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W12a & W12b

Filed (1st Appeal):	4/22/24
Filed (2nd Appeal):	1/17/25
49th Day (1st Appeal):	Waived
49th Day (2nd Appeal):	Waived
Staff:	TLG- A
Staff Report:	3/27/2025
Hearing Date:	4/9/2025

STAFF REPORT: APPEAL
NO SUBSTANTIAL ISSUE DETERMINATION

Appeal Nos.:	**A-1-MEN-24-0017 and A-1-MEN-25-0002**
Applicant:	**Mendocino Unified School District (MUSD)**
Agent:	GHD
Local Government:	County of Mendocino
Local Decisions:	Approval with Conditions
Location:	44100 Little Lake Rd. Mendocino, CA 95460 (APN(s): 119-100-23, 119-100-04, 119-100-03)
Project Description A-1-MEN-24-0017:	(1) Demolish and replace two water tanks with combined storage capacity of ~115,000 gallons (gal) of potable water with two new tanks providing up to ~615,000 gal of potable water storage; (2) construct ~400-sq.ft. water treatment building and emergency back-up generator; (3) improve three existing water supply wells; (4) install up to 10 new emergency supply wells and related underground piping; (5) improve and expand driveway/access road; and (6) install new security fence with gates around perimeter of 5.7-acre property
Project Description A-1-MEN-25-0002:	Modify permit previously granted for Water System Reconstruction Project to: (1) reduce number of groundwater test wells from 10 to up to 6; (2) improve two existing wells and convert an existing test well to

	a supply well; (3) adjust locations of proposed test wells, tanks, and treatment building to ensure all development is at least 50 feet from environmentally sensitive habitat areas (ESHA); (4) construct new driveway entrance at east end of site; (5) demolish two sheds; and (6) install low symbolic fencing along northern edge of gravel access road
Appellant (1st Appeal):	Max Yeh
Appellants (2nd Appeal):	Max Yeh, Richard Jung, Todd Walton, Norman de Vall, Claudia Boudreau, MendoMatters.org, Monica Steinisch, Marc Laventurier, Margaret Mary O'Rourke, & Mary Falkenrath
Staff Recommendation:	No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeals raise a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify; others may submit comments in writing. (14 CCR § 13117.) If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeals have been filed.

On April 4, 2024, the Mendocino County Planning Commission conditionally approved Coastal Development Use Permit (aka CDP) No. U_2023-0004 for Applicant Mendocino Unified School District (MUSD). The approved development authorized the demolition and replacement of two existing water tanks, chlorination and control building, and related infrastructure; improvement of three existing wells; and installation of up to 10 new wells at the 5.7-acre site of the MUSD's water system facility located at 44100 Little Lake Road, approximately one mile east of the Town of Mendocino and 0.75 mile east of Highway One.

The purpose of the project includes two main objectives: (1) improving the MUSD's aging potable water system to meet current regulatory requirements and (2) providing

additional water storage capacity for firefighting and declared drought emergency conditions. The proposed improvements also are intended to resolve deficiencies associated with the aging infrastructure of the school's water system facilities that the State Water Resources Control Board Division of Drinking Water identified in 2016.

On April 22, 2024, the Commission received an appeal of the County's approval from Max Yeh. After the filing of the appeal, the applicant elected to waive the time limit for the Commission to open the appeal hearing to allow time to redesign the project to address issues raised in the appeal through an application for an amendment to the approved/appealed permit (further informed by consultations and coordination with County planning staff and staff from the CA Department of Fish and Wildlife, Regional Water Quality Control Board, and the Commission), which would supersede and replace the original approval.

On December 19, 2024, the Mendocino County Planning Commission approved Coastal Development Use Permit Modification (aka CDPM) # UM_2024-0008 with conditions, which modifies the original permit and its findings and conditions approved on April 4, 2024. The approved permit, as amended, includes prior authorizations for demolition and replacement of two existing water tanks, chlorination and control building, and related infrastructure and improvement of three existing wells, but the amended permit also reduces the scope and environmental effects of the original permit by limiting new wells to test wells only; reducing the number of groundwater test wells from 10 to up to 6; and adjusting locations of proposed test wells, tanks, access road improvements, and treatment building to ensure all development is at least 50 feet from environmentally sensitive habitat areas (ESHA)). The permit amendment also modifies the conditions of approval of the original CDP and also authorizes removing two sheds from within ESHA buffers and installing low symbolic fencing along the northern edge of an existing access road.

The County's findings for approval include adoption of the Final Subsequent Mitigated Negative Declaration (FSMND) and Addendum, prepared by the MUSD as the CEQA Lead Agency. The County granted its approval of the permit amendment subject to twenty-one Conditions of Approval including, but not limited to, conditions related to (1) the unanticipated discovery of cultural resources; (2) "Best Management Practices" (BMPs) for construction; (3) implementing all mitigation measures prescribed by the FSMND; (4) protective measures for nearby ESHAs; (5) future CDP application requirement for conversion of any test wells to production; (6) limitations on groundwater withdrawal and uses; and (7) future development limitations.

On January 17, 2025, the Commission received an appeal of the County's approval of the CDP amendment from ten appellants primarily raising issues related to the amended project's potential adverse effects on water supply; protection of ESHA); and visual compatibility of the approved development (i.e., water tanks) with the character of the surrounding area.

One of the primary contentions relates to Existing Test Well 6 (TW 6), which will be converted to a supply well under the approved CDP amendment. The appeal asserts

that TW 6 has not undergone minimum testing required by the LCP and its approval does not adequately protect the aquifer. Related water supply contentions assert that (a) the approved water storage and area of use (within a defined emergency drought water service area) is arbitrary because it does not include calculations justifying the quantity of water needed, fire flows, and storage, and does not specify the rationale for the water service area; and (b) the County did not require certain hydrological studies required by the LCP prior to permit approval for the construction of up to six wells to demonstrate that the well field will not have adverse effects on groundwater supplies.

The County approved the proposed amended development and adopted extensive findings and conditions that address the adequacy of water without adversely affecting the groundwater table of contiguous and surrounding areas. Specifically, the County's approval is based on evidence demonstrating that the purpose of this project is not to increase water supply to support new development for the area, but instead to address existing deficiencies and provide increased water security and fire prevention for the development that currently exists. The conversion of TW 6 to a production well is not intended to serve a new water-dependent development but rather to provide additional source capacity to meet State Water Board requirements for the existing water supply system. The replacement tanks will provide the same (i.e., in-kind) storage capacity that exists now to support the MUSD's ongoing operations (115,000 gals) and provide additional storage capacity (500,000 gals) to be used as an emergency water supply for firefighting and declared drought emergency conditions. The size of the new storage tanks also satisfies seismic design and fire code requirements. The test wells will be installed to explore the viability of supplementing water supply for emergency purposes and to provide system flexibility and redundancy for the existing water supply system.

Moreover, the County's approval is conditioned to limit water withdrawal in a manner that avoids the potential to adversely affect the groundwater table of contiguous or surrounding areas, including imposing Condition 15 requiring development of a thorough hydrological study prior to the submittal of any subsequent permit application for conversion of any of the proposed test wells to production wells. Additionally, the County included Conditions 16 and 18 establishing limits on the timing, volume and uses of water for both daily uses and emergency drought conditions.

Regarding ESHA, the County's findings for approval acknowledge the approved modified project substantially reduces the project's construction footprint and eliminates the need for new access roads and well improvements in areas of sensitive Bishop pine forest and other ESHAs. The relocations also eliminate the need to remove sensitive Mendocino cypress and Bishop pine trees at the site. In addition to siting all new development within existing disturbed areas outside of minimum required 50-foot ESHA buffers, the demolition and reconstruction of water system infrastructure authorized under the amended permit will result in removing existing infrastructure from within ESHA and ESHA buffers (such as sheds and a former water treatment building) and restoring and revegetating disturbed areas as proposed and required by Condition 8, thereby improving ESHA and adjacent areas. The conditional approval incorporates seven biological mitigation measures from the MND as part of Condition 8, including among others, Measure BIO-7 requiring a minimum 50-foot buffer from all aquatic

resources and adherence to standard erosion and sediment control measures for any work occurring within 100 feet of aquatic resources. Additionally, CDFW submitted written comments following the site visit with recommendations for imposing additional mitigation measures as conditions of approval. The County staff report incorporates these recommendations.

Finally, there is a high degree of legal and factual support for the County's decision that the development as conditionally approved would be sited and designed to protect views, to minimize the alteration of natural land forms, and to be visually compatible with the character of the surrounding area. The County's findings acknowledge that reducing the maximum height of the structures would necessitate more or wider tanks and thus more disturbance, and allowing for taller water tanks in this instance is in the public interest. The County's findings also state that the heavily (tall) wooded nature of the site limits the visual impact of the over-height water tanks. Furthermore, the tanks would be sited farther from Little Lake Road than a recycled water storage tank of similar size that was separately approved in 2023 for the same site. In addition, the approved CDP amendment includes enforceable conditions requiring revegetating disturbed areas, limiting the color of materials for the approved tanks, and exterior light fixtures, which together protect visual resources consistent with the LCP.

As the County thoroughly addressed the relevant coastal resource concerns, the project extent and scope are limited (the project footprint itself is limited to three contiguous parcels owned by the MUSD inland of Highway One that in total are approximately 5.7-acres), no significant coastal resources are threatened by the County-approved project, and the County's decision in approving the permit amendment should not set an adverse precedent for future interpretations of the County's LCP given the high degree of legal and factual support for the County's decision, staff recommends that the Commission find that none of the contentions of the appeal submitted for the permit amendment (Appeal No. A-1-MEN-25-0002) raise a substantial issue of conformance of the amended project with the policies and standards of the certified LCP.

If the Commission finds that Appeal No. A-1-MEN-25-0002 raises no substantial issue as recommended by staff, the County's CDP amendment becomes final and effective following Commission action, the original CDP approval is rendered as having no legal effect, and no development may be performed under that original approval. In that case, the appeal of the original permit becomes effectively moot, and, staff thus recommends that the Commission also find that the contentions raised under Appeal No. A-1-MEN-24-0017 for the original permit approval also do not raise a substantial issue, because following its action on the appeal of the CDP amendment would result in a final action on the CDP amendment and effective rescission of the original CDP, as adopted under the County's resolution for the CDP amendment.

The motions to adopt the staff recommendation of No Substantial Issue are found on **Pages 10 (Motion A) and 11 (Motion B)**.

Table of Contents

I. APPEAL JURISDICTION & PROCEDURES 7

II. LOCAL GOVERNMENT ACTIONS 9

III. FILING OF APPEALS AND RELATIONSHIP OF TWO APPEALS 10

IV. MOTIONS & RESOLUTIONS 10

V. SUMMARY OF APPEAL CONTENTIONS 11

VI. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE . 13

A. BACKGROUND & PROJECT DESCRIPTION 13
B. ANALYSIS OF CONTENTIONS 15
1. Contentions Regarding Demonstrating Water Adequacy Without Adverse Effects ... 16
2. Contentions Regarding Environmentally Sensitive Habitat Areas (ESHA) 31
3. Contentions Regarding Visual Resources 36
4. Invalid Contentions 40
C. CONCLUSION – NO SUBSTANTIAL ISSUE DETERMINATION 41

APPENDICES

Appendix A. Substantive File List

Appendix B. Excerpts from the Mendocino County Certified LCP

EXHIBITS

Exhibit 1 – Regional and Vicinity Maps
Exhibit 2 – Site Plan
Exhibit 3 – Appeal Documents (Original Permit)
Exhibit 4 -- Appeal Documents (Permit Amendment)
Exhibit 5 – Local Notice of Final Action (Original Permit)
Exhibit 6 – Local Notice of Final Action (Permit Amendment)

I. APPEAL JURISDICTION & PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their final CDP actions. During a period of ten working days following Commission receipt of a notice of final local action for an appealable development, an appeal of the action may be filed with the Commission.

Approvals of CDPs by cities or counties may be appealed if the authorized development will be located within the appealable areas, which under Coastal Act section 30603(a)(1) through (3)[1] include development located (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) in other areas on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; or (3) in a sensitive coastal resource area. Approvals of CDPs by counties also may be appealed if the approved development is not designated as the principal permitted use under the county's certified zoning ordinance or zoning district map (Coastal Act section 30603(a)(4)). In addition, any development that constitutes a major public works project or a major energy facility that is approved or denied by a city or county may be appealed (Coastal Act section 30603(a)(5)).

In this case, Mendocino County's approval of Coastal Development Major Use Permit U_2023-0004 and Coastal Development Use Permit Modification UM_2024-0008 are appealable to the Commission because the approved development is: (1) located within 100 feet of a wetland or stream; (2) a form of development not designated as the "principal permitted use" under the certified LCP; and (3) constitutes a major public works project.

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

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

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. The Commission

[1] See Commission regulations 14 CCR § 13577 for guidance.

is required to begin its hearing on an appeal, addressing at least the substantial issue question, within 49 working days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline.

At the Substantial Issue determination stage, the Commission may only consider whether appellants' grounds for an appeal raise a substantial issue. The Coastal Act and the Commission's implementing regulations are structured such that "substantial issue" is presumed, and the Commission generally considers a number of factors in making such a determination. The term "substantial issue" is explained in section 13115(c) of the Commission's regulations as follows:

> When determining whether the appeal raises a substantial issue, the Commission may consider factors, including but not limited to:
>
> 1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
> 2. The extent and scope of the development as approved or denied by the local government;
> 3. The significance of the coastal resources affected by the decision;
> 4. The precedential value of the local government's decision for future interpretations of its LCP; and
> 5. Whether the appeal raises local issues, or those of regional or statewide significance.
>
> The Commission may, but need not, assign a particular weight to a factor.

Commission staff has analyzed the administrative record for the original approved project and subsequent amendment, including, but not limited to, the County's Final Local Action Notices for the approvals (Exhibits 5 & 6), the appellants' claims (Exhibits 3 & 4), and the relevant requirements of the certified LCP (Appendix B). Staff is recommending that the Commission find that the development as approved by the County under the CDP amendment raises no substantial issue with respect to the appellants' grounds for appeal.

In this case, because staff is recommending that the appeals raise No Substantial Issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

If, following testimony and a public hearing, the Commission determines that the appeals *do not* raise a substantial issue, then the Commission does not take jurisdiction

over the underlying CDP application and the local government approval will stand. Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application for the subject appeal *de novo*. The applicable test for the Commission to consider in a de novo review of a project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea (in this case it is not), the public access policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons. In this case, any consideration of a de novo application will occur at a future hearing.

II. LOCAL GOVERNMENT ACTIONS

A. APPEAL NO. A-1-MEN-24-0017

On April 4, 2024, the Mendocino County Planning Commission conditionally approved Coastal Development Use Permit (aka CDP) No. U_2023-0004. The approved development authorizes the demolition and replacement of two existing water tanks, chlorination and control building, and related infrastructure; improvement of three existing wells; and installation of up to 10 new wells. The County granted its approval subject to twelve Conditions of Approval including, but not limited to, conditions related to (1) the unanticipated discovery of cultural resources; (2) implementing all mitigation measures prescribed by the Mitigated Negative Declaration SCH 2020080439; (3) repaving an existing driveway approach onto Little Lake Road; and (4) imposing 72-hour pump testing on new wells and establishing use limitations dependent on testing results. The decision was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action (NOFA), which was received at the Commission's North Coast District Office on April 18, 2024 (Exhibit 5).

B. APPEAL NO. A-1-MEN-25-0002

On December 19, 2024, the Mendocino County Planning Commission approved Coastal Development Use Permit Modification (aka CDPM) # UM_2024-0008 with conditions, which modifies the original permit and its findings and conditions approved on April 4, 2024. The County's final action and approved project plans for the amendment are attached as Exhibit 6. The approved permit, as amended, includes prior authorizations for demolition and replacement of two existing water tanks, chlorination and control building, and related infrastructure; and improvement of three existing wells, but reduces the scope and environmental effects of the original permit (e.g., limits new wells to test wells only; reduces the number of groundwater test wells from 10 to up to 6; and adjusts locations of proposed test wells, tanks, access road improvements, and treatment building to ensure all development is at least 50 feet from environmentally sensitive habitat areas (ESHA)), modifies the conditions of approval of the original CDP, and also authorizes removing two sheds from within ESHA buffers and installing low symbolic fencing along the northern edge of an existing access road. The County's findings for approval include adoption of the Final Subsequent Mitigated Negative Declaration (FSMND) and Addendum, prepared by the MUSD as the CEQA Lead

Agency. The County granted its approval of the permit amendment subject to twenty-one Conditions of Approval including, but not limited to, conditions related to (1) the unanticipated discovery of cultural resources; (2) "Best Management Practices" (BMPs) for construction; (3) implementing all mitigation measures prescribed by the FSMND, SCH # 2020080439; (4) protective measures for nearby ESHAs; (5) future CDP application requirement for conversion of any test wells to production; (6) limitations on groundwater withdrawal and uses; and (7) future development limitations. The County's resolutions for approving the **permit amendment also include a resolution that the subject amended CDP supersedes the original permit CDP # U_2023-0004 "and shall control the development of the Project**" (Resolution No. PC 2024-0019; page 6 of Exhibit 6).

III. FILING OF APPEALS AND RELATIONSHIP OF TWO APPEALS

A. APPEAL NO. A-1-MEN-24-0017

On April 22, 2024, the Commission received an appeal of the County's approval from Max Yeh (Exhibit 3). The appeal was filed in a timely manner, within ten working days of receipt by the Commission of the County's NOFA. Pursuant to section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission; however, according to Coastal Act section 30625(a), the applicant can waive that time limit. On May 28th, 2024 the applicant's agent, Matthew Kennedy of GHD, submitted a signed copy of a waiver of the 49-working-day deadline for opening the Commission hearing on the appeal. The applicant subsequently applied for an amendment to the approved/appealed permit to address issues raised in the appeal.

B. APPEAL NO. A-1-MEN-25-0002

On January 17, 2025, the Commission received an appeal of the County's approval of the amendment from Max Yeh, Richard Jung, Todd Walton, Norman de Vall, Claudia Boudreau, MendoMatters.org, Monica Steinisch, Marc Laventurier, Margaret Mary O'Rourke, and Mary Falkenrath. The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit 3). On January 31, 2025, the applicant's agent submitted a signed copy of a waiver of the 49-working-day deadline for opening the Commission hearing on the appeal.

IV. MOTIONS & RESOLUTIONS

A. APPEAL NO. A-1-MEN-25-0002

Motion A:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-25-0002 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the

Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution A:

The Commission hereby finds that Appeal A-1-MEN-25-0002 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

B. Appeal No. A-1-MEN-24-0017

Motion B:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-24-0017 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting "Yes" as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution B:

The Commission hereby finds that Appeal No. A-1-MEN-24-0017 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified LCP and/or the public access policies of the Coastal Act.

V. SUMMARY OF APPEAL CONTENTIONS

1. Appeal No. A-1-MEN-24-0017

The following is a summary of contentions raised by Max Yeh in his appeal of the County's approval of the original permit. All of the below contentions were restated, incorporated by reference, and included as contentions on the appeal of the amended

permit and are addressed in this staff report under analysis of appeal contentions (Finding VI).

1. The approved development does not demonstrate that adequate services exist without adversely affecting the aquifer and depleting groundwater supply.

2. The approved project authorizes a non-resource dependent use in/adjacent to Environmentally Sensitive Habitat Areas (ESHAs) inconsistent with the ESHA protection policies of the certified LCP.

3. The development approved by the County does not protect visual resources or conform with the policies set forth to ensure development shall be sited and designed to be visually compatible with the character of surrounding areas.

4. The County followed improper procedures and disclosures of CEQA.

2. APPEAL NO. A-1-MEN-25-0002

In their joint appeal of the County's approval of the permit amendment that the County approved in an attempt to address the issues raised in the first appeal, the following is a summary of contentions raised by Appellants Max Yeh, Richard Jung, Todd Walton, Norman de Vall, Claudia Boudreau, MendoMatters.org, Monica Steinisch, Marc Laventurier, Margaret Mary O'Rourke, and Mary Falkenrath. Again, the analysis of all contentions is included in Finding VI below.

1. The approved modified development did not demonstrate prior to project approval that an adequate water supply exists without adversely affecting the aquifer and depleting groundwater supply.

2. The approved modified project authorizes a non-resource dependent use in/adjacent to wetlands and other Environmentally Sensitive Habitat Areas (ESHAs) inconsistent with the ESHA protection policies of the certified LCP.

3. The water storage tanks authorized by the approved modified project exceed the height limits established by the PF zoning district requirements and would be visible from the scenic Little Lake Road Trail, inconsistent with the visual resource protection requirements of the certified LCP.

4. The County followed improper public noticing and hearing procedures by posting new materials less than 24 hours in advance of the hearing and modifying the adopted Resolution during the hearing[2];

[2] See Exhibit 4, Appeal Item III.G (pages 33-34) among others

5. The County followed improper disclosure requirements of CEQA and the Lead Agency failed to issue an EIR [3].

6. The approved modified project violates groundwater law and associated rights.

VI. FINDINGS AND DECLARATIONS for NO SUBSTANTIAL ISSUE

A. BACKGROUND & PROJECT DESCRIPTION

Background

The MUSD owns, operates and maintains a potable and fire water system at the project site to serve its K-8 School, High School and District Office, as well as Friendship Park, the Community Center of Mendocino, and a number of irrigation areas affiliated with these primary consumers.

The project site is located approximately one mile east of the Mendocino Town center and 0.75 mile east of Highway One on three contiguous parcels owned by MUSD. The parcels are approximately 5.7 acres total and situated adjacent to and north of Little Lake Road. The land use designation and zoning of the parcels is Public Facilities (PF) and surrounding development is primarily Rural Residential, five (5)-acre minimum lots. The residential neighborhood is intermixed with swaths of native vegetation including large overstory trees above a maintained understory. Other nearby public facilities are located south of and adjacent to Little Lake Road and include a Mendocino K-8 school located approximately 500 feet southwest of the subject site (also owned by MUSD); and the PG&E Big River Substation located approximately 1,040 feet southwest of the subject site.

The Town of Mendocino and the immediate surrounding area are particularly vulnerable to extended periods of drought as the water supply is almost entirely provided by a relatively small and shallow aquifer. The Mendocino Headlands aquifer receives 98% of its water supply from precipitation, much of which drains to the ocean via seeps and springs along the coastal bluffs. No community (public) water system exists to serve the Town or surrounding area, and there are over 400 privately owned water wells within the Town boundaries. The unique geology of the area's shallow marine terrace formations above highly fractured bedrock severely limit groundwater availability, and California Department of Water Resources has designated the Town of Mendocino and surrounding environs as an area of "Critical Water Resources.[4]" This open aquifer

[3] See Exhibit 4, Appeal Items III.B.3 (page 31), III.H (page 35), VI.E (page 41), Attachment II (page 44), and Comments 2 (page 52), and 15 (page 160), among others

[4] The appellants incorrectly state that "the project site is located within the County designated "Critical Groundwater Area" and within the State designated "Critically Overdrafted Basin" and cites the DWR website showing a coarse-scale webmap of Sustainable Groundwater Management Act (SGMA)-designated Critically Overdrafted Basins. However, zooming in to site, it shows as "very low" for SGMA groundwater basin prioritization at the project site, and the nearest critically overdrafted basin is in the Stockton area.

creates a limited groundwater supply and leads to severe water shortages during drought years and the dry summer months every year, particularly for residents with marginal wells. The Mendocino Community Services District (MCCSD) manages groundwater extraction within a service area boundary that includes the Town of Mendocino and extends east of the highway but terminates just west of the subject project site.

Project Studies and Modifications

In 2020, the MUSD prepared an Initial Study/Proposed Mitigated Negative Declaration (IS/MND; State Clearinghouse No. 2020080439[5]) for a Project involving the replacement of two existing water storage tanks, rehabilitating two existing wells, converting a test well to a new production well, replacing a water treatment building, and other accessory improvements on the MUSD property. The Board of Trustees adopted the MND and approved the Project on October 15, 2020.

After adoption of the MND and approval of the Project, the MUSD agreed to coordinate with the Mendocino City Community Services District (MCCSD) to allow additional water supply and storge improvements on the MUSD property.

In 2022, MCCSD, in cooperation with the MUSD, received a grant in response to a drought scenario from the State of California Department of Water Resources through the Urban and Multibenefit Drought Relief (UMBDR) grant program (Agreement No. 4600014624) to help serve emergency water needs of MCCSD customers. The UMBDR grant funding is for the development of 500,000 gallons of potable water storage at the MUSD's water supply and storage site for MCCSD use, the drilling of up to ten new groundwater supply wells at the MUSD's water supply and storage site for emergency water supply purposes, and a connection to the MUSD's water distribution system. To achieve the shared interests of both projects, MUSD prepared a Subsequent MND (FSMND; SCH NO. SCH 2020080439[6] to address both the MUSD's improvements to existing identified MUSD water system deficiencies, and improvements in conjunction with the MCCSD to provide an emergency water supply for MCCSD customers, all of which would be located at MUSD's water supply and storage site.

On April 4, 2024, the Mendocino County Planning Commission conditionally approved Coastal Development Use Permit (aka CDP) No. U_2023-0004. Following an appeal of the project to the Coastal Commission (Appeal No. A-1-MEN-24-0017), Commission staff joined the applicant, County staff, and resource agency representatives August 29, 2024, of a tour of the project site. During the site visit, it was determined that some of the development proposed in U_2023-0004 may have been located in ESHA and ESHA buffers and should be adjusted. The applicant prepared a wetland delineation and redesigned the project to avoid ESHA and minimum ESHA buffers required by the

[5] Accessible online at https://ceqanet.opr.ca.gov/Project/2020080439

[6] Accessible online at https://ceqanet.opr.ca.gov/Project/2020080439

certified LCP and prepared an addendum to the FSMND that is included as an attachment to the County staff report.

Separately, in 2020 MUSD prepared an IS/MND for a recycled water system project (SCH No. 2022020568[7]) involving installation of new recycled water pipelines, irrigation systems, and fire hydrants throughout the Town of Mendocino, and a new 250,000 gallon recycled water storage tank on the same MUSD property as the approved development that is the subject of this appeal. On July 6, 2023, Mendocino County granted conditional approval of Coastal Development Use Permit U_2022-0012 for the recycled water system project.

Related Permits

In 2020, Mendocino County issued Categorical Exclusion Order # CE2020-0043 to MUSD. The Exclusion Order authorized the school district to develop a supplemental well at the site (referred to in the approved project as "test well 6"). In 2023, the County approved CDP # U_2022-0012 authorizing construction of a 250,000-gallon recycled water storage tank at the subject parcel along with installation of additional water infrastructure (pipelines, water hydrants, and irrigation systems) on multiple sites through the Town of Mendocino to the west. The intent of the recycled water system project is to supplant potable water usage with reclaimed water and provide additional fire protection and not to increase any potential development for the area.

Project Description

The approved permit, as amended, includes authorization to: (1) demolish and replace two existing water tanks (50,000-gal redwood tank and 65,000-gal steel tank, with a combined capacity of 115,000 gallons of potable water) with two new tanks providing up to ~615,000 gal of potable water storage; (2) demolish an existing water treatment building located 50 feet from ESHAs and replace with a new chlorination and control building and related infrastructure sited greater than 100 feet from ESHAs; (3) convert an existing test well (TW #6) to a production well; (4) redevelop (maximize well yield, etc.) an existing groundwater supply well (MUSD MW #1), (4) reconstruct (replace cables/transducers) existing well MW #2; (5) drill up to six groundwater test wells; (6) remove two sheds from within ESHA buffers; (7) develop a new access driveway; and (8) install low symbolic fencing along the northern edge of an existing access road. Additional details on the approved project are included in the supplemental project description attached to the county staff report (page 33 of Exhibit 6)

B. Analysis of Contentions

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally approved project's conformity to the

[7] Accessible online at https://ceqanet.opr.ca.gov/2022020568

policies contained in the certified LCP or the public access policies of the Coastal Act (where applicable; in this case it is not).

For the reasons discussed below, the Commission finds that all but three of the contentions raised by the appellants under Appeal No. A-1-MEN-25-0002 for the permit amendment present valid grounds for appeal, but none raise a substantial issue of conformance of the approved development with the policies and standards of the certified LCP. Valid contentions are discussed in subsections (1) through (3) below, and invalid contentions are discussed in subsection (4) below. The policies and standards relevant to appeal contentions are shown in Appendix B.

The contentions raised under Appeal No. A-1-MEN-24-0017 for the original permit approval are not separately analyzed herein, because, as discussed above, the County's resolutions for conditionally approving the permit amendment include a declaration that the subject amended CDP supersedes the original permit (CDP # U_2023-0004) and shall control the development of the Project. In addition, the applicant submitted in their presentation to the Planning Commissioners on December 5, 2024 a request that "the Planning Commission renders the original approval of U_2023-0004 to be null and void and with no legal effect as of the issuance date of the amended CDP."[8]

Therefore, if the Commission finds that the appeal of the permit amendment raises no substantial issue (Appeal No. A-1-MEN-25-0002), the permit amendment becomes final and effective following Commission action, the original CDP approval is rendered as having no legal effect, and no development may be performed under that approval. In that case, the appeal of the original permit becomes effectively moot, and the contentions raised under Appeal No. A-1-MEN-24-0017 for the original permit approval also do not raise a substantial issue, because following its action on the appeal of the CDP amendment would result in a final action on the CDP amendment and effective rescission of the original CDP, as adopted under the County's resolution for the CDP amendment.

1. Contentions Regarding Demonstrating Water Adequacy Without Adverse Effects

The appeal of the modified project raises contentions generally asserting that the County approved the amended project without demonstrating proof of an adequate water supply to serve the development and in a manner that protects the aquifer without depleting groundwater resources. Specifically, the appeals assert in part that that the County's approval of the amended project does not adequately address the following contentions: (a) TW 6, which will be converted to a supply well, has not undergone minimum testing required by the LCP prior to converting to production; and interference has been documented between TW 6 and Well 1 in conflict with LCP and Division of Environmental Health requirements; (b) the approved water storage and area of use is arbitrary because it does not include calculations justifying the quantity of water needed,

[8] Slide 60, accessible online at https://www.mendocinocounty.gov/home/showpublisheddocument/68641/638689861085670000

fire flows, and storage, and does not specify the rationale for the water service area; (c) the County did not require certain hydrological studies required by LUP Policy 3.8-9 prior to permit approval for the construction of up to six wells, and the authorization of the well field may have adverse effects on groundwater supplies.

Excerpts of Applicable LCP Policies:

Land Use Plan (LUP) Policy 3.8-9 states the following (Emphasis added):

> 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. (Appendix 6)
>
> 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.

Mendocino County Coastal Zoning Code (CZC) section 20.516.015 ("General Criteria") states in part the following (Emphasis added):

> New development shall be approved subject to the availability of necessary public services and consistent with the following provisions.
>
> …
> (B) Water Supply.
>
> …
> (2) 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 final approval of the proposed use.

LUP Policy 3.9-1 states in part:

> 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. (emphasis added)

...

CZC Section 20.308.095(M) "Definitions" defines "Proof of Water" and "Adequate Water Supply" as follows:

...
(M) Proof of Water" means testing and evaluation of an aquifer to determine the existence of an adequate water supply. Similar to a hydrological study, but generally not as complex.

Proof of water as defined above can be clarified further by the review of additional related definitions as follows:

(1) "Adequate Water Supply" means a combination of production and storage of sufficient quantities to support proposed uses which will not adversely affect contiguous and surrounding uses as defined by the Division of Environmental Health in their publication "Land Development Requirements," as revised.

(2) "Adversely affect" means lowering of the groundwater table of contiguous or hydrologically contiguous parcels to the point where there is no longer an adequate water supply for the uses existing on the parcels. This definition also includes "undesirable result" (as defined in this section) as well as lowering of water levels in existing wells to less than adequate as defined in paragraph (1) of this subsection or existing usage, whichever is greater.

(3) "Undesirable result, means a depletion of the groundwater table of contiguous or surrounding properties, or the lowering of water levels in existing wells to levels less than adequate for existing uses, or an adverse cumulative impact where a gradual lowering of the groundwater levels will eventually lead to a depletion of the supply.

(4) "Hydrological Study" means a study of the hydrology of a defined area.

LUP Appendix 6 "Environmental Health Land Division Requirements" Revised January 1, 1982 (with Water Testing Revised June, 1994) refers to the "Mendocino County Coastal Groundwater Development Guidelines," prepared by Questa Engineering Corporation July 1989 ("1989 Guidelines"), which specify in Table 1 that a hydrological

study shall be prepared for commercial, institutional, and industrial major water uses. The 1989 Guidelines specify in part that the hydrological study should include:

> …consideration of local geology and hydrology, documentation of current groundwater development, estimation of water use by the development, a pump test, assessment of the onsite availability of groundwater, and analysis of potential impacts of the proposed groundwater development. The hydrological study should be documented in a report summarizing the information and analyses, and should include appendices containing supporting data… (emphasis added)

CZC Section 20.532.095 "Required Findings for all Coastal Development Permits" states, in applicable part, the following (emphasis added):

> (A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:
>
> (1) The proposed development is in conformity with the certified local coastal program; and
>
> (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities
>
> (3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and
>
> (4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.
>
> …
>
> (6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.

Discussion

The purpose of the project includes two main objectives: (1) improving the MUSD's aging potable water system to meet current regulatory requirements and (2) providing additional water storage capacity for firefighting and declared drought emergency conditions. The two existing water tanks at the site (one constructed of redwood and one constructed of steel) are nearing the end of their useful life and do not meet current seismic design standards. The replacement tanks will provide the same (i.e., in-kind) storage capacity that exists now to support the MUSD's ongoing operations (115,000 gals) and provide additional storage capacity (500,000 gals) to be used as an

emergency water supply for firefighting and declared drought emergency conditions. The test wells will be installed to explore the viability of supplementing water supply for emergency purposes and to provide system flexibility and redundancy for the existing water supply system.

The proposed improvements also are intended to resolve deficiencies associated with the aging infrastructure of the school's water system facilities that the State Water Resources Control Board Division of Drinking Water (Division) identified in 2016. The applicant explained the identified deficiencies and project components in a presentation before the Mendocino County Planning Commission on December 5, 2024.[9] The conversion of TW #6 to a production well, along with replacing the existing water treatment building and installing pH and chemical analyzers and a new alarm system, will collectively address current regulatory requirements established by the Division.

The new storage tanks will be sized to meet seismic design and fire code requirements and afford the stored 500,000 gallons of water to be available to the MUSD and surrounding area in the event of a fire or declared drought emergency. The conversion of TW #6 to a production well, along with replacing the existing water treatment building and installing pH and chemical analyzers and a new alarm system, will collectively address current regulatory requirements established by the Division.

(a) Demonstrating Adequate Water Supply for TW 6 Without Adverse Effects on Aquifer

The appellants assert that the project was approved without demonstrating proof of water because TW 6 has not undergone minimum testing required by the LCP prior to converting to production. The appellants further assert that the conditional approval does not protect the aquifer, because: (i) interference has been documented between wells, particularly between TW 6 and Well 1, in conflict with LCP and Division of Environmental Health requirements[10]; and (ii) the County's conditional approval of the modified project, and especially Condition 16, "results in nonsensical, self-defeating conditions.[11]"

Demonstrating Adequate Water Supply for Test Well 6

The County's findings for approval state in part that: "The purpose of this project is not to increase the potential development for the area, but instead to address existing deficiencies and provide increased water security and fire prevention for the development that currently exists." The conversion of TW 6 to a production well is not intended to serve a new water-dependent development but rather to meet State Water Resources Control Board Division of Drinking Water (Division) requirements for the

[9] Presentation by Matt Kennedy, GHD to Mendocino County Planning Commission is accessible online at https://www.mendocinocounty.gov/home/showpublisheddocument/68641/638689861085670000.

[10] See Exhibit 4, Appeal Contention III.B.1, page 30 and tenth comment, page 144

[11] See Exhibit 4, Appeal Contention III.D, page 32

existing water supply system. MUSD's two existing wells ("Well 1" and "Well 2") have adequate capacity to meet more than three times its average daily demands and fill the proposed tanks but does not meet current state regulatory requirements. According to a letter in the local record dated August 23, 2016 from the Division, in June 2016, Division staff conducted an inspection of MUSD's water system and informed the school district that "The System is required to have a combined source capacity that meets the highest maximum day demand (MDD) over the last ten years which is 25,500 gallons (or 17.7 gpm)" (Appendix B). To comply with Division requirements, MUSD's peak daily demand requires a water production capacity four times greater than its average daily demand. To address the issue, in 2020 the applicant obtained authorization to drill a supplemental well (Mendocino County Categorical Exclusion Order # 2020-0043 and Division of Environmental Health Water Well Permit # 23932).

The local record contains a Technical Memorandum from GHD dated January 25, 2021, which further describes the purpose of TW6 as follows:

> The main objective of this test well construction and testing was to confirm the availability of a reliable, high-quality water supply which could later be added to the current MUSD well field to increase water supply reliability and provide a level of redundancy in case either of the existing two water supply wells were to go offline. When added to the system, the well could be cycled along with the other two supply wells to better manage the water levels in the aquifer so as to keep the overall levels higher, and to avoid concentrated extraction. Currently, the combined production from the two existing supply wells could potentially have inadequate capacity to meet current Maximum Day Demand (MDD) and lack redundancy in the event one or more supply wells were to go offline.

The appellants cite procedures established in Mendocino City Community Service District (MCCSD) Ordinance 2020-1 and assert that TW 6 was not pump tested to the 72-hour standards required by MCCSD. However, the project site is not located within the MCCSD and is subject to Mendocino County LCP standards, not MCCSD standards. The requirements for "adequate water supply" are defined by the certified Mendocino County LCP and its incorporation by reference of requirements in the County's 1989 Coastal Groundwater Development Guidelines that establish the well testing procedures and required levels of investigation for groundwater development. The 1989 Coastal Groundwater Development Guidelines require proof of water for newly approved development and divisions of land and state that "existing water uses shall have priority over uses for new development." (Coastal Groundwater Development Guidelines, General Plan Water Policies 6a, 6b, and 6c).[12] Even though the TW 6 is for

[12] Proof of water is "established by conducting a pump test and comparing well yield, observed during pump testing, to the estimated water demand for the property." (Coastal Groundwater Development Guidelines, p. 4) These guidelines state that estimated water demand for commercial, institutional and industrial facilities are "determined individually for each project, based upon usage rates for comparable facilities along the North Coast of California…" (Coastal Groundwater Development Guidelines, p. 5) Inherent in this water demand estimate is that there be a "usage rate" for a proposed development, which has been described in these guidelines in gallons per day units. Appellants allege that there needs to be

an existing water use at MUSD and has priority under the guidelines, the relevant guidelines that could apply to the subject site if it were for a new water use establish protocols for minimum pump testing duration of public water systems and major water users in terrace deposit wells for a period of 24 hours, and in bedrock and composite wells for a period of 72 hours. All property owners within one mile are required to be notified prior to pump testing. TW 6 was drilled in December 2020. The 2021 technical memo and a 2022 hydrogeologic report describe the lithology of the TW 6 boring as comprised of undifferentiated alluvial and marine terrace deposits before reaching bedrock at 45 feet below ground surface (bgs), where the TW 6 boring is terminated.[13]

The connection of TW 6 to the water system addresses capacity needs for an existing water use. As described above, the approved connection of Test Well 6 to the existing water system ensures regulatory compliance of a needed replacement to aging infrastructure and does not increase the demand for potable water or otherwise serve a new development. Furthermore, the installation of well 6 as a supplemental well was already authorized by the County in 2020 through issuance of Categorical Exclusion Order # 2020-0043 (Appendix A) and data related to TW 6, as described below, showed no adverse effect on nearby wells.

Even in those cases where proof of water is required for groundwater use for new proposed commercial or institutional facilities "as a Condition of Approval for a proposed project," the Coastal Groundwater Development Guidelines acknowledge the role of Division of Environmental Health (DEH) in serving to oversee the testing requirements, including the ability to either waive or increase testing requirements for commercial, institutional, and industrial facilities depending on the scale and scope of the proposed use, by stating in part the following:

> Commercial, institutional and industrial facilities are required to conduct either Proof of Water or hydrological studies, depending upon the water resource classification, parcel size, adjoining parcel sizes, and the water demands of the facility. The Mendocino County Division of Environmental Health Department may waive the testing requirements on a case-by-case basis for very low water use operations, or where a change in land use can be demonstrated to result in no anticipated increase in water use. Conversely, the Division of Environmental Health may increase the testing requirements for "minor" water use facilities in areas of marginal or critical water resources. (Emphasis added)(Coastal Groundwater Development Guidelines, p. 3)

proof of water for the emergency supplies for fire and drought but given the inherent uncertainty as to when or if these emergencies arise and their severity, there can be no established daily usage rate from which an estimated water demand can be established for such emergency uses. Given the lack of usage rate and related water demand for emergency uses, the proof of water requirements in the Coastal Groundwater Development Guidelines do not apply to emergency uses of the water given their inherent uncertainty and variability of water demands based on the type and scope of the emergency.

[13] See in part Figure 4 of October 7, 2024 Hydrogeologic Report prepared by GHD, and section 3.1.3 and Attachment 2 of the January 25, 2021 Technical Memorandum prepared by GHD.

Nonetheless, some testing has already occurred in association with TW 6. The testing was done for the existing institutional facilities, not for new institutional facilities. As such, protocol testing of wells associated with proposed new institutional facilities was not required under the Coastal Groundwater Development Guidelines. The January 25, 2021 Technical Memorandum included in the local record documents the activities and results associated with the initial drilling, construction, pump testing, and laboratory analysis of TW 6 and that included an 8-hour constant rate pump test. The local record also includes a revised Hydrogeologic Report prepared by GHD and dated October 7, 2024 that describes additional data analysis based upon readings collected from MUSD wells and neighboring wells between September 29 and November 24, 2022.

According to the 2024 hydrogeologic report, in September 2022, GHD, MCCSD and MUSD outreached via phone and letters sent to domestic well owners who are immediately adjacent to and downgradient of the anticipated groundwater flow direction (westerly) of the MUSD site to obtain permission for collecting well data from well owners. The hydrogeologic report states in part: “In total, nine (9) nearby residents were identified as having wells adjacent to or downgradient of the proposed well field that could provide valuable data or potentially be impacted by the operation of the proposed well field. Six of the nine residents responded and had wellheads in sufficient condition to allow monitoring, two of which were capable of allowing the installation of a transducer.” The MUSD also detected a water leak around the time of October 28, 2022 that drained their water storage tanks, triggering a 5-day continuous pumping period for both Well 1 and Well 2 to refill the tanks. MUSD collected data during this time period, which is also presented in the hydrogeologic report.

Avoiding Adverse Effects for Test Well 6

The appellants point to data cited in the revised hydrogeologic report for TW 6 that indicates the presence of interference drawdown effects from Well 1, and assert the interference is evidence that water withdrawal will adversely impact neighboring wells, inconsistent with LCP requirements. The Mendocino County Coastal Groundwater Guidelines describes procedures for evaluating water table effects, stating in part:

> An adverse effect on the water table of surrounding properties shall be considered to occur if pumping at the maximum day demand at the pumped well results in a water table drawdown at wells on adjoining properties which either:
>
> a) amount to more than 10-percent of the existing drawdown at such wells under conditions of maximum day pumping demand; or,
> b) causes a decline (estimated or observed) in the existing well yield to a level which is less than 90-percent of maximum day water demand for the adjoining property.
>
> If either situation is estimated or found to occur, mitigation measures will be required.

The revised 2024 hydrogeologic report states in part that “Transducer data from the MUSD wells indicate that Well 6 (non-pumping monitoring well) has interference

drawdown effects from Well 1 (when actively pumping) of up to four feet. Wells located 285+ feet way from MUSD Well 1 show no apparent effects from sustained pumping activities. Under normal water demands Well 1 cycles on and off 3 to 4 times a day. Normal water demands are about 4,488 gallons per day of water use (GHD, 2019a)." However, no drawdown effects at off-site wells, including those of the nine nearby residents identified as having wells adjacent to or downgradient of the project area, were reported during the five-day continuous pumping period that occurred in 2022.

Thus, the facts in the local record support the County's approval of the project as amended, because although the drawdown effects have been observed on the MUSD property during an anomalous 5-day continuous pumping period from the water storage tank leak in October 2022, no drawdown effects were reported to have occurred on adjoining properties during this time. Nonetheless, the County's approval is conditioned to limit water withdrawal in a manner that avoids the potential to adversely affect the groundwater table of contiguous or surrounding areas. For example, Condition of Approval 16 restricts the initial filling and refilling of the storage tanks to the rainy season (specified as October 15 through May 15). Condition 16 further limits refilling tanks during the dry season (May 16 to October 14) to an average for the dry season of 5,000 gallons per day, which is consistent with the current water use and demand of existing operations.

The appellants further challenge the merits of the County's conditional approval of the modified project, and especially condition 16, asserting that the condition does not protect the aquifer. The appellants in their appeal state in part that "limiting extraction in Condition 16 during the "dry" season while allowing unlimited pumping during the "wet" season results in maximum extraction after October 15, when the aquifer is most vulnerable, at the end of the dry months and long before precipitation infiltrates the aquifer… Precipitation does not revive the aquifer for months, which is why the Mendocino City Community Service District's (MCCSD's) Ordinance 2020-1 extends the period of well testing until 6 inches of rain has fallen, usually late November or early December." Condition 16 requires the following:

> The applicant shall only withdraw groundwater to initially fill and refill the storage tanks from the aquifer during the rainy season (October 15 through May 15). Groundwater may be withdrawn to refill the storage tanks during the dry season (May 16 through October 14) but shall be limited to an average for the dry season of 5,000 gallons per day.

The County's Condition 16 does not limit groundwater extraction to the period immediately following the onset of the rainy season but rather limits the initial filling of the storage tanks to occur during the rainy season which is defined as the period from October 15 through May 15. This affords the MUSD the ability to initially fill the tanks after the aquifer has recharged but within the wet season while limiting daily groundwater withdrawals during the drier times of the year. The FSMND indicates that the MUSD would operate and maintain the replacement tanks and water treatment improvements in a manner similar to the existing tanks and water system, which has

been operating and managing its groundwater extraction for decades without adversely affecting nearby wells. The FSMND states in part:

> The use of the property would be substantially the same as the existing site. The planned operation is to fill the tanks during the wet season and then maintain the tanks full during summer months when a drought condition is projected, so if the need arises and water from other local systems is unavailable, the supplemental emergency water stored in the tanks could be sustainably available to serve the local community with emergency water. This would prevent intrusive pumping of groundwater during the summer months.

Condition 16 further limits groundwater extraction from the existing wells to not exceed the average for the dry season of 5,000 gallons per day, which is the MUSD's current extraction rate for the existing water system.

Therefore, there is legal and factual support for the County's determination that the approved amended coastal development permit application, as conditioned, will be provided with adequate utilities, has adequate capacity to serve the existing development, and will ensure that the connection of TW 6 to the existing water system for the existing institutional facilities owned by MUSD will not adversely affect the groundwater table of contiguous or surrounding areas.

(b) Water Purpose and Need, and Area of Use

The appellants assert that the approved water availability and area of use is arbitrary because it does not include calculations justifying the quantity of water needed, fire flows, and storage, and does not specify the rationale for the water service area to be served during fire and drought emergencies.[14]

Water Purpose and Need

In particular, the appellants contend that justifications for the needed amount of water storage are "chameleon-like" and further state:

> "The FSMND declared that the need for over-sized tanks holding 615,000 gallons of water was sized according to MUSD's need of 115,000 gallons and Mendocino City Community Service District's need of 500,000 gallons for drought relief for some 3,300 people. However, at the December 5, 2024 hearing, MUSD replaced that rationale with the fire flow need of 630,000 gallons, said to be National Fire Protection Association (NFPA) requirement. However, under questioning from the Commission, MUSD's representative said that 200,000 to 300,000 gallons would satisfy that requirement. See the discussion following MUSD's slide show on the video of December 5th, 2024, hearing on Youtube after about 1:37."

The County's findings for approval of the amended development state in part that:

[14] See Exhibit 4, Appeal Contention III.F, page 33; and Appeal Contention III.G, page 34.

> "The stated intent of this project is to address existing identified Mendocino Unified School District water system deficiencies and provide an emergency water supply for the Town of Mendocino and surrounding area as illustrated in Exhibit I, not to increase the potential development for the area or be a growth-inducing infrastructure project."

The applicant's FSMND similarly describes the purpose of providing in-kind replacement water storage of 115,000 gallons to serve the existing MUSD demand while storing 500,000 gallons of water to be made available for emergency water in response to emergency fire or drought scenarios. The November 22, 2024 Addendum to the FSMND further states that:

> "Improvements to meet long-term service needs include providing sufficient storage to meet NFPA and California Fire Code requirements, providing water supply redundancy, and protecting the integrity of the water system by replacing assets beyond their service life to ensure the health and safety of students, faculty and public who rely upon the potable and fire water system. Specifically, the MUSD plans to deconstruct and replace its two existing water storage tanks with new water storage tanks that meet current seismic design standards and provide sufficient storage capacity for the recommended operational, emergency and fire storage."

As described in the FSMND, the storage of 500,000 gallons of water will also address current seismic design standards and regulatory requirements established by the California Fire Code (CFC). The FSMND also states in part that "The proposed new tanks have been sized to provide sufficient storage capacity for the recommended operational storage as well as NFPA 1142 requirements and CFC CCR Title 24, Part 9 for fire flows." The Water System Plan report referenced in the FSMND provides specific water storage volume calculations that were used to design the project. In a presentation before the Planning Commission on December 5, 2024, the applicant presented the original goal of increasing the total volume of water storage to no more than 630,000 gallons to meet CFC requirements.[15] The presentation lists the project design modifications that occurred to accommodate space limitations related to on site ESHAs while continuing to meet CFC requirements.[16] The local record also includes a letter of support for the approved project from David Latoof, Local Fire Authority Official and Chief of Mendocino Volunteer Fire Department.[17]

[15] Slide 20, accessible online at https://www.mendocinocounty.gov/home/showpublisheddocument/68641/638689861085670000

[16] Slides 34 and 41 accessible online at https://www.mendocinocounty.gov/home/showpublisheddocument/68641/638689861085670000

[17] Accessible online at https://www.mendocinocounty.gov/home/showpublisheddocument/68437/638681413365700000

To ensure the minimum volume of water is reserved in storage and available for fire fighting purposes during a drought scenario when water may be needed to provide an emergency water supply, the County imposed Condition of Approval 18, which limits the total volume of water that may be provided to no more than 40,000 gallons per day, and only if a minimum stored water volume of 315,000 gallons total can be maintained, consistent with the terms and conditions of the approved CDP amendment. Condition 18 also limits the drought scenarios under which water would be provided to those defined by Water Code Section 13198(a), or during a declared Drought Stage 3 "Emergency" as described in in MCCSD's "Water Shortage Contingency Plan."

Area of Use

The appellants further contend that the County's Condition of Approval 18 designates an arbitrary and capricious "Emergency Water Service Area" (EWSA) because the defined area does not clearly depict parcels located within the labeled boundaries in a way that the public knows whose property is within or outside the boundary, or whether the EWSA boundary bisects a parcel.

The applicant has indicated that water would be made available in the event of an emergency for fire fighting and emergency drought purposes beyond the boundaries of the MUSD properties. During the December 5, 2024 Planning Commission hearing on the amended project, Planning Commissioners deliberated on the matter of what area would be eligible for obtaining water from MUSD during a drought emergency. Following discussion with the applicant's agent, both agreed that providing water within the MCCSD service area boundaries and extending to the Slaughterhouse Gulch watershed boundary would provide a "definable and defined" emergency drought water service area. The meeting was continued until December 19, 2024, and the applicant submitted a graphic documenting the EWSA in advance of the meeting. The graphic is referred to as "Exhibit I" and is included in the County's findings for approval (page 61 of Exhibit 6). The revised hydrogeological report describes the Slaughterhouse Gulch watershed boundary as being located approximately 800-900 feet east and 1,800 feet north of the project site.

Thus, although Exhibit I does not include an overlay depicting parcel boundaries, the County's approval establishes a factual basis for conditionally approving the EWSA in a defined way such that parcel boundary overlays can be added without ambiguity. Also, the extent and scope of the EWSA boundary approved by the County is relatively minor, and this contention raises only local issues as opposed to those of regional or statewide significance. Moreover, the significance of the coastal resources affected by the County's decision is relatively low, as is the precedential value of the local government's decision for future interpretations of the LCP.

(c) Lack of Hydrological Studies for New Well Field and Potential Adverse Effects

The appellants contend that the County did not require certain hydrological studies required by LUP Policy 3.8-9 prior to permit approval for the construction of up to six test wells, and the authorization of the well field may have adverse effects on

groundwater supplies.[18] Further, the appellants state that "Nothing justifies the construction of storage tanks prior to a proof of the water that is meant to be stored in them."

The construction of the replacement storage tanks is not reliant on the development of the proposed test wells; rather, any additional permanent wells authorized by a future CDP amendment would provide for system redundancy and resiliency. The amended project approved by the County includes a proposal to drill up to six test wells, as described in the Addendum to the FSMND, "to explore the viability of additional water supply for emergency purposes. Viable wells would also help to meet source production and supply reliability required by the Division of Drinking Water." The County's original approval raised LCP conformity issues in part because construction of the well field included authorization to convert test wells to production wells without first demonstrating the adequacy of the water supply. The approved amended development revises the County's prior approval under CDP # U_2023-0004 by reducing the number of test wells from 10 to no more than 6, relocating test wells to ensure that all improvements are within previously developed areas of the site and outside of Environmentally Sensitive Habitat Areas (ESHAs), and limiting the development to installation of test wells rather than production wells, as required by the LCP.

As noted above, LUP Policy 3.8-9 and CZC section 20.516.015(B)(2) require in part that, prior to approval of the proposed use, 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. The term "adequate water supply" is defined by CZC section 20.308.095(M), and, as further specified in the Division of Environmental Health's Land Division Requirements and supporting documents (including the Mendocino County Coastal Groundwater Development Guidelines dated July 1989),[19] must be demonstrated through preparation of a hydrological study.[20] The 1989 Guidelines additionally specify that a showing of

[18] See Exhibit 4, Appeal contentions III.B.2 (page 31), III.E (page 33), IV.B (page 36); and Comments 2 (page 50), 3 (page 55), 4 (page 60), and 5 (page 65).

[19] LUP Appendix 6 "Environmental Health Land Division Requirements" Revised January 1, 1982 (with Water Testing Revised June, 1994) refers to the "Mendocino County Coastal Groundwater Development Guidelines," prepared by Questa Engineering Corporation July 1989 ("1989 Guidelines"), which specify in Table 1 that a hydrological study shall be prepared for commercial, institutional, and industrial major water uses.

[20] The 1989 Guidelines specify the required elements of a hydrological study, including among other things: estimated water demand, an extended duration pump test, monitoring well observations throughout the pumping period, and data analysis (including well and aquifer characteristics such as drawdown and recovery, transmissivity and storage, well efficiency, and specific capacity; proof of water in terms of observed maximum sustained yield of the well in relation to the estimated maximum daily water demand; water table effects based on observed and computed drawdown at neighboring wells or installed monitoring wells; regional impact analysis computed through the annual pumpage of the well in

adequate water supply requires the following: “If more than one well is proposed it must be demonstrated by calculations, or by actual pump testing, that the cumulative drawdown effect from all wells will be less than 10 percent of the maximum day drawdown at adjoining wells that may be affected.”

The County’s findings acknowledge that several concerns were raised in public comment during circulation of a Subsequent Mitigated Negative Declaration (MND) prepared by Mendocino Unified School District (MUSD) who served as the Lead Agency for the project[21] -- specifically regarding the long-term impacts that “emergency draw” of water would have on the local groundwater supply. The County adopted the findings and mitigation measures of the FSMND as part of its findings for approval, citing MUSD’s Response to Comment on the FSMND in part as follows:

> "Additional Testing and Mitigation: The Memorandum of Understanding between the MUSD and MCCSD (Appendix D) and Mitigation Measure HWQ-2 of the Subsequent MND require proposed well construction to be completed in accordance with MCCCSD Ordinance 2020-01. This includes notification of surrounding properties and a 72-hour pump test as part of a subsequent hydrogeologic study during construction. The additional monitoring and analysis provided by pump tests will provide further estimation of the well field’s hydraulic radius of influence, groundwater cone of depression and groundwater level recovery rates, as well as to allow for further means to minimize or eliminate potential impacts on neighboring wells and down gradient conditions. Mitigation Measure HWQ-2 also includes best management practices such as spacing of wells, pumping limitations, monitoring of adjacent domestic wells, well setbacks from surface waters, an on-site stream gauge, and other measures to ensure any pumping for emergency water supply purposes is conducted sustainably and

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acre-feet; and mitigation measures to reduce water table effects on adjoining properties to acceptable levels).

It also does not appear that the 1989 Guidelines apply to emergency water uses which inherently cannot establish an estimated water demand, based on the metrics in the Guidelines. Proof of water is “established by conducting a pump test and comparing well yield, observed during pump testing, to the estimated water demand for the property.” (Coastal Groundwater Development Guidelines, p. 4) These guidelines state that estimated water demand for commercial, institutional and industrial facilities are “determined individually for each project, based upon usage rates for comparable facilities along the North Coast of California…” (Coastal Groundwater Development Guidelines, p. 5) Inherent in this water demand estimate is that there be a “usage rate” for a proposed development, which has been described in these guidelines in gallons per day units. Appellants allege that there needs to be proof of water for the emergency supplies for fire and drought but given the inherent uncertainty as to when or if these emergencies arise and their severity, there can be no established daily usage rate from which an estimated water demand can be established for such emergency uses. Given the lack of usage rate and related water demand for emergency uses, the proof of water requirements in the Coastal Groundwater Development Guidelines do not apply to emergency uses of the water given their inherent uncertainty and variability of water demands based on the type and scope of the emergency.

[21] State Clearinghouse Number 2020080439, accessible online at: https://ceqanet.opr.ca.gov/2020080439/2

> does not interfere with surface water, groundwater levels, or neighboring wells."
> …

The County imposed the applicant's proposed mitigation measures, including Mitigation Measure HWQ-2 as part of its Condition 8. and included in its staff report the referenced language of Mitigation Measure HWQ-2 as follows:

> Mitigation Measure HWQ-2: Implement Best Management Practices to Prevent Well Interference and Surface Water Depletion.
>
> The proposed wells shall be constructed with approximately 120-foot spacing, which is the anticipated radius of influence that would reduce the potential for wellfield interference. In coordination with the existing MUSD wells (Well 1, Well 2 and Well 6), initially no more than half of the well field (6 to 7 wells) shall be operated at one time to reduce the potential for adverse drawdown effects. Additionally, pumping of any one well shall not exceed 12 hours in a 24-hour period initially to allow for aquifer recharge within the well field.
>
> In accordance with MCCSD's Ordinance 2020-1, the proposed well field shall be pump tested during the MCCSD hydrological testing period, which begins after August 20th and before a total of 6-inches of rainfall has been recorded.
>
> Monitoring of adjacent domestic wells, MUSD wells, and the MUSD North Caisson shall be performed before, during and after the proposed test wellfield installation and pump testing is performed. MCCSD and MUSD shall continue to coordinate with additional adjacent property owners who were not able to install pressure transducers due to access issues to determine if future pressure transducers can be installed.
>
> The MCCSD / MUSD and its contractor shall implement appropriate Best Management Practices to prevent surface water depletion during use of the proposed well field. This shall include, but would not be limited to, the following:
>
> - Proposed groundwater wells shall be setback from surface waters by a minimum of 1.5 times their anticipated radius of influence.
> - One stream gauge or staff plate shall be installed in upper Slaughterhouse Gulch, on the Project parcel just down gradient of the existing caisson wells and near the property boundary where observed surface water flows leave the parcel.
> - MCCSD and MUSD shall perform monitoring of the stream gauge before, during and after the proposed test wellfield installation and pump testing is performed. The gauge should be periodically monitored during MCCSD's hydrological testing period.
> - MCCSD and MUSD shall convert an existing caisson well into a monitoring well to monitor groundwater levels in the vicinity of the

> mapped wetland and well field. Require subsequent hydrologic study to evaluate the project's effect on surrounding wells.

The County's findings further establish that:

> The Hydrogeologic Study and this mitigation measure were deemed adequate to demonstrate compliance with MCC 20.516 with the approval of U_2023-0004. UM_2024-0008 seeks to reduce the number of new proposed wells from ten to six, and to clarify that with this permit they will only be used as test wells (if viable, they may be used as production wells in the future, but this will require a separate Coastal Development Use Permit Modification and further evaluation).

The County also imposed Condition 15 requiring development of a hydrological study in compliance with the Coastal Groundwater Development Guidelines and approved by Division of Environmental Health prior to the submittal of any subsequent application for conversion of any of the proposed test wells to production wells. The County's action in approving the amended development demonstrates conformity with LCP requirements by authorizing only the installation of test wells. Because the approval is limited to only test wells rather than production wells, potential permanent adverse effects of the groundwater aquifer will not occur under the approved amended development.

Thus, there is strong factual and legal support for the County's action in conditionally approving the installation of test wells at this time while identifying that the reasonably foreseeable purpose and intent of the test wells is to explore the viability of additional water supply for the existing MUSD facilities and potential drought and fire emergencies. Additionally, MCCZC section 20.532.010 specifically requires in part that "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." (emphasis added). The County's action in approving the CDP prior to issuing a water well permit follows the proper sequence of permitting established by the certified LCP.

2. Contentions Regarding Environmentally Sensitive Habitat Areas (ESHA)

The appellants contend in part that the approved development fails to adequately review the effect of the revised project on Environmentally Sensitive Habitat Areas (ESHAs) and does not protect ESHAs including but not limited to wetlands, inconsistent with certified LCP policies.[22] In particular, the appellants assert that the estimated radius of influence from the proposed installation and operation of six groundwater wells would encroach within minimum ESHA buffer required by the certified LCP, thereby draining surface wetlands and depleting groundwater supplies. The appellants also assert that developing within the 100-foot ESHA buffer is inconsistent with the ESHA buffer requirements of the certified LCP.

[22] See Exhibit 4, Appeal contentions III.B.3 through III.C(page 31), V.B (page 37), V.C (pages 38-39), and VI.C (page 40), Comment 5 (page 66), and Comment 8 (page 115).

Excerpts of Applicable LCP Policies (emphasis added):

Coastal Act section 30240 states, incorporated by reference in the LUP:

> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
>
> (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

ESHA are defined on page 38 of the LUP as:

> Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

CZC Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose" states (emphasis added):

> …Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 in applicable part states:

> 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 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…
> …

CZC section 20.496.020 states in applicable part:

ESHA- Development Criteria

(A) Buffer areas. A buffer 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 degradation resulting from future developments and shall be compatible with the continuance of such habitat areas. **...**

(1) Width. The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area 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 fifty (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.

CZC section 20.532.100 of the Mendocino County Coastal Zoning Code states:

In addition to required findings, the approving authority may approve or conditionally approve an application for a permit or variance within the Coastal Zone only if the following findings, as applicable, are made:

(A) Resource Protection Impact Findings.

(1) Development in Environmentally Sensitive Habitat Areas. No development shall be allowed in an ESHA unless the following findings are made:

(a) The resource as identified will not be significantly degraded by the proposed development.

(b) There is no feasible less environmentally damaging alternative.

(c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted (emphases added).

Discussion

As part of its amendment application submittal, MUSD included a Biological Report dated February 27, 2023, a Wetland Delineation dated September 30, 2024, and an ESHA Reduced Buffer Analysis dated November 13, 2024. As noted in the February 2023 Biological Report prepared for the project, riparian forested open spaces occur within approximately 0.25-0.5 mile of the project site, including Russian Gulch State

Park to the north, Jackson State Forest to the east, and Big River State Park to the south. The project site is approximately 0.5-mile north of Big River and 0.4-mile east of the headwaters of Slaughterhouse Gulch. The project site is developed on the portion of the property nearest to Little Lake Road with MUSD facility infrastructure including a maintenance building, former pump house converted into a student radio transmission station, two shallow decommissioned/abandoned water supply wells, two in-service groundwater wells, two water storage tanks, a water treatment building, water distribution piping, and a graded access road. North of the developed area, the site is heavily forested with Northern Bishop Pine forest dominating the overstory.

As cited in the policies above, CZC Section 20.496.010 defines ESHAs and specifically includes wetlands, riparian areas, and habitats of rare and endangered species. As ESHA, wetlands, riparian areas, and endangered species habitat are subject to the ESHA buffer requirements of LUP Policy 3.1-7 and CZC Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Wildlife (CDFW, formerly CDFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state in that event, the buffer may be reduced but shall not be reduced to less than 50 feet in width.

The County staff report summarizes ESHAs occurring at the site as follows:

- Two watercourses and associated riparian areas ([Biological Report] Appendix A, Figure 8; Appendix G, Photos 5-6).

- One 1-parameter wetland and two 3-parameter wetlands ([Biological Report] Appendix A, Figure 8; Appendix G, Photo 5).

- Bishop pine forest (G3/S3) ([Biological Report] Appendix A, Figure 7; Appendix G, Photos 1-4).

- 18 unstunted Mendocino cypress trees (*Hesperocyparis pigmaea*, CRPR 1B.2), 14 of which are naturally occurring (the other four having been introduced to the site via landscaping)

The approved project as amended adjusts locations of proposed test wells, tanks, access road improvements, and a treatment building that were originally sited within ESHA and required minimum ESHA buffers under the County's original approval, to ensure that all development is now at least 50 feet from ESHA. The amended approval also modifies the conditions of approval of the original CDP to include more resource protection measures as detailed below; and authorizes removing two sheds from within ESHA buffers.

The County's findings for approval include adoption of the FSMND and Addendum prepared by MUSD as the Lead Agency for the project. The FSMND Addendum

acknowledges the approved modified project "substantially reduces the project's construction footprint and eliminates the need for new access roads and well improvements in areas of Bishop pine forest and other on-site ESHAs. The relocations also eliminate the need to remove sensitive Mendocino cypress and Bishop pine trees at the site." In addition to siting new development within existing disturbed areas outside of minimum required 50-foot ESHA buffers, the demolition and reconstruction of water system infrastructure will result in removing existing infrastructure from within ESHA and ESHA buffers (such as sheds and a former water treatment building), thereby improving ESHA and adjacent areas.

The County's findings for approval cite the Reduced Buffer Analysis which states in part: "The 'best site' for the proposed development is as proposed. This is the best location that will be sufficient for the proposed development and provide the least impact and encroachment into potential ESHA buffer zones." The staff report states the following:

> As mitigated (see mitigation measures below), the development shall be compatible with the continuance of the habitat areas by maintaining the functional capacity, and their ability to be self-sustaining and to maintain natural species diversity. As mitigated, the development shall also minimize impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, alteration of natural landforms, and further human intrusion into the wetland.

The conditional approval incorporates seven biological mitigation measures from the MND as part of Condition 8, including, among others, Measure BIO-7 requiring a minimum 50-foot buffer from all aquatic resources and adherence to standard erosion and sediment control measures for any work occurring within 100 feet of aquatic resources. Additionally, CDFW submitted written comments following the site visit with recommendations for imposing additional mitigation measures as conditions of approval for a reduced ESHA buffer. The County staff report incorporates these recommendations, including:

- Condition 10 requiring installation of low, symbolic fencing along the existing gravel driveway prior to commencement of construction to further protect the watercourse;
- Condition 11 requiring installation of "temporary construction fencing to demarcate the edge of work and apply the appropriate erosion control BMPs to prevent impacts to nearby wetlands, watercourses, and Sensitive Natural Communities. During well drilling, appropriate BMPs shall be applied to contain test well drilling mud. Such mud shall be disposed of offsite at an approved disposal location;" and
- Condition 12 requiring that "Non-native invasive species on the subject parcels shall be targeted for removal for a period of no less than 5 years. Should native vegetation, including shrubs and trees, be removed, a revegetation plan must

> first be submitted and approved by the County and CDFW at least 30 days prior to the start of work."

Thus, there is a high degree of factual and legal support for the County's decision to approve the amended development, as conditioned to protect adjacent ESHAs, with a reduced minimum buffer width of 50 feet.

The appellants also raise concerns that the installation of test wells is inconsistent with the minimum buffer requirements because the "anticipated" 120-foot radius of influence as measured from the test well installation site would extend into minimum ESHA buffers. However, no physical development would occur within the minimum 50-foot ESHA buffers, and while the revised hydrogeologic report and FSMND describe conservative estimates of the radius of influence, any assumptions on the potential effects of groundwater drawdown associated with any of the test wells would be premature until the necessary pump testing, data collection, and operational (pump rate) analysis occurs. As described in Contention 1 above, any proposal to convert any of the test wells to production wells would require an amendment to the County's CDP and, relying on the data generated from the pump testing, the analysis of effects of wells on the surrounding area would be evaluated at that time.

The appeal also alleges that there are other less environmentally damaging feasible alternatives and specifically suggests that water should be obtained offsite from a nearby developed water facility known as Hills Ranch, which serves a residential subdivision approximately one mile away. Although the local record does not include a specific evaluation of this alternative, it is clear that even if withdrawing from a private water facility was a viable option, developing the needed mile-long infrastructure and authorizations would be a far greater scale of a project with unknown but likely greater impacts (considering the need for associated plumbing and/or offsite improvements and associated water availability studies) than the approved development which has many of the infrastructure components in place already to transport nearby pumped water to the storage tanks.

Therefore, the Commission finds that there is factual and legal evidence in the record to support the County's approval of the subject CDP, which includes enforceable conditions to limit the impacts of the approved development (including construction of test wells) on nearby wetlands, riparian habitat, and other ESHAs.

3. Contentions Regarding Visual Resources

The appellants assert that the project area is subject to the Highly Scenic Area policies of the certified LCP that impose height limit standards and require subordination of new development to the character of its setting. Relatedly, the appellants refer to a trail mapped on Land Use Map 17 and described in LUP section 4.7 as "Little Lake Road Inland Trail" as being mapped on the frontage of the subject parcels within 20 or 30 feet of the approved water storage tanks and assert that the trail is designated in the LUP as

"scenic" and thus afforded the same standards as designated HSAs.[23] The appellants further contend that the approved height of the water storage tanks exceed the height limits established by the PF zoning district and thus are not compatible with the visual character of the surrounding area.

Excerpts of Applicable LCP Policies:

LUP Policy 3.5-1 states (emphasis added):

> 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.

CZC Section 20.504.020 states, in part, as follows:

> (C) Development Criteria.
>
> (1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.
>
> …
>
> (4) Building materials and exterior colors shall be compatible with those of existing structures.
>
> (D) 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…

LUP Policy 3.5-3 states the following:

> 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,

[23] See Exhibit 4, appeal contention VI.D (page 40) and 4th comment (pages 60-61); and pages 4-10 to 4-12 of Appeal No. A-1-MEN-24-0017 (Exhibit 3) as incorporated by reference in Exhibit 4

vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

…

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

CZC section 20.504.015(A) states the following:

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

…

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

LUP Policy 3.5-5 states in part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged…

Discussion

Site Not Within a Designated Highly Scenic Area

The proposed development is not located in a designated Highly Scenic Area (HSA) or within a designated conditional HSA under the County's certified LCP. HSAs have been identified on the certified LUP maps. The certified LUP maps also include conditional HSAs, which are designated areas on the land use maps that are east of Highway 1 that would be designated as an HSA *if* the new development would be visible from Highway 1. The appellants cite LCP procedures in CZC section 20.504.015 for determining the extent of HSAs however as specified in CZC section 20.504.005 ("Applicability"): "This section shall apply to those areas identified as highly scenic areas…as defined by the Mendocino Coastal Element and identified on the Coastal Land Use Maps." (emphasis added). Similarly, the cited section 20.504.015 describes in part (B) the procedures for determining the extent of HSA, stating in part "Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible…" (emphasis added). The Little Lake Trail is acknowledged in LUP section 4.7 and designated on the County Trails Plan as a trail utilizing public roadways but does not have any designation as "scenic" or "highly scenic area" within meaning of the certified LCP. Because the site does not fall within a designated HSA or within a designated conditional HSA, the various LCP policies that relate to development in such designated HSAs do not apply to the subject development.

Compatibility of Storage Tanks with Visual Character of Surrounding Area

Although not subject to the policies governing HSAs, the certified LCP incorporates Section 30251 of the Coastal Act as enforceable LCP policies (such as LUP Policy 3.5-1 and CZC section 20.504.020(D), see Appendix B for the full list of applicable policies). LUP Policy 3.5-1 requires in part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

As noted above, the project site is located on land designated and zoned Public Facilities (PF), and surrounding development is primarily Rural Residential, five (5)-acre minimum lots. Other nearby public facilities designated and zoned PF are located south of and adjacent to Little Lake Road and include a Mendocino K-8 school located approximately 500 feet southwest of the subject site (also owned by MUSD); and the PG&E Big River Substation located approximately 1,040 feet southwest of the subject site. The standard height limitation of the PF zoning district is 35 feet. However, CZC section 20.444.025 ("Height Exceptions") specifies that "Additional heights for public utility structures may be permitted upon approval by the Planning Commission…" The County staff report states in part the following considerations regarding the height and visibility of the storage tanks:

> As reducing the maximum height of the structures would necessitate more or wider tanks and thus more disturbance, allowing for taller water tanks in this instance is in the public interest. The heavily (tall) wooded nature of the site limits the visual impact of the over-height water tanks (see Visual Resources section below). Other proposed structures onsite will remain under the standard 35-foot limitation.

In addition to the approved amended development that authorized installation of two, 48-foot-tall water storage tanks, the County in 2023 authorized construction of a 250,000-gallon recycled water storage tank at the same site (CDP # U_2022-0012), and the approval was not appealed at the local or state level. The previously approved tank was authorized to be approximately 40 feet in diameter and 40 feet tall and will be located closer to Little Lake Road than the two tanks authorized by the amended project. Although the tanks approved by the amended permit are approximately eight feet taller than the previously approved recycled water storage tank, the tanks will be of similar scale and bulk as the prior approval.

Additionally, the County's findings regarding visual resources states the following: "The only proposed new outdoor lighting is one low intensity motion-activated light on the replacement water treatment building, shielded or recessed and directed downward to reduce light spillage onto adjoining properties and public right of way…" The County's conditions of approval incorporate mitigation measures from the FSMND aimed at reducing aesthetic impacts to a less than significant level, including incorporating Mitigation Measure AES-2 among other requirements, into Condition 8. MM AES-2 requires the following:

> Mitigation Measure AES-2: Minimize Visual Impacts
>
> The MUSD shall restore or revegetate staging areas and other work areas disturbed by construction activities, including restoring pre-Project topographic features and reseeding with species comparable to those removed or disturbed during construction. To the extent feasible, the MUSD shall ensure that the proposed new tanks are of a color that would minimize visual contrast and blend in with the surrounding landscape. Access roads shall be designed with the minimum width needed for adequate maintenance and fire access.

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County's decision that the development as conditionally approved would be sited and designed to protect views, to minimize the alteration of natural land forms, and to be visually compatible with the character of the surrounding area. In addition, the approved CDP includes enforceable conditions requiring revegetating disturbed areas, limiting the color of materials for the approved tanks, and exterior light fixtures, which together protect visual resources consistent with the LCP.

4. Invalid Contentions

Three additional contentions raised by appellants include the following:

- The County followed improper public noticing and hearing procedures by posting new materials less than 24 hours in advance of the hearing and modifying the adopted Resolution during the hearing;[24]

- The County followed improper disclosure requirements of CEQA and the Lead Agency failed to issue an EIR;[25] and

- The approved modified project violates groundwater law and associated rights.[26]

Discussion:

The concerns raised by the appellants do not allege an inconsistency of the local approval with a policy or standard of the certified LCP. Therefore, these contentions are not valid grounds for an appeal.

Though the appellants' contentions regarding compliance with CEQA do not expressly assert that the approved project is inconsistent with the certified LCP, the approved CDP amendment does include conditions requiring fulfillment of mitigation measures specific to protecting groundwater supply (such as limiting groundwater withdrawals and

[24] See Exhibit 4, Appeal Item III.G (pages 33-34) among others

[25] See Exhibit 4, Appeal Items III.B.3 (page 31), III.H (page 35), VI.E (page 41), Attachment II (page 44), and Comments 2 (page 52), and 15 (page 160), among others

[26] See Exhibit 4, Appeal Items VI-A (page 39), VI-B (page 40), and Comment 2 (page 51)

imposing testing and analysis requirements), ESHAs (such as construction BMPs and erosion control measures), and visual resources (such as replanting vegetation and limiting tank colors and lighting). The measures have been required by the County as enforceable CDP conditions to ensure that the proposed development will avoid significant effects on the environment.

C. CONCLUSION – NO SUBSTANTIAL ISSUE DETERMINATION

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable) conformance. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": (1) the degree of factual and legal support for the local government's decision; (2) the extent and scope of the development as approved or denied by the County; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the County's decision for future interpretations of its LCP; and (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well.

In this case, these five factors considered together support a conclusion that the appeal does not raise a substantial issue as to the County-approved project's consistency with the LCP. The County approved the proposed amended development and adopted the FSMND and Addendum with extensive findings and conditions that address the adequacy of water without adversely affecting the groundwater table of contiguous and surrounding areas while ensuring the protection of wetlands and other ESHAs, and compatibility with the visual character of the surrounding area. Specifically, the County's approval is based on evidence in the record, including findings and conditions, demonstrating that (1) the development will be provided with adequate utilities; (2) the proposed use is consistent with the purpose and intent of the Zoning District and the use qualifies as a "minor impact utility" that is a conditionally permitted use in the PF district; (3) the approved development, if completed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of CEQA; (4) the approved development would not have any adverse impact on any known archeological and paleontological resources provided the conditions of approval are adhered to with regard to tribal monitoring and potential discovery of unrecorded archeological sites or artifacts; (5) other public services have been considered and are adequate to serve the development; (6) the approved project as sited and designed relocates all development outside of ESHAs and minimum required ESHA buffers and as conditioned will prevent impacts that would significantly degrade wetland, Northern Bishop Pine forest, and other ESHA in the surrounding area; and (7) as conditioned the project includes enforceable conditions requiring revegetating disturbed areas, limiting the color of materials for the approved tanks, and exterior light

fixtures, which together protect visual resources consistent with the LCP. Therefore, there is a high degree of factual and legal support for the County's approval of the project. As the County thoroughly addressed the relevant coastal resource concerns, the Commission assigns more weight to this factor in the substantial issue analysis.

As to project extent and scope, the essential purpose of the project is not to increase water supply to support new development for the area, but to improve the MUSD's aging potable water system to meet current regulatory requirements and provide additional water storage capacity for firefighting and declared drought emergency conditions within a defined emergency drought water service area. The replacement tanks will provide the same (i.e., in-kind) storage capacity that exists now to support the MUSD's ongoing operations (115,000 gals) and provide additional storage capacity (500,000 gals) to be used as an emergency water supply for firefighting and declared drought emergency conditions. The test wells will be installed to explore the viability of supplementing water supply for emergency purposes and to provide system flexibility and redundancy for the existing water supply system. The proposed improvements also are intended to resolve deficiencies associated with the aging infrastructure of the school's water system facilities that the State Water Resources Control Board Division of Drinking Water identified in 2016. As noted in the County's findings for approval: "The purpose of this project is not to increase the potential development for the area, but instead to address existing deficiencies and provide increased water security and fire prevention for the development that currently exists." The County's approval is conditioned to limit water withdrawal in a manner that avoids the potential to adversely affect the groundwater table of contiguous or surrounding areas. In particular, condition of approval 18 limits the total volume of water that may be provided to no more than 40,000 gallons per day, and only if a minimum stored water volume of 315,000 gallons total can be maintained. Condition 18 also limits the drought scenarios under which water would be provided to those defined by Water Code Section 13198(a), or during a declared Drought Stage 3 "Emergency" as described in MCCSD's "Water Shortage Contingency Plan." Thus, the project extent and scope are limited, and the project footprint itself is limited to three contiguous parcels owned by the MUSD inland of Highway One that in total are approximately 5.7-acres. When combined with the first factor, this second factor also weighs against finding substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of no substantial issue. The approved amended development revises the County's prior approval under CDP # U_2023-0004 to reduce the number of test wells from 10 to no more than 6, relocate test wells to ensure that all improvements are within previously developed areas of the site and outside of ESHAs and ESHA buffer areas, and limit the development to installation of test wells rather than production wells, as required by the certified LCP. Because the approval is limited to only test wells rather than production wells, depletion of the groundwater aquifer will not occur under the approved amended development. The County's findings for approval include adoption of the FSMND and Addendum prepared by MUSD, which acknowledges the approved modified project "substantially reduces the project's construction footprint and eliminates the need for new access roads and well improvements in areas of Bishop pine forest and other on-site ESHAs. The relocations also eliminate the need to remove sensitive Mendocino

cypress and Bishop pine trees at the site." In addition to siting new development within existing disturbed areas outside of minimum required 50-foot ESHA buffers, the demolition and reconstruction of water system infrastructure will result in removing existing infrastructure from within ESHA and ESHA buffers (such as sheds and a former water treatment building), thereby improving ESHA and adjacent areas. As conditioned by the County, the project will not adversely affect ESHAs, and it will be sited and designed in such a way as to protect other important resources, including onsite wetlands and groundwater resources. No significant coastal resources are threatened by the County-approved project.

Fourth, the County's decision in approving the permit amendment should not set an adverse precedent for future interpretations of the County's LCP given the high degree of legal and factual support for the County's decision, as discussed above.

Finally, while the project does raise issues of regional or statewide significance (including, but not limited to, the need to demonstrate that an adequate water supply is available to support the authorized development in a manner that protects coastal resources and surrounding uses), as previously discussed, the County imposed conditions addressing the groundwater, resource protection, and visual resource issues, and there is a high degree of legal and factual support that the approved project as conditioned will protect groundwater and visual resources and provide an adequate buffer to protect nearby wetlands and other ESHAs. As discussed in the above findings, connecting test well #6 to the existing water system addresses capacity needs for an existing water use, and data related to TW 6 showed no adverse effect on nearby wells. Moreover, as discussed, the facts in the local record support the County's approval of the project as amended, because although the drawdown effects were observed on the MUSD property during an anomalous 5-day continuous pumping period from the water storage tank leak in October 2022, no drawdown effects were reported to have occurred on adjoining properties during this time. Also, the County's approval is conditioned to limit water withdrawal in a manner that avoids the potential to adversely affect the groundwater table of contiguous or surrounding areas.

Therefore, especially given the high degree of factual and legal support for the County's decision and conditions of approval, consideration of the five factors together support a conclusion that the County's approval of a CDP does not raise a substantial issue of LCP conformance. For the reasons stated above, the Commission finds that Appeal Numbers A-1-MEN-24-0017 and A-1-MEN-25-0002 do not present a substantial issue with respect to the grounds on which the appeals were filed under section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.