

From: Barbara Reed <barbra623@sbcglobal.net>
To: <bos@co.mendocino.ca.us>, <Bob.Merrill@coastal.ca.gov>, <Alison.Dettmer@...>
Date: 10/4/2016 11:55 AM
Subject: Town Plan Letter CCC
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COASTAL COUNTY
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EXECUTIVE OFFICE
PERMITS
CITY OF ALFORNIA

By E-Mail

October 3, 2016

The Hon. Dan Gjerde, Chairman

And Members

Board of Supervisors

County of Mendocino

501 Low Gap Road

Ukiah, CA 95482

Email: bos@co.mendocino.ca.us

The Hon. Steve Kinsey, Chairman

And Members

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA [94105-2219](tel:4152219)

Email: Alison.Dettmer@coastal.ca.gov

Bob.Merrill@coastal.ca.gov

SUBJECT: TOWN OF MENDOCINO LCP UPDATE-AMENDMENT

Honorable Supervisors and Coastal Commissioners:

This letter provides some preliminary comments on (1) the Coastal Act-consistent Mendocino Town LCP Update-Amendment ("the Town LCP Update") that the Mendocino County Board of Supervisors adopted - after numerous local workshops, meetings, public hearings - and transmitted to the Coastal Commission for certification review, **and** (2) the Coastal Commission staff's inordinate attempts to challenge, recast, and delay action on that Town LCP Update.

Since 1973, we and others throughout our community have engaged in the coastal program as property owners, successful coastal permit applicants, builders, and operators of high priority overnight visitor lodging and other visitor- and community-serving amenities. We have attended and actively participated in literally scores of local, State, and federal workshops, meetings, public hearings, legislative hearings, and judicial proceedings concerning the Coastal Plan, dozens of which focused on the Town LCP Update now before you for yet more public comment.

The State legislature has delegated to the Coastal Commission important, but limited, authority in the Town LCP Update certification review. The Coastal Commission's role is to assure (a) that the policies in the Town Plan Update are consistent with Coastal Act Chapter 3 to the extent necessary to meet the State's goals and objectives for the coastal zone in Section 30001.5 and (b) that the accompanying Zoning Code update is adequate to carry out the policies of the Town Plan Update.

The Board-adopted Town LCP Update and the accompanying Consistency Analysis fully address, implement, and demonstrate conformance with these fundamental Coastal Act parameters. Unfortunately, the staff report before you proposes hundreds of "suggested modifications", which range from unnecessary word-smithing to wholesale rewriting of the County submittal. This proposal to substitute your staff's own preferences and aspirations to replace the Town Plan content adopted by the Board of Supervisors exceeds the Commission's limited statutory authority over the contents of the pending amendment. As a result, the Coastal Commission staff report not only substantially fails to inform Coastal Commissioners and the public of actual local conditions in the Town, but also undermines the public's right to a full

understanding of, and effective participation in, Coastal Commission's statutorily limited certification review.

Coastal Commission staff's challenge to (1) the Town Plan Update's provision of much-needed affordable housing opportunities through second residential dwelling units, and (2) the County's lawful ability under both the Government and Public Resources Codes to continued designation of more than one principal permitted use in a zoning district exemplify the stretch beyond the Coastal Commission's statutory authority reflected here in the guise of "suggested modifications".

The Board-adopted Town Plan Update would allow approximately fifty (50) attached or detached second residential dwelling units, not to exceed 900 square feet. Each CDP application, including, but not limited to, for a second residential dwelling unit, would be required to demonstrate specific consistency with concentration of sustainable development, conservation, and development standards, including an adequate year-round water supply, use of which that does not impair the unique local aquifer or have a significant adverse effect on other coastal resources. However, Coastal Commission staff proposes to require that second dwelling units also protect views from all the many small public streets and private paths, usable by the public, in the Town, including outside the Historic Districts. That "suggested modification" would effectively preclude continued utilization of the Town's historic (19th and 20th Century) water tower architectural design – for which the Coastal Commission established applicable guidance in previous CDP approvals – and thereby undermine the very increment of affordable housing that State Housing Law requires, and the Coastal Act supports.

Similarly, whereas the Coastal Commission certified the Town LCP in 1996, and has certified may other LCP's, to allow more than one principal permitted use in various zoning districts, Coastal Commission staff now recommends reaching outside Coastal Act Sections 30001.5 and 30200-30265 (and the LCP standards in Coastal Act Chapter 6) to broadly make most high priority development in the Town a conditional use, and hence appealable to Coastal Commission. The "suggested modification" relies solely on the basis of the listing in Coastal Act Section 30603 of post-LCP certification appealable development, which, however, grants no authority whatsoever for the Coastal Commission or its staff to recommend any change in how many principal permitted uses the Board of Supervisors determines to allow in a zoning district. Ironically, staff's "suggested modification" in this context would render high priority Coastal Act visitor-serving uses appealable to Coastal Commission, while (e.g.) designating residential development as the principal permitted use in visitor-commercial areas and thus having it be not appealable. Coastal Commission staff would plainly stand the Coastal Act's substantive priorities on its head, while crafting itself, and the Coastal Commission, a costly, inappropriate, and unnecessary future workload. Notably, the State legislature in 1976 specifically declined to grant the Coastal Commission (or its staff) the power to exercise any "incidental", "implied", or other powers, not expressly granted pursuant to the Coastal Act, and its "liberal construction" provision does not and cannot stand as an alternative edifice by which the Coastal Commission (or its staff) can legislate additional powers (e.g., in the form of "suggested modifications" to the Board-adopted Town Plan Update without a specifically identified Section 30001.5/Chapter 3 basis).

In fact, most of Coastal Commission staff's "suggested modifications" are either (a) unnecessary for the Town Plan Update to objectively conform, in light of a fair reading of the threshold Section 30001.5 State goals and objectives, to the conservation and development standards in Coastal Act Chapter 3, or (b) volitional staff alternative formulations of Town history and Town Plan Update definitions, mandatory (CDP-regulatory) policies and actions, and advisory goals and actions. The Town LCP Update Amendment constitutes the County Board of Supervisors' Plan to implement, in light of local conditions, both the Coastal Act in the Public Resources Code and the State planning laws in the Government Code, rather than a mere "proposal", as the

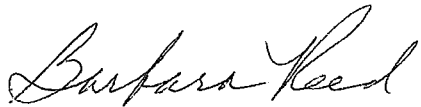
staff report pretends. While both the County and the Coastal Commission have an obligation to "coordinate" the preparation of the Town Plan Update, and we like all reasonable citizens welcome constructive Coastal Commission feedback on the Town Plan Update, Coastal Act (Section 30500(a)) is crystal clear that the specific Town Plan Update contents are solely the Board of Supervisors to determine.


We request that both the County and the Coastal Commission each now perform their respective statutory functions in relation to the Board-adopted Town LCP Update. In that context,

- The Board should at the earliest practical time, after further noticed public hearing, adopt succinct minor corrections, clarifications, and enhancements in response to Coastal Commission staff's overblown "suggested modifications", and convey them to the Coastal Commission, and,
- The Coastal Commission should, without further delay, appropriately review the Town Plan Update (and companion Town Zoning and Implementation Program), and in the absence of any objectively identifiable inconsistency of the Town Plan Update with the aforementioned Coastal Act standards of review, And of the Zoning and Implementation Plan with the Town Plan, certify them as adopted by the Mendocino County Board of Supervisors.

Thank you for your consideration. Another matter unfortunately prevents us from being at the Board's October 4 meeting and Coastal Commission's October 5 meeting.

Sincerely,



 Barbara and Monte Reed
P.O. Box 127
Mendocino, California 95460

cc: Ms. Carmel Angelo, Mendocino County CEO (by email)
Mr. Robert Merrill, CCC North Coast District Manager (by email)
Ms. Alison Dettmer, CCC Deputy Director (by email)

