

MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND JURY REPORT TITLED:

ELECTIONS REDUX

The Board of Supervisors welcomes this opportunity to respond to the above entitled report. The Grand Jury correctly notes (F6) "members of the Board of Supervisors stated a willingness to dedicate resources to improvement, including increasing the budget for hiring more election workers and reserving more physical space for ballot counting." This is not merely based on statements by individual members of the BOS, but is the consensus opinion of the BOS stated in open session of one or more meetings of the BOS. The Board of Supervisors is committed to making available the resources necessary to hire personnel, purchase equipment and/or reconfigure physical space to improve the timely processing of election ballots. Specifically, the BOS supports hiring and training additional personnel to process ballots that are not counted on election day. The BOS applauds the dedication to accuracy of the Registrar of Voters but believes it is a disservice to the public when thousands of ballots remain uncounted for weeks after Election Day. In addition to supporting any reasonable method for increasing the processing of votes not counted on Election Day, the BOS also supports increasing the number of polling place voters and is willing to make resources available to do so. Thousands of voters who no longer have the option to cast a vote at a polling place on Election Day choose instead to mail or drop off their ballot at the last minute with the result that it is not counted until days or weeks after the election.

Pursuant to the request of the Grand Jury, the Board is responding to the following:

F2. Lack of timely results frustrates candidates and voters.

Agree.

F6. To achieve more timely results, members of the Board of Supervisors stated a willingness to dedicate resources to improvement, including increasing the budget for hiring more election workers and reserving more physical space for ballot counting.

Agree.

Recommendations:

R1. The BOS and the Registrar of Voters review SB 450 and either adopt the provisions of SB 450 or change the current ballot counting procedures for more timely results. (F1, F2, F4-F8)

The BOS will not implement this recommendation at this time as it is not reasonable. The first opportunity Mendocino County will have to adopt the provisions of SB 450 would be for the 2020 election cycle. The BOS, as stated in

F6, has stated a willingness to increase the budget for more election workers and equipment in order to improve result timelines.

- R2. Regardless of the adoption of the provisions of SB 450, the Registrar of Voters requests updated more efficient equipment and software. (F2-F8)

This recommendation requires further analysis. The BOS has stated a desire to purchase improved equipment independent of the provisions of SB 450. In a timeframe not to exceed six (6) months the BOS would like a discussion on recommended equipment and software needed to ensure a more efficient election.

- R3. The Registrar of Voters hires and trains more workers to provide more timely results. (F1, F2, F5-F7)

This recommendation has been implemented. As stated by the Registrar of Voters, "For every election we attempt to hire more poll workers and extra help...We place a request to fill with the County's Human Resources Department for extra help on an annual basis." The Registrar is actively pursuing increased poll workers. The Board of Supervisors would like an emphasis placed on an increase in persons hired to process ballots not counted on Election Day and encourages the Registrar of Voters to provide periodic updates on election results prior to completion of the final canvas.

- R5. The Registrar of Voters provides training and outreach education instructing voters how to correctly cast a vote with the aim to reduce the number of spoiled and provisional ballots. (F6, F8, F9)

This recommendation has been implemented. Every voter receives instructions on how to complete ballots properly and poll workers are well trained on how to aid voters with questions. These instructions are on both the mailed sample ballot and the official ballot. The BOS would welcome statistics on the number of spoiled ballots and specifics on errors.

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title: *Elections Redux*

Report Dated: June 22, 2017

Response Form Submitted By:

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than:
October 6, 2017

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- ☒ I (we) agree with the Findings numbered:
F2, F6
- ☐ I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- ☒ The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:
R3, R5
- ☐ The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

- ☒ The following Recommendation(s) require further analysis, and attached as required, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)

R2

- ☒ The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:

R1

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 2

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: John McCowen

Title: Chair, Board of Supervisor

Signed: John McCowen Date: October 4, 2017

ELECTIONS REDUX

SUMMARY

The Mendocino County voters can be relieved to know that every possible attempt is made to count their votes. Many manual procedures are in place because some voters fail to follow ballot instructions.

The Registrar of Voters is determined to ensure accuracy and accountability for election results. Due to changes in voting procedure, 80% of voters are now obliged to vote by mail. As a result, the actual final tally is delayed for up to 30 days after an election. Both the public and elected officials find the delay unacceptable.

Reporting intermediate vote counts could cost \$5,000 each and any improvement in the speed of the final count will require new expenditures for equipment and additional temporary hires to count mail-in ballots before Election Day. For example, 21,700 mail-in ballots were available for counting prior to November 6, 2016 Election Day. While the Registrar had 10 days prior to Election Day to count them, approximately only 6,000 were counted by Election night.

It is clear to the Grand Jury that election counting procedures need to change. This will either be forced on the County by public opinion or the implementation of State law.

GLOSSARY

Manual Count: "One percent manual tally" is the public process of manually tallying votes in 1% of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count. (Elections Code §336.5)

Official Canvass: The "official canvass" is the public procedure of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and vote by mail ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by vote by mail and provisional voters, and performance of the manual tally of 1% of all precincts. (Elections Code §335.5)

Provisional Ballots: Ballots that are voted at the polls when a voter's registration is in question, or when records indicate the voter was already sent an absentee ballot. Provisional ballots are sealed in special envelopes at the polls and must be individually researched and verified at the Registrar's Office before ballots are counted, or they are rejected in accordance with election laws.

(Elections Code §14310)

Spoiled Ballots: Signature approved ballots with a visually noted problem(s) that will not allow it to pass through a counting machine. These require manual re-creation by two election staff.

BACKGROUND

The 2016-17 Mendocino County Grand Jury received a number of complaints about the election observation process during the June 7, 2016 Primary Election and about the continual lack of timeliness for the reporting of election results. Pursuant to Elections Code §15104(b) the Grand Jury reviewed the election process in Mendocino County during the November 6, 2016 General Election.

The Grand Jury has reviewed and reported on the County election process in the past and has an ongoing responsibility. Past investigations are from 2004-05, "Report on the County Clerk and Assessor's Office," and 2007-08, "Your Vote Does Count, A Look at Mendocino County Voting." Grand Jury reports are available online at <http://www.co.mendocino.ca.us/grandjury>.

APPROACH

During the investigation, the Grand Jury reviewed general election law and, specifically, the *General Rules and Election Observation Rights & Responsibilities* and other pertinent election documents. The Grand Jury also reviewed newspaper coverage past and current of both the Primary and General Elections, and the September 13, 2016 Board of Supervisors meeting during which the Supervisors interviewed the County Registrar of Voters. The Grand Jury interviewed the complainant, the Registrar of Voters, and members of the Board of Supervisors.

The Grand Jury observed the election process on numerous occasions at various locations, and interviewed staff in the Elections office. During the observation of ballot counting, the Grand Jury questioned a voter's eligibility on a ballot.

DISCUSSION

Reporting Election Results

Following the 2000 Presidential Election, Congress passed and President Bush signed into law the *Help America Vote Act of 2002* (HAVA), which mandated that states and localities update their voting procedures and equipment. This included requiring that all polling places be accessible to and have specialized equipment for the disabled to vote independently and privately. To decrease the cost of implementing HAVA, California Elections Code §3005 permitted precincts with fewer than 250 registered voters to become mail-in ballot only.

Effective January 1, 2006, the former Registrar of Voters implemented changes to many of this County's voting procedures in line with the updated California election law. Precincts with more than one special district were reorganized, increasing the overall number of precincts from 274 to 388. Precincts with fewer than 250 registered voters became mail-in ballot only, eliminating at that time 28 polling places.¹ Mail-in ballots were preferred for decreased cost, and difficulty in finding polling place workers and locations accessible to disabled voters. Also, expected was an increase in voter participation. For the November 2006 election, approximately 70% of the County's registered voters voted by mail.²

Currently there are 250 precincts, 69 of which can vote at 24 polling places located throughout the County. Each polling place can accommodate more than one precinct, with each precinct having its own polling place workers and ballot.

For the November 6, 2016 General Election³, 41,566, or 81%, of the 51,035 registered County voters were issued vote-by-mail ballots. 31,729, or 82%, of the 38,730 ballots cast were mail-in ballots. Of these, 21,700 vote-by-mail ballots were received before Election Day, and 10,029 vote-by-mail ballots were received on Election Day. The majority of those, 80%, were dropped off at the Registrar of Voters office or at the polls on Election Day. There were approximately 900 provisional ballots that had to be reviewed and counted manually.

¹ "Elections Office Clarifying Changes," Mintz, Katie, Ukiah Daily Journal, August 4, 2006

² "70% in County Vote by Mail," Mintz, Katie, Ukiah Daily Journal, November 2, 2006

³ http://www.co.mendocino.ca.us/acr/pdf/GEMS_ELECTION_SUM_FINAL_OFFICIAL_updated.pdf

A result of moving from polling place to mail-in balloting is that the reporting of election results is delayed. Ballots completed on voting machines at polling places must be counted by the end of Election Day, making those results available for posting by the end of that day or the next. The counting procedures for mailed provisional ballots, mail-in ballots, and mail-in ballots dropped off at polling places, postpone the availability of results for up to 30 days. This is the time limit imposed by State law for the submission of certified results.⁴

Our County Registrar of Voters policy is to release the vote count that is completed by the end of Election Day and the Certified Election results when the canvass is complete. There are no counts released between these two dates. This November 2016 election, 31% of all votes cast were tallied and reported by the end of Election Day. In 2006, the former Registrar announced election results on election night; in 2016, final certified results were posted late in the evening December 1, 2016 on the County website, 24 days after the election.⁵

The method of tabulating votes requires the use of antiquated memory cards. Each election result currently requires the use of 36-50 cards. The Grand Jury was informed that these cards cost \$100 each. That means that each update count would cost up to \$5,000. According to the Registrar of Voters there are currently no State approved replacement tabulating machines.

The counting procedure we observed, excluding provisional ballots, consisted of the following steps:

- opening the ballot envelopes
- tearing off the privacy flap
- scanning individual ballot barcode by hand wand
- visual verification of voter signature individually by staff comparison on computer screen
- sorting of ballots by precinct
- ballots stored and secured
- separated spoiled ballots
- ballot re-creation
- ballots by precinct scanned for count

⁴ California Code of Regulations Elections Code §20706

⁵ This still beat the 30 day State deadline

Senate Bill 450: California Voter's Choice Act

The State further addressed the requirements of HAVA in 2016 with the passage of Senate Bill 450 (SB 450). This bill will essentially convert all ballots to mail-in ballots.

The Legislature is allowing each county to opt in or out of the provisions of the bill.

SB 450 provides for the elimination of precinct polling places as we currently know them. Instead, the County would have six voting centers. Two of these centers would be open for 10 days prior to the election and on Election Day. The other four centers would open 3 days prior to the election and on Election Day.

Each voting center would be required to have computers that generate a ballot for each precinct in the county, regardless of which special district, school district or supervisorial district in which the voter resides. The County would have to purchase these machines and the needed software. The County would also need to hire and train staff to use and operate these specialized machines.

Three voting machines in each polling place would also be required for handicapped and disabled voters. The County currently has enough of these machines to comply with the provisions of SB 450.

SB 450 did not change the language in Elections Code §3017(c) that the County Election official:

“On or before March 1, 2008, the elections official shall establish procedures to track and confirm the receipt of voted vote by mail ballots and to make this information available by means of online access using the county’s elections division Internet Web site. If the county does not have an elections division Internet Web site, the elections official shall establish a toll-free telephone number that may be used to confirm the date a voted vote by mail ballot was received.”

This provision was tested by the Grand Jury and it is followed in Mendocino County.

Election Count Observation

The Registrar of Voters responded to the observation difficulties experienced by public observers during the June 2016 Primary. Changes were made to the physical environment at the Administration Building. A Dutch door was installed to permit viewing of the election staff in the Registrar’s office. Two remote large screen televisions were set up in the main corridor showing the verification of

ballots. This enabled observers to see the ballot counting process, including the sorting by precinct, the verification of signatures, and the creating of new ballots to replace provisional ballots.

The Grand Jury observed that it was difficult to view the verification of signatures, the creation of replacement ballots, and to hear the discussion between election officials. The handling of provisional ballots, in this County, is the sole discretion of the Registrar of Voters.

FINDINGS

- F1. The Registrar of Voters does an excellent job in the accuracy of reporting certified results.
- F2. Lack of timely results frustrates candidates and voters.
- F3. Twenty seven percent, or 10,029 mail-in ballots, were dropped off at a polling place on Election Day indicating that some voters may prefer to vote at polling places.
- F4. The Office of the Registrar of Voters follows its established procedures rigidly.
- F5. The Registrar of Voters voiced a willingness to change but has not implemented any substantive changes.
- F6. To achieve more timely results, members of the Board of Supervisors stated a willingness to dedicate resources to improvement, including increasing the budget for hiring more election workers and reserving more physical space for ballot counting.
- F7. The procedures for processing election results are labor intensive and lack adequate modern data processing.
- F8. Adopting the provisions of SB 450 will be expensive for low population counties like Mendocino County.

APPENDICES

Appendix 2-1: County of Mendocino Office of the Assessor-Clerk Recorder Memorandum dated February 7, 2017

Appendix 2-2: SB 450 Legislative Analyst comments

Appendix 2-3: Memorandum to All Candidates, Incomplete Ballot Counting on Election Night

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

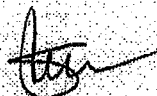
Appendix 2-1

County of Mendocino Office of the Assessor-Clerk Recorder

Memorandum dated February 7, 2017

County of Mendocino
Office of the Assessor-Clerk Recorder

MEMORANDUM

DATE: February 7, 2017
TO: Finley Williams, Grand Jury
FROM: Susan M. Ranochak, Assessor Clerk-Recorder 

1. 21,700 Vote-By-Mail ballots.
2. There are no tabulation scanners at the polling places. All paper ballots are tabulated at a central location located at the Registrar of Voters office in Ukiah. There were two votes recorded on the DRE handicap accessible machines. There were twenty-four machines deployed throughout the county.
3. There were a total of 10,029 vote by mail ballots received on Election Day. 2,015 through the mail, 1,198 dropped off at our office and 6,816 dropped off at the polls.
4. 796 Vote-By-Mail ballots postmark +3
5. 1,136 Provisional ballots

What ballots are counted by Election Day? The ballots that are counted by the end of Election Day are all paper ballots voted at the polls along with vote by mail ballots that have been opened and have completed the remake process.

What would your office need to have all the mail-ins received before Election Day counted by Election Day? We would need additional staff, space and funding.

What is that percent of the total turnout? "I'm assuming your referring to your sixth question, What ballots are counted by election day?", $12,032/38730 = 31\%$.

Appendix 2-2

SB 450 Legislative Analyst comments

**Senate Bill No. 450
CHAPTER 832**

An act to amend Sections 3017 and 15320 of, to add Sections 4005, 4006, and 4007 to, and to add and repeal Section 4008 of, the Elections Code, relating to elections.

[Approved by Governor September 29, 2016. Filed with Secretary of State September 29, 2016.]

legislative counsel's digest

SB 450, Allen, Elections: vote by mail voting and mail ballot elections.

Existing law requires all vote by mail ballots to be voted on or before the day of the election and requires the vote by mail voter to return the ballot by mail or in person, as specified, to the elections official who issued the ballot.

This bill would require an elections official who receives a vote by mail ballot that he or she did not issue to forward that ballot to the elections official who issued the ballot no later than 8 days after receipt. By requiring an elections official to forward a ballot to the elections official who issued the ballot, the bill would impose a state-mandated local program.

Existing law authorizes cities with a population of fewer than 100,000 persons, school districts, and special districts to conduct an all-mailed ballot special election to fill a vacancy on the legislative or governing body of those entities under specified conditions.

This bill, the California Voter's Choice Act, would, on or after January 1, 2018, authorize specified counties, and on or after January 1, 2020, authorize any county except the County of Los Angeles, to conduct any election as an all-mailed ballot election if certain conditions are satisfied, including conditions related to ballot dropoff locations, vote centers, and plans for the administration of all-mailed ballot elections. The bill would require the Secretary of State, within 6 months of each all-mailed ballot election conducted by a county pursuant to these provisions, to report certain information to the Legislature regarding that election. The bill would require the county that conducted the all-mailed ballot election to submit to the Secretary of State the information needed for the Secretary of State to prepare the report.

This bill would, on or after January 1, 2020, authorize the County of Los Angeles to conduct any election as a vote center election if certain conditions are satisfied, including conditions related to ballot dropoff locations and vote centers. The bill would, on or after January 1, 2020, authorize the County of Los Angeles to conduct a special election as an all-mailed ballot election pursuant to specified provisions that apply to every county that chooses to conduct a special election as an all-mailed ballot election.

92

This bill would also require the Secretary of State to establish a taskforce that includes certain individuals to review all-mailed ballot elections conducted pursuant to these provisions and to provide comments and recommendations to the Legislature within 6 months of each all-mailed ballot election or vote center election. This bill would incorporate additional changes to Section 3017 of the Elections Code proposed by AB 1921 that would become operative only if AB 1921 and this bill are both chaptered and this bill is chaptered last. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appendix 2-3

Memorandum to All Candidates, Incomplete Ballot Counting on Election Night

MEMORANDUM

COUNTY OF MENDOCINO
ELECTIONS

TO: All Candidates

FROM: Susan M. Ranochak, Registrar of Voters

SUBJECT: INCOMPLETE BALLOT COUNTING ON ELECTION NIGHT

Candidates are frequently surprised on the day after an election when they learn that there are ballots countywide remaining to be counted. These uncounted ballots may leave some close races undecided for days or even weeks. This memo is provided as a courtesy to explain the logistics of election night ballot counting, and follow-up ballot tabulation, which occurs in the days/weeks following the election. The law allows 28 days after the election to complete the ballot tally and the official audit of the election, known as the Canvass. When the Canvass is completed, the official results are certified.

There are two categories of ballots that cannot be processed on Election Night:

- Absentee ballots turned in at polling locations
- Provisional ballots voted at the polls

Absentee ballots turned in at polling locations. Many absentee voters wait until the last minute to make their voting choices and then drop off their absentee ballots at a polling place on election day. We receive these ballots very late on election night. All absentee ballots must be pre-processed before they are counted – this includes verifying every absentee voter's signature prior to opening the absentee ballot envelopes to remove the ballots in preparation for counting.

Provisional ballots voted at the polls. Provisional ballots are voted at the polls when a voter's registration is in question, or when our records indicate the voter was already sent an absentee ballot. Provisional ballots are sealed in special envelopes at the polls and must be individually researched and verified at the Registrar's Office before ballots are counted or rejected in accordance with election laws.

Ballots containing write-in votes. Must be individually reviewed to determine whether or not the write-in vote is for a qualified write-in candidate and whether or not the voter over-voted (i.e. voted for a candidate on the ballot and also voted for a write-in candidate for the same office.). When an over-vote occurs, neither vote can be counted for that one office, although the rest of the ballot selections will be counted. Vote tallies for write-in candidates are also certified at the conclusion of the official canvass.

There will be no updates to our Final Unofficial results posted on election night until the Final Official results are released at the time of certification. Based on past trends, the number of ballots remaining to be counted after election night is anticipated at 1,000 – 2,500 countywide. Our staff will be working as quickly as possible to prepare all outstanding ballots for tabulation.

California law permits 28 days to complete the final, official canvass and certify the results of the election. This provision of the law recognizes the complexity of completing the ballot count and conducting a thorough audit of the election results to ensure accuracy. Part of the canvass process is a legally required manual recount of the votes cast for all candidates and measures on the ballot in 1% of the total voting precincts. This manual process verifies the accuracy of the computer count. As always, candidates and members of the general public are invited to observe ballot counting and the manual tally of ballots from the randomly selected 1% of the voting precincts.

We realize it is difficult for candidates/campaigns involved in close races to wait days and sometimes weeks to know whether or not they won or lost the election. However, we hope that the reasons for the delays in the final ballot tally have been explained fully in this memo. If you have additional questions, please call me at 483-4376.

MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND JURY REPORT TITLED:

FORMULA BUSINESS RESTRICTION

The Mendocino County Board of Supervisors (BOS) welcomes this opportunity to respond to the above entitled report. The BOS notes that the Grand Jury appears to be of two minds regarding zoning and land use regulations. Grand Jury finding F2 states that the Community Character Combining District Ordinance "adds additional expense and time, discouraging business permit applications in the County." Grand Jury finding F4 states that the Community Character Combining District Ordinance "reflect[s] an anti-business attitude that stymies economic growth." Finally, Grand Jury finding F8 states that the wisdom of the market place "should be allowed to determine the success or failure of business." These findings by the Grand Jury appear to be critical of applying design review to particular types of businesses, in particular locations, because doing so is perceived to be "anti-business." The Grand Jury recommends (R1) that this perceived negative impact be remedied by applying "community character design review for all business development." The Grand Jury further recommends (R2) the County "eliminate 'by right' business permits and formula business restrictions, and consistently review all business development under discretionary use permits for community character." The effect of these recommendations, if implemented, would be to apply the restrictions that are applied to some formula businesses in some locations, to all businesses in all locations. The Grand Jury appears to either not understand or not agree with the traditional exercise of local police power to adopt land use regulations. Historically, local jurisdictions are deemed best suited to adopt local regulations that protect the public health and safety. These regulations are based on local conditions which will vary from one jurisdiction to another and from one area of a jurisdiction to another. The decision to adopt the Community Character Combining District Ordinance, following extensive community input by the public, the Municipal Advisory Councils and the Planning Commission, is not a "nimby overreaction" but a measured response to an important issue of public policy and is intended to protect and enhance community character based on local conditions.

Pursuant to the request of the Grand Jury, the Board is responding to the following:

- F1. Formula businesses are restricted or prohibited, except when they are not. Ordinances are written and applied in different jurisdictions resulting in dissimilar treatment of similar businesses, and even applied differently in the same jurisdiction.

Disagree. As stated above, local jurisdictions are best suited to adopt local land use regulations that are intended to protect the public health and safety. These regulations are based on local conditions which will vary from one jurisdiction to another and from one area of a jurisdiction to another. The BOS incorporates by reference the response of the Interim Director of Planning and Building Services.

- F2. The proposed County Community Character Combining District Ordinance adds additional expense and time, discouraging business permit applications in the County.

Disagree. The BOS notes that the Grand Jury states in its report that "formula businesses are usually well capitalized. They plan for and can manage the development fees additional to the construction necessary to build from the ground up, which is becoming increasingly difficult for individuals." To the extent this statement is true, formula businesses are uniquely suited to absorb the additional incremental cost that may be required by complying with the Community Character Combining District Ordinance. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

- F4. The downtown Ukiah formula business prohibition and the County Community Character Combining District Ordinance reflect an anti-business attitude that stymies economic growth.

Disagree. The BOS notes for the record that this finding appears to include a statement of personal opinion that is not supported by evidence in the record. To the contrary, the Grand Jury references formula businesses that continue to seek approval to operate regardless of the requirements that are applied by local jurisdictions or lawsuits that are brought by private parties. The BOS incorporates by reference the above response to F3 and the response by the Interim Director of Planning and Building.

- F5. Community character may be achievable through design modification.

Agree. The BOS incorporates by reference the response by the Interim Director of Planning and Building.

- F6. In-N-Out Burger could have mitigated neighborhood concerns and Dollar General could have been required to provide design modifications if the code had not been written to allow "by right" commercial development.

Partially disagree. There is no formal record of "neighborhood concerns" regarding In-N-Out Burger. The BOS incorporates by reference the response by the Interim Director of Planning and Building.

- F7. The County Community Character Combining District zoning regulations go too far by adding time and expense to the application with the risk of capricious denial.

Disagree. The BOS notes for the record that this finding appears to include a statement of personal opinion not supported by evidence in the record. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

- F8. The “wisdom of the market place” should be allowed to determine the success or failure of business.

Disagree. The BOS notes for the record that this finding appears to include a statement of personal opinion not supported by evidence in the record. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

Recommendations:

- R1. The County zoning ordinance include community character design review for all business development. (F1, F2, F4, F5, F7)

This recommendation will not be implemented because it is not warranted or reasonable. The Community Character Combining District Ordinance is a well thought out response to a local public policy issue and was the subject of extensive review by the public, the Municipal Advisory Councils, the Planning Commission and the BOS. Further, it is illogical for the Grand Jury to make findings (F2, F4) that the Community Character Combining District Ordinance adds additional time and expense and discourages business permit applications and to assert the wisdom of the market place (F8) “should be allowed to determine the success or failure of business” and then recommend that these same regulations be applied to every business. Instead of protecting local community character, the recommendation of the Grand Jury would more likely present an unreasonable barrier to locally based businesses. The BOS incorporates by reference the response of the Interim Director of Planning and Building.

- R2. The County and Ukiah eliminate “by right” business permits and formula business restrictions, and consistently review all business development under discretionary use permits for community character. (F1, F4, F4, F6, F8)

This recommendation will not be implemented because it is not warranted or reasonable. The BOS incorporates by reference our response to R1 and the response of the Interim Director of Planning and Building to R1 and R2.

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title: *Formula Business Restriction, Nimby Overreaction?*

Report Dated: June 22, 2017

Response Form Submitted By:

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than:
October 6, 2017

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- ☒ I (we) agree with the Findings numbered:
F5
- ☒ I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
F1, F2, F4, F6, F7, F8

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- ☐ The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:

- ☐ The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

- ☐ The following Recommendation(s) require further analysis, and attached as required, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)
-

- ☒ The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:
R1, R2

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 3

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: John McCowen

Title: Chair, Board of Supervisor

Signed: John McCowen

Date: 10/4/17

County of Mendocino
Grand Jury
www.co.mendocino.ca.us/grandjury

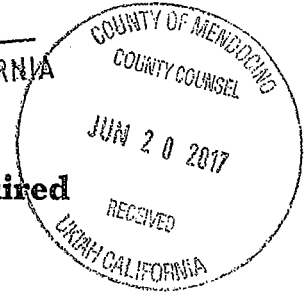
COUNTY OF MENDOCINO
BOARD OF SUPERVISORS

2017 JUN 20 PM 4 11

Post Office Box 939
Ukiah, CA 95482
grandjury@co.mendocino.ca.us

EXECUTIVE OFFICE

PER _____
UKIAH, CALIFORNIA



**Grand Jury Report Transmittal
(with Instructions and Response Form for Required
Respondents)**

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, Ca 95482

Date: June 20, 2017

RE: Report Titled: Formula Business Restriction, Nimby Overreaction?
Dated: June 22, 2017

Your response to the attached report by the 2016-17 Mendocino County Civil Grand Jury is required pursuant to Penal Code §933.05 (enclosed). Penal Code §933.05 also requires that your response to the Findings and Recommendations contained in the report be in writing and be submitted within **60 days for individual responses from elected officials or agency heads** or within **90 days for governing bodies** (including such entities as school boards, city councils and the Board of Supervisors).

Penal Code §933.05(f) specifically prohibits disclosure of the contents of this report by a public agency or its officers or governing body prior to the release to the public. The report will be released to the public and posted on the grand jury website two (2) or more days after the date of this letter.

The Penal Code is specific as to the format of responses. Complete and sign the enclosed Response Form and attach any additional comments as required.

Should you have any questions after reviewing the enclosures, please contact me at **grandjury@co.mendocino.ca.us** or at the address above.

Sincerely,

Katharine Wylie
2016-17 Foreperson
Mendocino County Grand Jury

C: BOS, CEO, COO, J. Duket

For Your Information

SUMMARY OF PENAL CODE 933.05

Penal Code § 933.05 provides for only two (2) acceptable responses with which agencies and/or departments (respondents) may respond with respect to the **findings** of a Grand Jury report :

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the findings, *in which case the respondent shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.*

Penal Code § 933.05 provides for only four (4) acceptable responses with which agencies and/or departments (respondents) may respond with in respect to the **recommendations** of the Grand Jury.

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be in the future, with a timeframe for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis, with a timeframe for the matter to be prepared for discussion by the officer or head of the agency/department being investigated or reviewed, including the governing body of the public agency when applicable. ***This timeframe shall not exceed six (6) months from the date of publication of the Grand Jury Report.***
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with a detailed explanation therefore.

However, If a finding and/or recommendation of the Grand Jury addresses **budgetary** or **personnel** matters of a county agency/department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address **all** aspects of the findings or recommendations affecting his or her agency/department.

FORMULA BUSINESS RESTRICTION Nimby Overreaction?

SUMMARY

A San Francisco Chronicle columnist recently declared:

"It's a cruel irony that many of the coastal California cities and counties that have imposed tight restrictions on new housing and development also are home to levels of poverty that don't get enough attention. Such communities should be aggressively challenged. Their NIMBYism, rationalized as "preserving community character," is actually making people poorer."¹

Both the City of Ukiah and the County of Mendocino² have ordinances that restrict formula business development. Are formula business restrictions necessary or desirable, or are they simply a manifestation of nimbyism, which effectively discourages business and job growth?

While the Mendocino County 2016-17 Grand Jury applauds community charm and mom-and-pop small business, we question if the restriction of formula businesses is appropriate in a County that suffers from an inability to fill professional employment positions, a lack of available housing, and too few jobs with benefits, not to mention a general dearth of retail shopping opportunity that is desirable to a youthful demographic. It is not as if these businesses are breaking down doors to open chains here.

A County Supervisor stated to the Grand Jury that the County has been making a concerted effort to change the perception that this County is anti-business. However, that such restrictions have been enacted gives the appearance of a not-so-business friendly culture that the County can ill afford.

GLOSSARY

NIMBY: An acronym for the phrase "Not In My Backyard".

CEQA: The California Environmental Quality Act is a statute requiring state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA applies to projects undertaken, funded or requiring an issuance of a permit by a public

¹ Joe Mathews, "Connecting California, Coastal California is Home to the State's Poorest Kids," San Francisco Chronicle, March 16, 2017

² Referring to those parts of the unincorporated County that are not under Coastal jurisdiction

agency. The analysis of a project required by CEQA usually takes the form of an Environmental Impact Report or Negative Declaration.

Formula Business (Mendocino County Draft Ordinance): "One of the commercial use types listed below that have 10 or more other locations and that share more than two standard features such as name, décor, services, and color.

- 1) Eating and Drinking Establishments (County Code §20.024.065)
- 2) Food and Beverage Retail Sales (§County Code 20.024.075)
- 3) Food and Beverage Preparation – Without Consumption (County Code §20.024.080)
- 4) Retail Sales, General (County Code §20.024.120)

Formula Business (Downtown Zone Ukiah): City Code §9232: RESTAURANT – FORMULA FAST FOOD: "A restaurant that includes all of the following characteristics:

1. Is required by contractual or other arrangements to maintain any of the following: substantially standardized menus, architecture, building appearance, signs, or other similar standardized features; and
 2. Has three (3) or more of the following characteristics:
 - a. Food is pre-made and wrapped before customers place orders;
 - b. Food is served with disposable tableware for on-site consumption;
 - c. Food is ordered from a wall menu at a service counter;
 - d. Food consumed on the premises is ordered while customers are standing;
 - e. Payment is made by customers before food is consumed; or
 - f. The service counter is closer to an entry/exit than is the seating/dining area.
- Ice cream shops, coffeehouses, bakeries, hot dog stands, or other businesses whose primary function is not the sale of full meals are exempted from this definition."

Ministerial: Ministerial projects, also known as "by right", involve only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. (CEQA Guidelines §15369). There is no public input.

Discretionary: Discretionary projects require the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations

where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations (CEQA Guidelines §15357). Public input is received.

Use Permit: A use permit gives the County the ability to conduct a more thorough review of a proposed project and subjects projects to public hearings to ensure that the project will be compatible with surrounding land uses and will not adversely affect neighbors or the environment.³

BACKGROUND

The Mendocino County 2016-17 Grand Jury interviewed a city official from Ukiah, who wondered how the new In-N-Out Burger restaurant, located close to the city-county line, would affect the City. The official questioned whether the County of Mendocino (County) had required the restaurant to perform a traffic analysis. The Grand Jury investigated whether the In-N-Out Burger fell under the new County formula business moratorium and whether it needed a special use permit that would allow for public input on the impacts the restaurant would introduce into the area. The Grand Jury speculated that traffic congestion, noise, and litter would increase, and questioned how the restaurant would affect the nearby neighborhoods and the Crossroads Shopping Center's businesses.

In-N-Out Burger is one of three formula businesses as defined in the County and Ukiah codes that have been permitted since 2015. Two such businesses have been built and opened; the third remains in litigation.

APPROACH

The Grand Jury compared the permit approval process and fees of the In-N-Out Burger with the recently built Chipotle Mexican Grill in Ukiah. To understand the basis for the County moratorium, we reviewed the Redwood Valley Dollar General building permit controversy.

The Grand Jury reviewed Mendocino County Board of Supervisor (BOS) meeting documents and video, Mendocino County Planning and Building Services reports, memoranda, meeting video, and

³ Mendocino County Planning and Building Services website:
[http://www.co.mendocino.ca.us/planning/pdf/How to apply for a use permit.pdf](http://www.co.mendocino.ca.us/planning/pdf/How%20to%20apply%20for%20a%20use%20permit.pdf)

litigation documents; the City of Ukiah Council and Ukiah Planning Commission minutes, and County and City codes. The Grand Jury also reviewed media coverage of all three business projects.

The Grand Jury interviewed Ukiah city staff, County Planning and Building Services staff, and BOS members.

DISCUSSION

A growing number of cities and towns nationally have discussed enacting restrictions or bans on formula chain businesses. Some have passed, some have been passed over. The underlying motive is the preservation of distinctive community character and small entrepreneurial business ownership. Mendocino County is currently in the process of adopting restrictions on these businesses. Ukiah has an ordinance that prohibits restaurant formula businesses altogether in the downtown zone.

In June 2015, a permit was granted to construct the building for a Dollar General store on a commercial lot in Redwood Valley. Some residents felt that they were "blind-sided" by the permit approval and vociferously objected to the store.⁴ Their protest led the BOS to enact an urgency moratorium on formula businesses. This may be viewed as an overreaction to a singular ministerial business application about one retail chain store that some residents did not like.

Concurrently, an In-N-Out Burger was speedily granted a building permit. Restaurant construction proceeded without objection. This chain restaurant is on North State Street just north of the Ukiah city limits and has ramifications for both the City and the County.

Although Ukiah has a restaurant formula business prohibition for the downtown zone, Chipotle Mexican Grill was exempted from the City code and allowed construction after the developers agreed to design modifications presented by the Ukiah Planning Commission.

The Grand Jury found two inconsistencies. The first inconsistency is that formula business ordinances vary according to their jurisdiction in cities and the County. Different rules apply to different locations

⁴ "Mendocino County imposes temporary ban on chain stores," Ukiah Daily Journal, September 28, 2015

for similar businesses. For example, Ukiah allowed Chipotle Mexican Grill, a national chain restaurant, to build in the downtown zone despite the City prohibition. Costco, a big box chain retailer outside the downtown zone, has been in litigation for years regarding environmental impact despite the public emphatically supporting the retailer's approval. Under its own set of zoning rules, Fort Bragg permitted Taco Bell, with a rustic exterior befitting the community, to open in 2015. It has been well received. Under County jurisdiction, In-N-Out Burger opened without any required modifications under an exempted commercial area⁵ of the Ukiah Valley Area Plan. Only Dollar General has been rebuked as unwanted development even though the property is in a County zone that allows commercial development by right.

The second inconsistency is that ordinances contradict explicit economic and workforce developmental policy. County budget priorities are economic and new housing development. The two are intertwined: Housing is affordable only when residents are fully employed; and building housing is not feasible without a viable employment base.

At the March 20, 2017 BOS meeting, County Human Resources reported that there is high employee turnover. Beyond discussion of low comparative wages for the region, it was asserted that a major reason for not being able to hire and retain employees is the lack of housing. This has also been reported by the County Agriculture Department as contributing to its inability to fill positions needed for the County cannabis ordinance.⁶ Similarly, a local business owner complained of lack of housing for employees and has applied for approval to build a housing development.⁷

The formula businesses discussed in this report are examples of how business is promoted and challenged in the County. A County Planning and Building official stated to the Grand Jury, "Every community wants some filter on economic development." Indeed, but is prohibition and restriction that could lead to permit denial consistent to our economic needs? The Grand Jury believes that the best practice is to encourage business development generally and to maintain standards by reviewing all business applications for community continuity equally.

⁵ <http://www.co.mendocino.ca.us/planning/UVAP.htm>

⁶ "County Ag Dept Struggling to Fill Marijuana Positions," Ukiah Daily Journal, March 27, 2017

⁷ "Housing Development Proposed Along Lovers Lane in Ukiah", Ukiah Daily Journal, March 10, 2017

Community Character Combining District Ordinance

In August 2015, responding to the community protest over the permit granted for construction of a Dollar General store on a vacant commercial parcel at 8451 East Road in Redwood Valley, the BOS directed staff to prepare a draft urgency ordinance putting in place a temporary moratorium on formula businesses. An Urgency Ordinance Establishing Interim Restrictions on the Establishment of Formula Businesses, BOS Ordinance No. 4382, was adopted on September 22, 2015, "prohibiting the issuance of any entitlement for a formula business or formula restaurant, or the making of any determination that would allow a formula business or formula restaurant, in any zoning district during the term of the ordinance," with certain exceptions.

On November 3, 2015, the BOS extended the September 22 moratorium to allow time for the Department of Planning and Building Services to prepare changes to the zoning code. On April 19, 2016, the Planning and Building Services Director presented the staff report to the BOS that proposed a requirement for a Conditional Use Permit allowing time for public input rather than an outright prohibition of formula businesses. On August 16, 2016, the BOS extended the Urgency Ordinance for 12 months to allow for further study and full review of the proposed ordinance.

The most recent Planning and Building Memorandum, with the recommended amendments to the County zoning ordinance, was presented to the Planning Commission on November 17, 2016. Additional permit fees and estimated project delay for these business applications were put forward in the staff report for the draft ordinance:

"The time to bring a use permit to a public hearing is 6-9 months. In addition to the use permit use fee (\$2,260), special studies (e.g., traffic) may be required to complete the CEQA review and a "Fish and Wildlife Filing Fee" (\$2,260.25) is charged when the project is completed."

The Planning Commission passed a motion recommending the adoption of the draft ordinance and thereby moved it forward to the BOS.

On March 20, 2017, the Department of Planning and Building Services Interim Director presented the draft ordinance⁸ to the Board of Supervisors. As explained to the Board, the amended County ordinance is not a complete ban but a requirement for formula businesses wanting to open in specified inland commercial zoning areas to obtain a use permit after a public process. However, there is no guarantee of approval and, the Interim Director stated, "it may appear to outside business that there is a prohibition, which in turn may obstruct business applications".

Additionally, the Hopland Municipal Advisory Council (MAC) requested exemption so as not to deter development, and the Laytonville MAC wanted a more stringent definition of formula business. A member of the BOS wondered if the MACs were becoming like "mini governments" within the County jurisdiction.

The target timeframe for presentation of the proposed ordinance to the BOS is sometime this summer. All potentially affected commercial property owners must be noticed in advance to give them opportunity to address the Board.

Dollar General

The Dollar General building permit was approved in June 2015 magisterially, or "by right", meaning that no public input or design changes were required. Vocal community members cried foul, saying that such a store would be a blight on the main commercial street. They argued that the store would conflict with the rural character of Redwood Valley⁹ and create unwanted competition with the local market.

A permit appeal was filed, petitioners arguing that potential environmental impacts were not reviewed. At the October 6, 2015 BOS meeting, the Board denied the building permit. This denial was subsequently overturned by the Board and the permit was approved on a close 3-2 vote on November 1, 2015. A civil suit against the County's approval of the permit without environmental review ensued.

⁸ Amend the Mendocino County Zoning Code – Division I, Title 20 (Inland) to add Chapter 20.147, Community Character (CC) Combining District and Rezone all the C-1 (Limited Commercial) and C-2 (General Commercial) zoning districts to apply the CC Combining zoning in the County

⁹ Board of Supervisors meeting, October 6, 2015

Mendocino County Superior Court denied the suit in entirety in January 2017.¹⁰ The Petitioners have appealed this decision. This continuing court action has delayed the building of the project.

Given that the business was magisterially approved “by right” under County code, there was no opportunity for residents of Redwood Valley to have input into the development. They may have been better served with design discussion requiring Dollar General to adopt a rustic exterior and signage appropriate to its rural setting rather than instigating a formula business moratorium. In that case, if the business failed there would be an acceptable commercial building available in the community.

The side of the argument that was not voiced in the public discussion is that the Dollar General will fill a retail need for many residents of the community. It will also lower the number of shopping trips to Ukiah from Redwood Valley and Potter Valley.

Dollar General employee benefits include healthcare, 401k retirement plan, paid vacation and holidays, and product discounts. Salary options and job benefits typically vary by Dollar General location.¹¹

In-N-Out Burger

Coinciding with the BOS action on formula businesses, In-N-Out Burger purchased the Fjord’s restaurant site at 1351 North State Street, just north of Ukiah city limits, demolished that landmark building, and built and opened its new chain restaurant on January 25, 2017.

The In-N-Out Burger was not subject to the provisions of the formula business moratorium because it was located in a specifically exempted county area¹² in a commercial zone designated in the Ukiah Valley Area Plan. It was also considered simply a replacement restaurant. As a result, the permit was issued very quickly “by right”. There was no requirement for design review or any particular modifications of the building plans.

¹⁰ Mendocino County Superior Court, Order and Judgment Denying Petition for Writ of Mandate and Exhibit A, January 23, 2017

¹¹ Dollar General Employee Handbook, February 2015:
<https://www.scribd.com/doc/293508174/Dollar-General-Employee-Handbook>

¹² Map of exempted area, Attachment D of Draft Ordinance (page 13):
http://www.co.mendocino.ca.us/planning/pdf/current/OA_20160001%20Formula%20Business.pdf

In-N-Out Burger agreed to construct new ADA-complaint sidewalks and the “dreaded bump” to enter the shopping center.¹³ The Department of Transportation Director stated, “And I gotta hand it to them, they’re stepping up and doing more...Everything I asked them to do they agreed to, which was great, because they didn’t have to. But they want to be a classy business.”¹⁴ So, while the restaurant stepped up, it was not required to submit a traffic analysis nor provide engineering for mitigation of potential congestion or other impacts by virtue of the current zoning code.

The popularity of this formula business development was evidenced when it opened by lines of cars at the drive-through, a full parking lot, and consumers at the counter. The restaurant added many permanent jobs offering pay exceeding minimum wage, variable work schedules, health care benefits, a retirement plan, free meals on work days, discounts, and holiday, vacation and sick time.¹⁵

It is appreciated that the In-N-Out Burger replaced Fjords, a restaurant that had been closed for years, on a site that had become a long-term eyesore. However, by adhering to current County zoning code that required the issuance of the building permit by right, the County missed an opportunity to have the developer listen to public concerns. In-N-Out may have provided, at their expense, improvements to mitigate such impacts as additional traffic congestion, noise, and odor in the surrounding unincorporated area and Ukiah. Such discussions have occurred in other Northern California counties during the permitting process.¹⁶

Chipotle Mexican Grill

In comparison, the Chipotle Mexican Grill in Ukiah at 596 E. Perkins Street had to jump through a number of hoops required by the Ukiah Planning Commission and City Council for approval under the Downtown Zoning Code. First, formula fast food restaurants are prohibited in the downtown zone. Even though Chipotle meets the criteria given by City code for a formula restaurant, it was expressly deemed not a formula fast food business by a unanimous Ukiah City Council vote on August 20, 2014, and the permit was approved.

¹³ “In-N-Out Burger to take over Fjords building in Ukiah,” Ukiah Daily Journal, April 12, 2016

¹⁴ Ibid

¹⁵ <http://www.in-n-out.com/employment/restaurant.aspx>

¹⁶ “Neighbors Voice Concerns about In-N-Out's Plan for Novato,” Novato Patch, August 16, 2011; “Walnut Creek: In-N-Out Burger Eyed for North Main Street,” East Bay Times, March 7, 2017

At the June 24, 2015 Planning Commission meeting, the City Planning Director projected that the restaurant would create 30 to 35 new permanent restaurant positions and 25 temporary construction jobs. The Director stated, "Right there is the major reason why we find this project consistent with the General Plan. It supports the local economy. It creates jobs." Additionally, the Planning Commission unanimously exempted the restaurant from the Downtown Plan in three other areas: the building is one story rather than the two required; the frontage is more than the code specifies; and the 20 proposed parking spaces exceeds the 8-maximum allowed. The Planning Commission also passed recommendations on exterior color, bike racks, and low-emission vehicle parking spaces.

Chipotle broke ground on December 14, 2015 and opened on November 27, 2016. The building is generally considered an attractive addition to the east entrance to downtown Ukiah.

Employee benefits include healthcare with a wellness premium discount, 401k Retirement Plan, an Educational Assistance Program, vacation time, free shift meal, and free uniforms.¹⁷

Development Costs

It is a well-established economic principle that the larger the business capitalization the more likely the business will survive beyond three to five years. Formula businesses are usually well capitalized. They plan for and can manage the development fees additional to the construction necessary to build from the ground up, which is becoming increasingly more difficult for individuals.

In-N-Out Burger:

- County Building Permit: \$8,749.98
- Millview Water service connection fee: \$14,325.79
- Sewer Connection/Capital Improvement Fee: \$112,984.04
- Grease Trap Inspection Fee: \$100
- Sewer Lateral Inspection Fee: \$50
- Plan Check Fee: \$1,274.25
- Hydrant and lateral construction costs: Not specified

¹⁷ <http://careers.chipotle.com/benefits>

Chipotle Mexican Grill:

- Ukiah Building permit fees \$71,166.72, including the associated sewer connection fee of \$22,258.24

Dollar General:

- County Building Permit fee: \$10,157.27
- Well and Septic: Not specified
- Legal fees: Not specified

FINDINGS

- F1. Formula businesses are restricted or prohibited, except when they are not. Ordinances are written and applied in different jurisdictions resulting in dissimilar treatment of similar businesses, and even applied differently in the same jurisdiction.
- F2. The proposed County Community Character Combining District Ordinance adds additional expense and time, discouraging business permit applications in the County.
- F3. The City of Ukiah has applied its zoning ordinance inconsistently.
- F4. The downtown Ukiah formula business prohibition and the County Community Character Combining District Ordinance reflect an anti-business attitude that stymies economic growth.
- F5. Community character may be achievable through design modification.
- F6. In-N-Out Burger could have mitigated neighborhood concerns and Dollar General could have been required to provide design modifications if the code had not been written to allow "by right" commercial development.
- F7. The County Community Character Combining District zoning regulations go too far by adding time and expense to the application with the risk of capricious denial.
- F8. The "wisdom of the market place" should be allowed to determine the success or failure of business.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. The County zoning ordinance include community character design review for all business development. (F1, F2, F4, F5, F7)
- R2. The County and Ukiah eliminate "by right" business permits and formula business restrictions, and consistently review all business development under discretionary use permits for community character. (F1, F3, F4, F6, F8)
- R3. Ukiah modify the Ukiah City code to eliminate the prohibition on formula business in the downtown zone and treat all business development equally. (F3, F4, F5, F8)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individual(s):

- Ukiah City Manager (F1, F3, F4, F5 and R2, R3)

Pursuant to Penal Code §933.05, responses are *required* from the following governing bodies:

- Mendocino County Board of Supervisors (F1, F2, F4-F8 and R1, R2)
- Ukiah City Council (F1, F3-F5 and R2, R3)

Pursuant to Penal Code §933.05, responses are *requested* from the following individual(s):

- Director, Mendocino County Planning and Building Services Department (F1, F2, F4-F8) and (R1, R2)

BIBLIOGRAPHY

Planning and Building Memorandum OA_2016-0001 Formula Business, dated November 17, 2016, http://www.co.mendocino.ca.us/planning/pdf/current/OA_2016-0001%20Formula%20Business.pdf

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

**MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND
JURY REPORT TITLED:**

ANOTHER LOOK AT FAMILY AND CHILDREN'S SERVICES

The Mendocino County Board of Supervisors welcomes this opportunity to respond to the Grand Jury report titled Another Look at Family and Children's Services.

Pursuant to the request of the Grand Jury, the Board is responding to the following:

- F1. The loss of significant numbers of experienced staff since 2011 and the inability of the County to attract trained social workers with CPS experience has resulted in the hiring of inexperienced workers with a higher than normal turnover rate and a need for on-the-job training.

Partially disagree. The County has had a turnover of staff since 2011. This trend is not expected to continue with the changes made and more direct leadership currently being provided by the HHSA Chief Operations Officer and Director. The County only hires Social Workers who meet the minimum experience and education requirements. The BOS incorporates the responses by Human Resources and HHSA.

- F2. Mendocino County has a higher rate than the State average for removal of children from their families due to a lack of early intervention in troubled families, the drug culture, high unemployment, lack of housing, and the lack of teenage drug treatment programs.

Partially disagree. Mendocino County does have a higher rate than the State average for removal of children from their families. However, the reasons stated by the Grand Jury are only contributing factors in this problem and not solely responsible for the emergency removal due to abuse or neglect. That said, the BOS understands these factors can be detrimental to families and is working with HHSA and partners to address them. The BOS incorporates the response by HHSA.

- F3. Without more investigators and a five-day workweek, it will be impossible to meet the County's mandated response time for non-emergency ten-day investigation requests. This results in unnecessary risks for children.

Partially disagree. HHSA management is currently scheduling as they feel is most effective. As HHSA states, "[w]hen adequately staffed, HHSA will consider how to meet that expectation and continue to improve public office hours." The Board would welcome monthly updates on response times/statistics, staffing and challenges for HHSA Family and Children's Services and recommendations for improvement.

- F4. The new State eligibility requirements and training requirements for foster homes may reduce the rate of abuse and changes in foster care placements, but make it even harder for Mendocino County agencies to recruit foster families.

Partially disagree. This is speculation and the hope is that the rates of abuse will decline and foster families will be able and willing to comply with the new requirements. This will need to be evaluated after sufficient time has passed for an effect to be seen.

- F9. The change from the Merit System to Civil Service Employment practices allows promotion of experienced people without an MSW degree to supervisorial positions and this may attract new staff from neighboring counties.

Partially disagree. The change does allow for more local control. However, there were no changes to the requirements for Social Worker Supervisor. Therefore, we should be able to attract more staff from adjacent counties and they can progress without a master's degree but would need to obtain a master's for promotion to Supervisor. The BOS incorporates the HHSA response.

- F10. The use of the term *Social Worker* as a job title in the Department is too broad. It does not properly define the education or responsibility of the various workers' assignments.

Disagree. The term Social Worker as a job title is the industry standard. The job level classification from Social Worker I to Social Worker V clearly delineates the different experiences/requirements. In order to actively recruit across comparable counties the standard title of Social Worker is most beneficial.

- F11. The California State Waiver for staffing levels through 2018 will need to be renewed. Mendocino County is unable to maintain sufficient State mandated MSW staff levels.

Agree. While staffing has improved, FCS still does not currently meet staffing requirements. HHSA will submit a new waiver request in January 2018. The BOS incorporates the response by HHSA.

- F12. The Differential Response RFP is part of developing community based programs that will lessen the stress on the available staff of FCS by assisting families before problems become exigent and require removal of children.

Agree.

- F13. The disparity between Mendocino County's salary scale and adjacent counties' pay scales has made recruitment of workers with a MSW degree or years of CPS experience nearly impossible.

Partially disagree. The disparity of salaries between Mendocino and adjacent counties has made the recruitment more difficult. However, as referenced by Human Resources, some Social Workers with a MSW degree or CPS experience have been hired. Salaries continue to be evaluated for increases as the budget allows.

- F14. The Grand Jury notes management is seeking outside help to analyze and correct the Departmental issues. However, the problems noted in the 2014-15 Report still need corrective action.

Partially disagree. HHSA management has been working diligently to improve morale, increase training opportunities, improve response times and have an atmosphere of collaboration. HR has worked hard to fill vacancies since the 2014-15 report. The BOS has approved a pay increase of 3% for the next two years to include longevity pay and differential pay for certain areas. The BOS incorporates the HHSA response.

- F15. The Board of Supervisors agreed to many of the recommendations in the UC Davis report. The BOS increased salaries and awarded a 5% differential payment to Coastal and Covelo staff. The BOS also took action to reward long-term County service with longevity pay. The Grand Jury commends these changes and hopes the BOS will continue to support those committed to County service.

Agree.

Response to Recommendations:

- R1. The County require a commitment of continued employment for a fixed period of time for those participating in the County subsidized Master's Degree program. (F1, F5, F9, F11, F13)

The BOS will not be implementing this recommendation. There currently is no County subsidized Master's Degree program as noted by Human Resources.

- R2. The County request another State Waiver for FCS to operate with less than the mandatory number of staff with MSW degrees. (F1, F3, F5, F11)

This request has not yet been implemented but will be in the future. HHSA anticipates that FCS will not have the required number of Social Workers needed and submission of a new waiver in January of 2018 will be necessary.

- R3. The County continue to develop and utilize community-based non-profits to locate and assist families before exigent situations develop. (F1-F3, F7, F12, F14)

This recommendation has been implemented. The BOS incorporates the response by HHSA.

- R4. The Board of Supervisors direct the County to offer competitive salaries to hire and retain quality Department staff. (F1-F3, F5, F11, F13, F15)

This recommendation requires further analysis. While the BOS would like to have a Social Worker salary comparable to adjacent counties, the needs of other county employees and budgetary constraints must be taken into account.

- R5. The Board of Supervisors provide a side letter agreement to the SEIU contract authorizing additional pay for Emergency Response work. (F1-F3, F11, F13-F15)

This recommendation will not be implemented.

Per Human Resources: "[c]ounty employees currently receive pay for "on-call" hours as well as compensation for hours worked when responding to emergencies."

While there are true stressors and significant impact created by Emergency Response work the best practice will be for the BOS to work with HHSA and HR leadership to determine proper scheduling, incentives and methods to minimize the secondary trauma to employees.

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title: *Another Look at Family and Children's Services*

Report Dated: June 27, 2017

Response Form Submitted By:

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

Response *MUST* be submitted, per Penal Code §933.05, no later than:
October 6, 2017

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- ☒ I (we) agree with the Findings numbered:
F11, F12, F15
- ☒ I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
F1, F2, F3, F4, F9, F10, F13, F14

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- ☒ The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:
R3
- ☒ The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:
R2

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

- ☒ The following Recommendation(s) require further analysis, and attached as required, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)
R4

- ☒ The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:
R1, R5

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 4

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

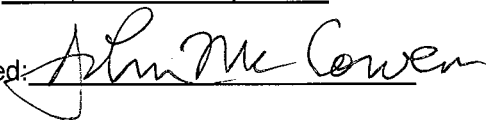
- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: John McCowen

Title: Chair, Board of Supervisor

Signed: 

Date: 10/4/17

ANOTHER LOOK AT FAMILY AND CHILDREN'S SERVICES

SUMMARY

The Mendocino County Health and Human Service Agency's Family and Children's Service Department is working to correct the problems described in the previous Mendocino County 2014-15 Grand Jury Report with new innovative ideas and with recognition of the hard-working staff that keep children safe in this County.

The Grand Jury recognizes the new management of Mendocino County Health and Human Services Agency reforms that focus on employee retention, a more employee-supportive management style, and the development of a training unit, which addresses the lack of required staff with Master of Social Work degrees. Family and Children's Services utilizes a California State Waiver of Professional Services because they are unable to fill open social worker positions in the Department. The waiver needs to be renewed on or before January 6, 2018.

Family and Children's Services management is promoting the utilization of community non-profits and Native American Tribal agencies to provide services to strengthen families and prevent the need for detainment of children. According to the nation-wide data collection bank, the County continues to have a higher rate of problems that require detainment of children. The County also has a higher rate of children who have been detained. Family and Children's Service is facing new requirements and new programs by the State of California without increased funding for staffing that these programs require. The County does not have a competitive salary scale, which exacerbates this problem.

GLOSSARY

Detainment: Removal of a child from their family

Differential Response: New program utilizing Community Non-Profit Agencies and Tribes to investigate potential child abuse situations and modify the situations that led to child abuse

Exigent: Immediate

FCS: Family and Children's Services, formerly named Child Protective Services (CPS)

BACKGROUND

The Mendocino County 2014-15 Grand Jury published a comprehensive and critical report of Mendocino County's Health and Human Service Agency's (HHSA) Family and Children's Services Department (FCS) entitled, *Family and Children's Services Children at Risk* (2014-15 Report). The Mendocino County 2016-17 Grand Jury (Grand Jury) received a complaint on a decision by FCS. As part of a preliminary investigation of this complaint, the Grand Jury reviewed the 2014-15 Report. The Grand Jury chose to see if the 2014-15 Report had affected any change in the Department's functions, and if the problems reported had been corrected.

APPROACH

To understand policies and procedures, the Grand Jury interviewed FCS's current and former staff, managers and supervisors, law enforcement personnel, and reviewed responses to the 2014-15 Report. Three Grand Jurors were recused from participation in the investigation and issuance in this report. In addition, the following documents were examined:

- The Grand Jury Report of 2014-15, *Family and Children's Services, Children At Risk*
- Federal Children and Welfare Reform Act
- Redwood Community Services, descriptions of contracted services for HHSA
- California - Child and Family Services Reviewed, Annual Systems Improvement Progress Report (SIP), May 2014 and April 2016
- FCS Budget
- FCS Organization Charts
- HHSA Organization Charts
- Pertinent Sections of the California Welfare and Institutions Code
- UC Berkeley Data Bank - California Child Welfare Indicators Project
http://cssr.berkeley.edu/ucb_childwelfare/default.aspx
- Mendocino County Family and Children's Services Organizational Assessment by Northern California Training Academy, University of California at Davis
- A recent First Five of Mendocino County White Paper
- April 18, 2017 materials presented to the Mendocino County Board of Supervisors
- California Department of Social Services Request for Exemption of Staff Regulatory Educational and Experience Requirements (waiver)

- Structured Decision Making Model Form – a required approach to CPS that uses clearly defined and consistently applied decision-making criteria for screening investigation and determining risk and safety of a child.

DISCUSSION

The Grand Jury found that many of the problems discussed in the 2014-15 Report intended for the Board of Supervisors (BOS), concerning the Health and Human Service Agency Family and Children's Services, continue to exist. The report listed nine out of eighteen recommendations requiring the BOS take action to correct concerns. The critical content of the 2014-15 Report, intended for the BOS, inadvertently devastated staff and resulted in loss of morale in the Department.

Following are the areas in which Mendocino County statistics are worse than most other California counties when compared to the National/State standards:

- Response time and data entry
- Number of reported incidents of child abuse
- Child abuse reports taking more than 10 days to investigate
- Number of times children in foster care have their placements changed
- The number of children returned to foster care after being returned to their family
- Number of abuses in foster care
- Structured Decision Making (SDM) risk assessment instrument - State Reports not filed in a timely manner

What is different since the 2014-15 Report is the change in senior management of HHSA. Some employees reported the new style of leadership is more open and respectful of employees. Current managers followed the suggestions of the UC Davis report and convinced FCS supervisors to be more open and respectful of the employees they supervise. Managers stated they are willing to face problems and find solutions for the lack of staff and to question the validity of long followed procedures. The Department is utilizing community resources more fully to help prevent childhood abuse.

The Grand Jury was concerned during their interviews that neither the Deputy Director of FCS nor the new Supervisor of Training knew the respective budget amounts for their units. The HHSA Director, in the Spring of 2017, stated to the Grand Jury that they plan to share budget and financial information with unit supervisors in the near future.

The HHSA Deputy Director manages FCS with five Program Managers supervising 21 different units. In the January 2017 organizational chart, there is only one "Hot Line Emergency Response Unit" to investigate reports of child abuse and one court unit to report to the Superior Court on detainments of children.

The 2014-15 Report commented that asking social workers to both investigate and make Superior Court referrals was "...hampering the work necessary for the safety of children".

Emergency Response Workers investigate referrals of child abuse and endangerment and detain children when necessary. The Emergency Response Court Unit reports these incidents to the Superior Court and defends the Department's recommendations to the Court for the safe detainment of children. Following the initial assessment:

- Workers in the other units, guided by the Judge's instruction, work to enable the re-integration of families
- Workers provide opportunities for educating families on better parenting
- Workers make referrals to addiction treatment programs
- Workers maintain the physical and mental health of the children as directed by the Court
- Workers also assist young people transitioning from foster care into the adult world

At the time of Grand Jury interview, the supervisor of Ukiah's "hot line" stated the unit had only one experienced worker and two new employees available to investigate complaints of child abuse.

The Willits and Fort Bragg units respond to emergency and non-emergency referrals. The Grand Jury was informed that the Fort Bragg unit, in spite of being understaffed, responds to exigent cases promptly.

On the Coast and in Ukiah, responses may be delayed for cases requiring a 10-day response due to lack of staff.

In the case of domestic violence, when children are present, the Grand Jury found that delayed response time from FCS investigators contributed to the difficulty for law enforcement officers to respond to other emergencies because officers must wait until FCS investigators arrive.

The FCS is responsible for placing detained children with approved family members or friends, and foster families when necessary. They supervise and provide for the children's physical and mental health care as needed. Considerable staff and resources are spent in rehabilitating children and families. There are limited facilities for adult drug treatment in the County and none for teenage drug users.

The programs are funded through Federal grants and State sales tax revenue. The Department's annual budget for the 2016-17 year was \$17,570,544. Initial County funding is reimbursed through State sales tax. Payments to foster parents are funded separately by the State.

The April 2017 service statistics for Mendocino County include:

- 18,620 total children in the County
- 1,844 referrals received (multiple referrals may be received for each child)
- 329 cases substantiated
- 149 cases entered into the system
- 259 children in care

These and other indicators and updates are to be found at the UC Berkeley website:

http://cssr.berkeley.edu/ucb_childwelfare/default.aspx

The State of California has recently raised standards for foster homes. Foster families are now required to attend monthly training sessions and meet the standards for adoption. The State ordered the closure of group homes and created new programs for emotionally disturbed and physiologically impaired children. These changes require staff with advanced certification and degrees. The State did not provide additional financial resources to meet these requirements. Considering FCS's existing shortage of staff with MSW degrees, FCS assigned trained staff to the new programs and filled their prior positions with new workers

with less training and experience. Management stated, "There is insufficient time to study the best way to implement changes, and create strategic plans."

All persons interviewed agreed that since 2011, FCS has lost staff, especially those with extensive background with CPS experience. Human Resources has not been successful recruiting Social Workers with a MSW degree. Since the County changed from the State Merit System to Civil Service, the Department has been able to promote long-term CPS workers without the MSW degree to supervisory positions.

Mendocino County currently has a State waiver until January 2018 releasing the County from the required number of licensed MSW's on staff as long as FCS gives staff every opportunity to continue their professional training. This waiver will need to be renewed next year.

Human Resources is hiring people with Bachelor of Arts degrees and/or Associate of Arts degrees who have some experience working with children, or with human services, to fill the staff vacancies. This requires extensive on-the-job training. Current staff stated that it takes new social workers two years of mentoring and working in the Department to become competent.

In interviewing FCS staff, it was difficult to determine an employee's responsibilities and level of expertise. Job titles are limited to Social Worker, Social Worker Assistant, or Supervisor. The level and complexity of work performed in these positions is not clear.

The HHSA has established a training location and unit for FCS. New hires will be trained and mentored, and there will be opportunities for experienced workers to take specific classes. UC Davis is providing the curriculum for new workers and Core Training for Supervisors.

Some supervisors reported they feel frustrated about leaving their units for training sessions because of the lost time and the amount of work left on their desks. Others stated they received new insight about their jobs from the training.

Many of the new hires do not choose to stay in FCS, even after receiving advanced training through

County programs. Current social workers report the work is difficult and emotionally draining. Many trained FCS employees transfer to Adult Services, or seek employment in other counties with higher wages, affordable housing, and educational opportunities.

The Grand Jury was informed that supervisors assign fewer and less difficult cases to new hires. Some supervisors expressed concern that these new social workers do not have sufficient training in ethics, knowledge of personality disorders, clinical background, and computer skills. Supervisors found not all staff use the required State SDM forms to determine child safety and risk. Some veteran Social Workers make intuitive decisions about children's safety and fill out State forms later or do not enter this information into the State data bank.

To increase efficiency, there are eight Human Resource positions, paid out of Social Service funds, performing the processing, hiring, and other personnel functions for HHSA. The FCS has increased funding to the County Counsel's Office to make available 2.5 full time equivalent lawyers to do legal work to meet the needs of FCS.

Management of HHSA does not have a say in salaries of line staff. Salaries are negotiated between the BOS and the Service Employees International Union (SEIU).

In the UC Davis study of FCS, losses of salaries and benefits were not the only causes of the exodus from the Department. The study suggested past management and supervisory policies at all levels contributed to the problem. They suggested that a more open respectful form of supervision and management was needed to regain the trust of staff and assist in retaining employees. The study made concrete suggestions of pay differentials for the Fort Bragg area due to the lack of affordable housing and insufficient staff. Because of the shortage of staff in Fort Bragg, inland Social Workers are scheduled to cover the Coast on weekends and are housed in local motels so they are available for emergencies. The study also suggested returning to a five-day workweek from the present four-day workweek.

Current upper management has addressed many of the issues in the 2014-15 Report and the UC Davis Study. Staff is now provided with laptops and cell phones to utilize time efficiently and record data promptly into electronic files to better meet State requirements. The Grand Jury observed a new open and

transparent attitude from management. Management now regularly meets with staff at four different locations. They created ways to recognize individual achievement and are now offering programs to relieve stress.

Some long-term employees continue to communicate to new hires their discontent that salary levels are lower than they were in 2009. The employees expressed their concerns and insecurities about the organizational, procedural, and programmatic changes in the Department. Several long-term employees have spoken despairingly of frequent reorganization of staff to meet new State demands. There have been two major reorganizations of units and staff since May of 2016.

The UC Davis study stated, "...instead of focusing on the loss of staff, management needs to focus on retention". The reality in Mendocino County is similar to other rural northern California counties. The study noted that the lack of trained social workers is the new reality for most rural counties without a local university offering a MSW degree.

Redwood Community Services provides Emergency Service Assistants (ESS) to meet with investigators from FCS to remove children to safety while the Social Worker collects data and analyzes the situation. The FCS investigators have reported ESS services are a great help. These assistants, stationed in Willits, meet investigators at emergencies both inland and on the Coast.

Social work staff has been encouraged to refer families to community groups that provide training for parents of young children and teens. In March 2017, the County issued a \$500,000 Request for Proposal (RFP) for new programs for community organizations and Native American Tribes to take on non-immediate referrals to FCS. Community workers would investigate complaints that do not meet the State guidelines for CPS investigation and see if they can have a positive effect on relieving family stressors. If the emergency becomes exigent they refer the situation back to FCS.

There are plans for developing a Visiting Community Worker Program under the supervision of a trained visiting nurse to assist families that may need help in daily management or care of infants. First Five has found that a weekly visit to families with very young children results in healthier children that are more likely to succeed in school. However, Human Resources has not been able to hire a qualified Public

Health Nurse to manage the program. Mendocino County salary scales are not competitive for this position.

Many interviewees reported that Mendocino County's performance inadequacies, such as the higher number of referrals to FCS and the high need to detain children, is caused by the lack of staff to work with problem families before the situation becomes exigent. The County's pervasive drug culture, insufficient mental health and drug treatment services are contributing factors. The use of drugs, which often results in police action, has created difficulties for the Department in finding approved family members able to take in detained children. The availability of drugs is considered to be one of the causes of parents relapsing into drug use and children going back into care.

FINDINGS

- F1. The loss of significant numbers of experienced staff since 2011 and the inability of the County to attract trained social workers with CPS experience has resulted in the hiring of inexperienced workers with a higher than normal turnover rate and a need for on-the-job training.
- F2. Mendocino County has a higher rate than the State average for removal of children from their families due to of lack of early intervention in troubled families, the drug culture, high unemployment, lack of housing, and the lack of teenage drug treatment programs.
- F3. Without more investigators and a five-day workweek, it will be impossible to meet the County's mandated response time for non-emergency ten-day investigation requests. This results in unnecessary risks for children.
- F4. The new State eligibility requirements and training requirements for foster homes may reduce the rate of abuse and changes in foster care placements, but make it even harder for Mendocino County agencies to recruit foster families.
- F5. Experienced workers are carrying a much higher caseload than inexperienced workers creating resentment and job dissatisfaction. This has contributed to staff leaving the Department.

- F6. State forms for evaluating safety and risk factors may be filed considerably after determinations are made, if at all, creating unnecessary risk for children.
- F7. The contract with RCS for ESS workers stationed at the RCS facility in Willits, serving the entire County, is proving extremely valuable in removing children to safety while investigators make a determination on the removal of a child.
- F8. The Grand Jury supports the Deputy Director of FCS' efforts to implement a more supportive and trusting management style, and the Department's recognition of individual accomplishments.
- F9. The change from the Merit System to Civil Service Employment practices allows promotion of experienced people without an MSW degree to supervisory positions and this may attract new staff from neighboring counties.
- F10. The use of the term *Social Worker* as a job title in the Department is too broad. It does not properly define the education or responsibility of the various workers' assignments.
- F11. The California State Waiver for staffing levels through 2018 will need to be renewed. Mendocino County is unable to maintain sufficient State mandated MSW staff levels.
- F12. The Differential Response RFP is part of developing community based programs that will lessen the stress on the available staff of FCS by assisting families before problems become exigent and require removal of children.
- F13. The disparity between Mendocino County's salary scale and adjacent counties' pay scales has made recruitment of workers with a MSW degree or years of CPS experience nearly impossible.
- F14. The Grand Jury notes management is seeking outside help to analyze and correct the Departmental issues. However, the problems noted in the 2014-15 Report still need corrective action.
- F15. The Board of Supervisors agreed to many of the recommendations in the UC Davis report. The BOS

increased salaries and awarded a 5% differential payment to Coastal and Covelo staff. The BOS also took action to reward long-term County service with longevity pay. The Grand Jury commends these changes and hopes the BOS will continue to support those committed to County service.

RECOMMENDATIONS

The Grand Jury recommends that:

- R1. The County require a commitment of continued employment for a fixed period of time for those participating in the County subsidized Master's Degree program. (F1, F5, F9, F11, F13)
- R2. The County request another State Waiver for FCS to operate with less than the mandatory number of staff with MSW degrees. (F1, F3, F5, F11)
- R3. The County continue to develop and utilize community-based non-profits to locate and assist families before exigent situations develop. (F1-F3, F7, F12, F14)
- R4. The Board of Supervisors direct the County to offer competitive salaries to hire and retain quality Department staff. (F1-F3, F5, F11, F13, F15)
- R5. The Board of Supervisors provide a side letter agreement to the SEIU contract authorizing additional pay for Emergency Response work. (F1-F3, F11, F13-F15)
- R6. The prevention and investigation of childhood abuses receive the most resources and attention of the Department management. (F2, F3, F14)
- R7. The Department ensure that staff utilize the Structured Decision Making risk assessment instrument forms prior to decision making, allowing for prompt data input into the State information bank. (F6, F14)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individuals:

- Mendocino County Chief Executive Officer (F1-F4, F7, F9-F12, F14, F15) and (R1-R5)
- Mendocino County Health and Human Services Agency Director (All Findings) and (All Recommendations)
- Mendocino County Human Resources/Civil Service Director (F1, F3, F5, F9-F11, F13, F15) and (R1, R4, R5)

Pursuant to Penal Code §933.05, responses are *required* from the following body:

- Mendocino County Board of Supervisors (F1-F4, F9-F15) and (R1-R5)

Pursuant to Penal Code §933.05, responses are *requested* from the following individuals:

- Mendocino County Health and Human Services Agency Operations Officer (All Findings) and (All Recommendations)
- Mendocino County Health and Human Services Agency Deputy Director (All Findings) and (All Recommendations)

APPENDIX

Appendix 4-1: Segment of 2016-17 Grand Jury Salary Study Summary

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

Appendix 4-1

Salary Comparisons by Salary and Position
Step One (starting) Salaries

| *See Note | SWI (S30A) | SWIII (S33A) | SW IV (S36A) | SW Supervisor I (S36A) |
|------------------|--|-------------------------|-------------------------|---------------------------------------|
| | Appropriately Equivalent Counties | | | |
| Mendocino | \$37,460 | \$43,409 | \$45,572 | \$50,252 |
| Humboldt | \$36,144 | \$44,345 | \$46,613 | \$57,762 |
| Lake | \$41,220 | \$50,100 | \$55,236 | \$58,008 |
| Glenn | \$34,257 | \$40,747 | \$43,929 | \$50,024 |
| Colusa | \$34,860 | \$42,552 | \$44,712 | \$46,980 |
| Shasta | n/a | \$39,804 | \$44,964 | \$44,100 |
| | High End Neighbors | | | |
| Marin | \$68,182 | \$71,968 | \$75,837 | \$93,538 |
| Napa | \$55,723 | \$66,248 | \$67,496 | \$73,299 |
| Sonoma | \$47,920 | \$56,978 | \$63,761 | \$67,956 |

*Note: These are Mendocino County Pay Grades

Sources: Respective County Human Resources Web Sites

**MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND
JURY REPORT TITLED:**

**MENDOCINO COAST RECREATION AND PARKS DISTRICT AND
THEIR FIELD OF DREAMS**

The Mendocino County Board of Supervisors (BOS) appreciates this opportunity to respond to the above entitled report but cannot help but wonder why the BOS has been required to respond to all findings and all recommendations. The BOS has no authority and no oversight responsibility concerning the Mendocino Coast Recreation and Parks District (MCRPD) which is an independent special district. Only Findings F3 and F4 and Recommendation R4, which relate to BOS approval of a loan to the MCRPD, address issues within the purview of the BOS. For this reason alone, the BOS will be unable to agree with findings related to issues for which it has no responsibility.

Further, upon reviewing the findings it appears the Grand Jury has incorporated personal opinions and unsubstantiated statements into the report. California Penal Code section 916 provides that "Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors and that all problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable."

Further, the Mendocino County Grand Jury Procedure Manual states: "All grand jury reports must include evidentiary support and a statement of findings and recommendations. Findings are statements of fact and conclusions derived from facts. Recommendations are actions suggested to address one or more of the findings. To present the strongest possible case to the public, the jury should carefully identify facts discovered in the investigation. Penal Code section 916." Accordingly, the BOS will be unable to agree with findings which incorporate personal opinions or statements that are not supported by evidence in the record.

Pursuant to the request of the Grand Jury, the Board is responding to the following:

- F1. There is evidence of continuing misfeasance regarding the financing of MCRPD, by Board action which neglects their fiduciary duties of transparency and fiscal responsibility to the taxpayers of MCRPD.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F2. The MCRPD's Board of Directives is not representational of the four tax districts.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F3. MCRPD has received County Treasury advances on Teeter funds (property tax funds) for at least the past four years by the Board of Supervisors Consent Calendar actions. The Grand Jury could not determine if the Teeter fund advances were comingled within the MCRPD budget. MCRPD requires and spends 2018 tax revenue in the 2017 budget year. This annual MCRPD need for advanced Teeter funds indicates a serious deficit in budget planning, and indicates serious concern for MCRPD's long term financial viability.

Disagree in part. While it is true that the MCRPD has been the recipient of loans from the County Treasury, the BOS is not aware of any evidence in the record that this indicates "a serious deficit in budget planning" or "serious concern for MCRPD's long term financial viability." As explained by the Auditor-Controller in his response to this finding, the annual loan amount in recent years has been \$50,000 which is a small percentage of the MCRPD's annual revenue. Further, the funds that are "loaned" to the MCRPD may be considered an advance on the property tax revenue to which the MCRPD is entitled. The loan is repaid upfront as the property tax is received by the County. MCRPD pays interest on the loan at a rate equal to the average rate of return for the County Treasury. Borrowing a portion of the property tax to which the MCRPD is due is the most efficient and cost effective method of assuring that the MCRPD has sufficient cash flow to meet its obligations prior to receipt of the property tax payments to which the MCRPD is entitled.

- F4. The County does not require or perform any type of audit on a special district requesting Teeter fund advances. Because MCRPD is operating in structural deficit, the Board of Supervisors and County Auditor may be abdicating a fiduciary duty to the taxpayer by not questioning recommendations that appear on the Consent Calendar to advance the Teeter funds.

Disagree. As explained by the Auditor-Controller in his response to this finding, the MCRPD is required to send a copy of their audit report to the Auditor-Controller. This is a requirement whether or not a district seeks to borrow a portion of the property tax due them. The BOS is not aware of any evidence that indicates the MCRPD "is operating in structural deficit." The BOS rejects the assertion that "the Board of Supervisors and County Auditor may be abdicating a fiduciary responsibility to the taxpayer by not questioning recommendations that appear on the Consent Calendar to advance Teeter funds." As explained in the response F3, every dollar loaned to the MCRPD is repaid with interest prior to any property tax funds being transmitted to the MCRPD.

- F5. THE MCRPD's annual audits have not been completed in a timely manner which prevents full public financial disclosure. The MCRPD's most recent audit, due June 30, 2016, was completed on February 8, 2017. MCRPD is currently delinquent on a capital lease and a note in the amount of \$200,000 plus interest.

Disagree. It has no authority or oversight function for the finances of the MCRPD.

The BOS notes for the record that the statement that "annual audits have not been completed in a timely manner is contradicted by evidence in the record which indicates that completion of the annual audit within a year is consistent with state law and is therefore considered timely.

- F6. MCRPD minimally supports activities in communities outside of Fort Bragg, even though significant amounts of property tax funds are collected from those communities. For example, Mendocino District contributes 35% of the Teeter funds, yet only receives 5% of the property tax funds collected in that District for its recreation and other MCRPD benefits.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F7. The Grand Jury feels that the leaseback arrangement has an appearance of impropriety. The way in which the leaseback appears to be used in this particular situation is outside of the usual leaseback arrangement. It is conveying benefits to the lessees that are not within the normal course of business. This is to the detriment of the property taxpayers of MCRPD.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F8. MCRPD's financial problems were and are compounded by the purchase of the Hwy 20 property. MCRPD has assumed a large amount of debt with no clear means of repayment.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F9. The Grand Jury has substantial doubt about MCRPD's ability to continue as a viable operation. The MCRPD Board and Management have used poor judgment in borrowing money from individuals and commercial banks on at least three occasions. The loan repayment terms have not been met by MCRPD.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F10. The Grand Jury finds that MCRPD has no strategic plan.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F11. MCRPD acted irresponsibly by borrowing money outside of legal parameters by borrowing more money and for a longer period of time than allowed by California Public Resources Code §5788.21.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F12. The Grand Jury finds that MCRPD has not maintained property and complete records.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

- F13. After originally requesting MCRPD documentation in January 2017, it was necessary for the Grand Jury to issue a subpoena in May 2017 to obtain MCRPD financial documentation.

Disagree. It has no authority or oversight function for the finances or governance of the MCRPD.

Recommendations:

- R1. The MCRPD Board of Directors and administration immediately make all financial transactions transparent to the public. (F1, F3, F4, F5, F7, F8, F9, F10, F11, F12, F13)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R2. MCRPD develop a long-term strategic plan to eliminate all unfunded liabilities. (F1-F3, F5-F13)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R3. By a change in bylaws, each tax district has an elected representative on the MCRPD Board of Directors with the fifth member elected at large. (F2)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R4. The Board of Supervisors develop and implement a policy that addresses the advances of Teeter funding to special district in financial distress including bankruptcy. (F3, F4)

This recommendation will not be implemented because it is not warranted or is not reasonable. Government Code section 23010, which authorizes loans to special districts contains sufficient safeguards to insure that all funds will be repaid in a timely manner, regardless of the financial condition of the district which borrows the funds.

- R5. The County Auditor perform an audit of MCRPD before recommending an issuance of an advanced of Teeter funds. (F3, F4)

This recommendation was implemented prior to this report being issued in that the MCRPD is required by law to submit a copy of its annual audit to the Auditor-Controller. As noted previously, repayment of the loan authorized pursuant to Government Code section 23010, is not contingent on the financial condition of the district which borrows the funds.

- R6. The annual audits be completed on time according to MCRPD's policy. (F5)

This recommendation has been implemented. State law requires that audits be completed in a timely manner. Based on the Auditor-Controller's response to this finding the MCRPD audits have been and are submitted in a timely manner.

- R7. The property tax funds be fairly allocated to the communities based on the current tax dollars raised in each tax district. After the 5% allocation from Fort Bragg to MCRPD, remaining funds shall be fairly allocated in proportional amounts to the outlying districts. (F2, F6)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

- R8. MCRPD finalize the ongoing bankruptcy and divest itself on the Hwy 20 property. (F8-F11)

This recommendation will not be implemented by the BOS because it has no authority or oversight function for the finances or governance of the MCRPD.

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title: *Mendocino Coast Recreation and Parks District and Their Field of Dreams*

Report Dated: June 27, 2017

Response Form Submitted By:

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than:
October 6, 2017

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- ☐ I (we) agree with the Findings numbered:

- ☒ I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
F1-F13

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- ☒ The following Recommendation(s) have been implemented and **attached, as required**, is a summary describing the implemented actions:
R5, R6
- ☐ The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

- ☐ The following Recommendation(s) require further analysis, and attached as required, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)

- ☒ The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:
R1-R4, R7, R8

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 5

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: John McCowen

Title: Chair, Board of Supervisor

Signed: John McCowen

Date: 10/4/17

MENDOCINO COAST RECREATION AND PARKS DISTRICT AND THEIR FIELD OF DREAMS

SUMMARY

The Mendocino County 2016-17 Grand Jury finds that the Mendocino Coast Recreation and Parks District (MCRPD) has been and continues to be financially irresponsible. MCRPD is currently and habitually delinquent on their capital lease and outstanding loans. MCRPD was over seven months late in completing the 2015-16 annual audit and is currently in Chapter 9 bankruptcy.

Because of the large debt and the absence of a long-term plan for repayment, the Grand Jury finds that these conditions raise substantial doubt about MCRPD's ability to continue as a viable entity.

The C.V. Starr Center, an aquatic and community center, was initially planned with insufficient funding for ongoing operations and capital improvements. The \$14 million project increased to a \$27 million facility over the construction period.

The City of Fort Bragg provided bailout funding to enable operations. The financial problems were unnecessarily compounded by the purchase of 580 +/- acres, a field of unrealized dreams. That property located on Highway 20 was intended to be developed as a golf course at some later date but the project failed to materialize.

In addition, MCRPD is not being fiduciarily responsible in the use of Teeter (property tax) funds. MCRPD receives Teeter funds based on four coastal school district boundaries, yet the funds are not reallocated proportionately to the outlying coastal communities.

GLOSSARY

C. V. Starr Community Center and Sigrid and Harry Spath Aquatic Facility: Starr Center

Highway 20 Property: Property purchased by Mendocino Coast Recreation and Parks District in June 2006 to be used for a golf course and recreational park.

Leaseback: An arrangement whereby the owner of an asset (usually a real estate property) agrees to sell it to another person or company on condition that the asset can be leased to its original owner at a

prearranged rent for a fixed term. Leaseback is normally undertaken to enable companies with large assets, such as real property, to realize cash from the property for use elsewhere in their business.

Teeter Plan/Funds: For the purposes of this report, Teeter funds are defined as: Property Tax money advanced for specific purposes by the County of Mendocino. In the case of MCRPD, the tax money is for the purpose of providing recreation along the coast. Money is collected from property owners in the four tax regions whose boundaries are the same as the four coastal school districts. These funds cannot be used to cure financial debt.

BACKGROUND

The Mendocino County 2016-17 Grand Jury initiated an investigation after receiving a complaint regarding the finances of MCRPD. Concerns were raised that most of the property tax collected are disproportionately distributed in the Fort Bragg region. Other regions do not receive their fair share of tax funding.

MCRPD receives funds from property taxes that are collected by the Mendocino County Tax Collector from property owners in the different coastal communities to fund recreational activities in the four coastal regions from Westport to Gualala. The District collects funds from programs, classes, events, and fund-raising activities.

Monies are comingled in the MCRPD budget. The Grand Jury could not obtain complete financial and operating records to determine which specific funds were used to pay off MCRPD debt.

APPROACH

The Grand Jury interviewed past and current members of the MCRPD Board of Directors, the Administrator of the C.V. Starr Center (Starr Center), and the City Manager of Fort Bragg. The Grand Jury requested and reviewed documents supplied by the MCRPD and the City of Fort Bragg (City). In order to receive additional documents the Grand Jury had to issue a civil subpoena to MCRPD. These were eventually received and reviewed. Newspaper articles from the Mendocino Beacon, the Fort Bragg Advocate, and The Press Democrat were reviewed along with information from the websites of MCRPD, Friends of MCRPD, and the Starr Center.

The Friends of MCRPD is an IRC 503(c)(3) non-profit corporation formed for the community's benefit. The Friends of MCRPD operations were not a subject of this investigation.

The City of Fort Bragg maintains an enterprise fund with more than a \$500,000 reserve for the benefit of the Starr Center. The enterprise operation was not a subject of this investigation.

DISCUSSION

History of the MCRPD

MCRPD was formed in 1973 with the original boundaries encompassing 20 square miles around Fort Bragg. MCRPD is a Special District existing under and pursuant to the Constitution and laws of the State of California, with an elected five-member Board of Directors which employs an Administrator. The current Administrator has been on the job for approximately one year. A series of bookkeepers have also been hired. Within the last two years, there have been three different bookkeepers and a series of District Administrators. This has hampered the ability for MCRPD to provide audit information and financial transparency. The current District Administrator has used the lack of continuity as a reason for MCRPD's inability to provide complete financial records.

MCRPD's annual audits have not been completed in a timely manner, which prevents full public financial disclosure. MCRPD's most recent audit due June 30, 2016, was completed on February 8, 2017. MCRPD is currently delinquent on a capital lease and a note payable. The County Auditor brings forth an annual request on behalf of MCRPD for advance property tax funds without performing any MCRPD audit review. The Board of Supervisors has automatically approved that consent-calendar item annually without any evaluation of MCRPD's underlying financial solvency.

In 1982, MCRPD was expanded to include the area served by Mendocino Unified School District (MUSD). In 1989, residents of the Point Arena area requested that MCRPD initiate proceedings to incorporate the Point Arena School District into MCRPD, and annexation of the South Coast followed. Most recently, in 2008, MCRPD annexed the remainder of the Fort Bragg Unified School District to include the village of Westport.

MCRPD owns the land on which the Mendocino Coast Botanical Gardens (Gardens) reside. A 25-year lease with the Gardens was recently negotiated at a rate of \$1.00 per year. MCRPD also owns the property on which the Mendocino Coast Humane Society is located.

MCRPD bylaws adopted March 19, 1974 by Resolution 74-2, prescribe a five-member Board of Directors elected at-large. The MCRPD Board is primarily comprised of Fort Bragg area residents. Taxpayers who reside in outlying Districts are not currently represented on the MCRPD Board of Directors.

The Grand Jury found that MCRPD was not fiducially responsible in the use of property tax (tax dollars) they receive. MCRPD receives property tax based on the four school districts areas. According to the County Auditor, MCRPD received \$465,348 in tax dollars in 2015-16 tax year. The tax dollars were received from the following areas:

- Fort Bragg Unified School District area property owners paid \$191,681 tax dollars
- Mendocino School Unified District area property owners paid \$165,058 tax dollars
- Point Arena School District area property owners paid \$86,904 tax dollars
- Manchester Elementary School District area property owners paid \$19,403 tax dollars

MCRPD's funding distribution for 2015-16 was not available, but as an example of disbursements to the above areas, the 2016-17 MCRPD funding for recreation on the coast was as follows:

- Mendocino Community Center, \$5,000
- Point Arena and Gualala, \$1,500
- City of Fort Bragg receives 45% of all property tax (tax dollars) collected to support the Starr Center

The remainder of the Teeter funds (tax dollars) are deposited into the MCRPD general fund. The General Fund is used to pay for staff at the Starr Center, maintenance, and MCRPD debt. The Teeter funds cannot be used to pay down the bankruptcy. It is unclear to the Grand Jury how all the Teeter fund money is spent. However, their indebtedness caused by the building of the Starr Center and the purchase of the 580 +/- acres off Highway 20 (Hwy 20 property) continues to be a serious concern.

C.V. Starr Community Center

In 1978, using Park Bond Act monies, MCRPD obtained a five-acre parcel known as Green Memorial Field in central Fort Bragg. After years of fundraising, and some major donations from residents, funds were raised to start the construction of a new aquatic center.

In 2002, the Starr Foundation of New York, NY, made a grant of \$4 million to the Friends of MCRPD toward construction of the new Starr Center in Fort Bragg. The grant was made in memory of Cornelius Vander Starr, who was born in Fort Bragg.

In 2003, MCRPD received a \$1million challenge grant from the Friends of MCRPD. It is reported that the MCRPD Board members donated \$500,000 toward the challenge. The construction bid was awarded in 2006; the lowest bid was \$14.1 million. The total cost of construction was \$27 million.¹

In May 2008, the Starr Foundation provided a second grant of \$13 million to fund the remainder of the pool project. This brought the total funding from the Starr Foundation to a total of \$17 million.² In August of 2009, the Starr Center, including the Sigrid and Harry Spath Aquatic Facility, opened to the public. The facility contains a 25-yard-long, eight lane lap pool and a leisure pool with beach, spray features, lazy river, and a large water slide. There is a group exercise room, spin room, cardio and fitness room, and multipurpose room. On the grounds of the Starr Center, there are Petanque courts, a skate park, two dog parks, and a picnic area.

In March 2012, MCRPD was facing financial hardship and was not able to pay their bills. MCRPD approached the City and asked them to assume responsibility of the Starr Center. The voters of Fort Bragg passed Measure A in the March 2012 special election to enact a ½ cent sales tax levied within the City limits to support the center.³ The fee schedule for Starr Center use is currently established by the City.

The City receives Teeter funds for the maintenance of the Starr Center. Fort Bragg receives all the Teeter funds collected in the Fort Bragg School District area or 45% of the total Teeter funds collected in all regions in MCRPD, whichever is greater. The City's share is remitted directly to Fort Bragg. This money is controlled by the City and is referred to as the enterprise fund.

The enterprise fund pays 70% of the District Administrator's compensation. The remaining 30% is paid by MCRPD. There is one full-time Recreational Specialist serving all communities within MCRPD paid entirely from the MCRPD budget.

¹ "Pool construction under way to make summer 09 opening," Fort Bragg Advocate News, December 24, 2008

² Ibid.

³ "MCRPD survival dependent on donations and volunteers," Fort Bragg Advocate News, January 26, 2012

The Starr Center is owned by the City and operated by MCRPD in accordance with an operating agreement between the two entities. The Starr Center Administrator is responsible for day-to-day operations. The Administrator reports directly to the MCRPD Board of Directors. The MCRPD Board of Directors is responsible for key policy decisions. The Fort Bragg City Council adopts the annual operating budget for the Starr Center and establishes the fee schedule. Together with MCRPD, the City is responsible for ensuring that the Starr Center operates in a fiscally responsible and sustainable manner.⁴

Highway 20 Property History

MCRPD desired to purchase property to build a golf course and recreational park. MCRPD identified 580 +/- acres on Highway 20 as a potential location.

In December 1999, Georgia Pacific, owners of the property, transferred the property to Hawthorne Timber Company for \$610,900.

In April 2006, prior to the transfer of the property to The Friends of MCRPD, a property appraisal was requested by the Savings Bank of Mendocino County. The appraised value was \$3,440,000. In June 2006, Hawthorne Timber Company transferred the property to The Friends of MCRPD for an undisclosed amount.

While the property was owned by the Friends of MCRPD, MCRPD began development and plans for the golf course. Before obtaining title to the property, MCRPD estimated they had already spent \$1,294,828 on the proposed golf course. This included a questionable payment of \$325,000 for “volunteer” services by the project manager.

In 2006, MCRPD acquired a loan from the Savings Bank of Mendocino County in the amount of \$2,221,000 to pay for the property and to pay for an earlier line of credit provided by the same bank.

The balance of \$1,356,000 from the 2006 loan was used for the following purposes:

- repayment of the Savings Bank of Mendocino County line of credit used from 1997 to 2006 for the proposed golf course related expenses
- repayment to private investors in the proposed golf course project
- retained funds to make mortgage payments to the Savings Bank of

⁴ CV Starr Center Website, History of CV Starr Center

Mendocino County while assembling a deal with a potential golf course developer

In July 2007, the Savings Bank of Mendocino County approached the City to express their concern about MCRPD's ability to repay the loan. MCRPD wanted to see if the City was interested in purchasing the property, as evidenced by the following:⁵

- The City engaged in conversations with MCRPD and by September 2007 the City concluded that the property did not have sufficient water resources. Water resources would be significantly diminished if the proposed golf course project proceeded.
- In the fall of 2007, MCRPD proceeded with Request for Proposal soliciting a golf course developer.

In April 2008, the Friends of MCRPD deeded the Hwy 20 property to MCRPD. MCRPD entered a lease back arrangement, assigning the leasehold interest in the Hwy 20 property to the Municipal Finance Corporation⁶ for \$2.3 million. These funds were used to pay off the Savings Bank of Mendocino County's mortgage on the Hwy 20 property. MCRPD agreed to repay \$2.3 million over 20 years at 4.95% interest at \$91,238 twice a year to the Municipal Finance Corporation.⁷

California Public Resources Code §5788.21 states that a district may acquire necessary real property by borrowing money on contract. This section of the code specifies that the amount of indebtedness shall not exceed an amount equal to two times the actual income from property tax revenues received. The property tax collected for fiscal year 2005-06 was approximately \$500,000. In accordance with the above code section, the amount of indebtedness should not have exceeded \$1 million, for a term not to exceed 10 years. MCRPD's \$2.3 million indebtedness over a period of 20 years is in conflict with California Public Resources Code §5788.21.

In April 2008, the Municipal Finance Corporation assigned the Lease and Sublease/Option Agreement to WestAmerica Bank.

In November 2009, MCRPD defaulted on a \$91,238 payment to WestAmerica Bank. In January 2010, WestAmerica Bank issued a notice of default and filed suit against MCRPD.

⁵ Fort Bragg Advocate Article entitled "OHV use of Regional Park under consideration: dated 1-26-12

⁶ Municipal Finance Corporation (MFC), is a California corporation, specializing in the structuring, documentation, funding and administration of tax-exempt financings for public agencies and non-profit institutions. MFC has arranged project financings public agencies including cities, counties, school districts, special districts, higher education and health care agencies.

⁷ Certified Memorandum from Douglas Provencher from Provencher and Flatt, LLP dated 6-06-2012

In March 2010, MCRPD accepted a \$200,000 private loan. These funds were used to make the following payments to WestAmerica Bank:

- The overdue November 7, 2009 payment of \$91,238
- The May 7, 2010 payment of \$91,238
- An additional payment of \$28,000 to cover legal expenses incurred as a result of the lawsuit filed by WestAmerica Bank

The \$200,000 private loan was due and payable in March 2012. As of February 2017, \$70,000 in principle and \$8,664 in interest have been paid on this loan. This debt continues to grow at a rate of 10% interest on the unpaid principal per annum. Additionally, if the payment is not received by the 10th day of the month in which it is due, a 5% late charge is incurred. At the time of this report, this loan had not been paid in full.

In May 2010, MCRPD made a fourth payment to WestAmerica Bank as part of the settlement of the lawsuit. The total leaseback payments between November 7, 2008 and May 7, 2010, amounted to approximately \$365,000.

In October 2010, as part of the settlement of the lawsuit, MCRPD negotiated an amendment to the Sublease/Option Agreement. The payment schedule was modified to eliminate the November 7, 2010 payment of \$91,238, and to have the May 7, 2011 payment of \$91,238 apply only to interest. The agreement added a 41st balloon payment of \$216,889 due November 7, 2028. In February 2011, MCRPD requested that the Century 21 Real Estate Agency market the Hwy 20 property for \$2.9 million.

In February 2011, MCRPD contacted the City to see if they were interested in purchasing the property. In November 2013, the City entered into a joint escrow agreement with MCRPD to purchase the Hwy 20 property. In January 2014, the City received the appraisal on the Hwy 20 property. The current appraised market value was \$875,000. The City was unable to purchase the property because they are prohibited from purchasing property that exceeds the Fair Market Value.

In September 2015, the City reconsidered purchasing the Hwy 20 property due to the water wells located on the property. The feasibility analysis of ground water was five to 10 feet lower than in the

2001 and 2004 analyses when the wells were previously measured. This led the City to once again to decline the offer.

Financial Problems and Bankruptcy

MCRPD has faced significant cash flow issues since the Starr Center opened in 2009. MCRPD considered closing both of its recreation centers in Mendocino and Fort Bragg. MCRPD attempted to raise \$300,000 from public donations to assist in paying their bills.⁸

In February 2011, MCRPD funds reached a zero balance.⁹

For at least the past four years, MCRPD has requested and received advances on Teeter funds from the County because they did not have the finances to pay operating expenses and service the debts. The advances on Teeter funds may only to be used for operating expenses. The Grand Jury could not determine if the funds were comingled.

MCRPD needs approximately \$2 million annually to operate. Their annual income of approximately \$1.5 million creates a \$500,000 annual structural deficit.¹⁰

In May of 2011, MCRPD had a deficit of \$117,000. They also projected a \$182,000 deficit in 2012.¹¹ In July 2011, MCRPD borrowed a short-term loan of \$54,000 from the Savings Bank of Mendocino County to make payroll. This loan was paid back in August 2011.

In July 2011, MCRPD closed the Starr Center on Sundays due to the lack of funds to pay the staff. MCRPD's debt had increased, and they needed \$700,000 to operate the Starr Center, to make payments on the Hwy 20 property, and to repay a \$200,000 loan. MCRPD raised \$275,748 in donations.¹²

⁸ "Rec Centers Closure Delayed," Fort Bragg Advocate News, December 23, 2010

⁹ "MCRPD Reaches Zero Balance," Fort Bragg Advocate News, March 3, 2011

¹⁰ "MCRPD Faced a \$500K Deficit," Fort Bragg Advocate News, July 11, 2011

¹¹ "Rec District still Battling Budget Woes," Fort Bragg Advocate News, May 26, 2011

¹² "MCRPD to Close CV. Starr on Sundays," Fort Bragg Advocate News, July 28, 2011

In August 2011 at a public meeting, a private citizen called for the MCRPD Board to file bankruptcy, telling the Board that the District will never raise adequate funds given the uncertainty of the organization.¹³

On December 29, 2011, MCRPD filed with the bankruptcy court for the HWY 20 property loan.

WestAmerica Bank refused MCRPD's offer on the property pay-off made about 9 months after filing bankruptcy documents.

In February 2014, the bank filed an appeal with the 9th Circuit District Court. The appeal remains with the 9th Circuit District Court. The Court has upheld MCRPD's right to file bankruptcy; however, MCRPD does not have the money to defend themselves against WestAmerica Bank's claims.

As of May 2017, the \$200,000 private loan has not been paid in full. MCRPD has paid \$75,000 in principal and \$8,664 in interest on the loan which was due in 2012.

Given all of the myriad problems affecting MCRPD, the Grand Jury is dismayed that there is no evidence of a strategic plan.¹⁴

FINDINGS

- F1. There is evidence of continuing misfeasance regarding the financing of MCRPD, by Board action which neglects their fiduciary duties of transparency and fiscal responsibility to the taxpayers of MCRPD.
- F2. The MCRPD's Board of Directors is not representational of the four tax districts.
- F3. MCRPD has received County Treasury advances on Teeter funds (property tax funds) for at least the past four years by the Board of Supervisors Consent Calendar actions. The Grand Jury could

¹³ "Public seeks bankruptcy for MCRPD," Fort Bragg Advocate News, August 25, 2011

¹⁴ Strategic planning is an organizational management activity that is used to set priorities, focus energy and resources, strengthen operations, ensure that employees and other stakeholders are working toward common goals, establish agreement around intended outcomes/results, and assess and adjust the organization's direction in response to a changing environment. It is a disciplined effort that produces fundamental decisions and actions that shape and guide what an organization is, who it serves, what it does, and why it does it, with a focus on the future. Effective strategic planning articulates not only where an organization is going and the actions needed to make progress, but also how it will know if it is successful.

not determine if the Teeter fund advances were comingled within the MCRPD budget. MCRPD requires and spends 2018 tax revenue in the 2017 budget year. This annual MCRPD need for advanced Teeter funds indicates a serious deficit in budget planning, and indicates serious concern for MCRPD's long term financial viability.

- F4. The County does not require or perform any type of audit on a special district requesting Teeter fund advances. Because MCRPD is operating in structural deficit, the Board of Supervisors and County Auditor may be abdicating a fiduciary duty to the taxpayer by not questioning recommendations that appear on the Consent Calendar to advance the Teeter funds.
- F5. The MCRPD's annual audits have not been completed in a timely manner which prevents full public financial disclosure. The MCRPD's most recent audit, due June 30, 2016, was completed on February 8, 2017. MCRPD is currently delinquent on a capital lease and a note in the amount of \$200,000 plus interest.
- F6. MCRPD minimally supports activities in communities outside of Fort Bragg, even though significant amounts of property tax funds are collected from those communities. For example, Mendocino District contributes 35% of the Teeter funds, yet only receives 5% of the property tax funds collected in that District for its recreation and other MCRPD benefits.
- F7. The Grand Jury feels that the leaseback arrangement has an appearance of impropriety. The way in which the leaseback appears to be used in this particular situation is outside of the usual leaseback arrangement. It is conveying benefits to the lessees that are not within the normal course of business. This is to the detriment of the property taxpayers of MCRPD.
- F8. MCRPD's financial problems were and are compounded by the purchase of the Hwy 20 property. MCRPD has assumed a large amount of debt with no clear means of repayment.
- F9. The Grand Jury has substantial doubt about MCRPD's ability to continue as a viable operation. The MCRPD Board and Management have used poor judgement in borrowing money from individuals and commercial banks on at least three occasions. The loan repayment terms have not been met by MCRPD.
- F10. The Grand Jury finds that MCRPD has no strategic plan.

F11. MCRPD acted irresponsibly by borrowing money outside of legal parameters by borrowing more money and for a longer period of time than allowed by California Public Resources Code §5788.21.

F12. The Grand Jury finds that MCRPD has not maintained proper and complete records.

F13. After originally requesting MCRPD documentation in January 2017, it was necessary for the Grand Jury to issue a subpoena in May 2017 to obtain MCRPD financial documentation.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. The MCRPD Board of Directors and administration immediately make all financial transactions transparent to the public. (F1, F3, F4, F5, F7, F8, F9, F10, F11, F12, F13)

R2. MCRPD develop a long-term strategic plan to eliminate all unfunded liabilities. (F1-F3, F5-F13)

R3. By a change in bylaws, each tax district has an elected representative on the MCRPD Board of Directors with the fifth member elected at large. (F2)

R4. The Board of Supervisors develop and implement a policy that addresses the advances of Teeter funding to special districts in financial distress including bankruptcy. (F3, F4)

R5. The County Auditor perform an audit of MCRPD before recommending an issuance of an advance of Teeter funds. (F3, F4)

R6. The annual audits be completed on time according to MCRPD's policy. (F5)

R7. The property tax funds be fairly allocated to the communities based on the current tax dollars raised in each tax district. After the 5% allocation from Fort Bragg to MCRPD, remaining funds shall be fairly allocated in proportional amounts to the outlying districts. (F2, F6)

R8. MCRPD finalize the ongoing bankruptcy and divest itself of the Hwy 20 property. (F8-F11)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individuals:

- Mendocino County District Attorney (F1, F11, F12) and (R1)
- Mendocino County Auditor (F3-F5) and (R4-R6)
- MCRPD District Administrator (F1-F3, F5-F13) and (R1-R3, R6-R8)
- City of Fort Bragg City Manager (F1, F3, F5-F12) and (R1, R2, R6-R8)

Pursuant to Penal Code §933.05, responses are *required* from the following governing bodies:

- Mendocino County Board of Supervisors (All Findings and All Recommendations)
- MCRPD Board of Directors (All Findings and All Recommendations)

Pursuant to Penal Code §933.05, responses are *requested* from the following individuals:

- State Auditor/Controller (All Findings and All Recommendations)

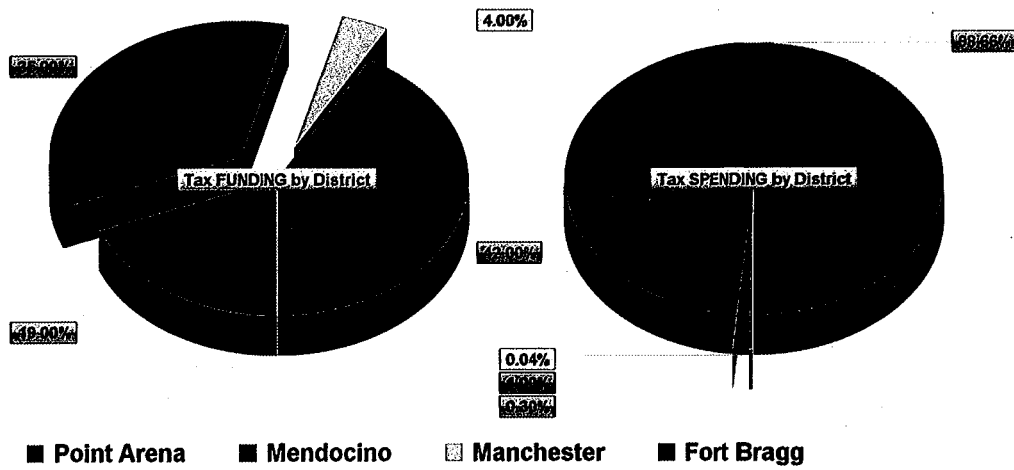
APPENDIX

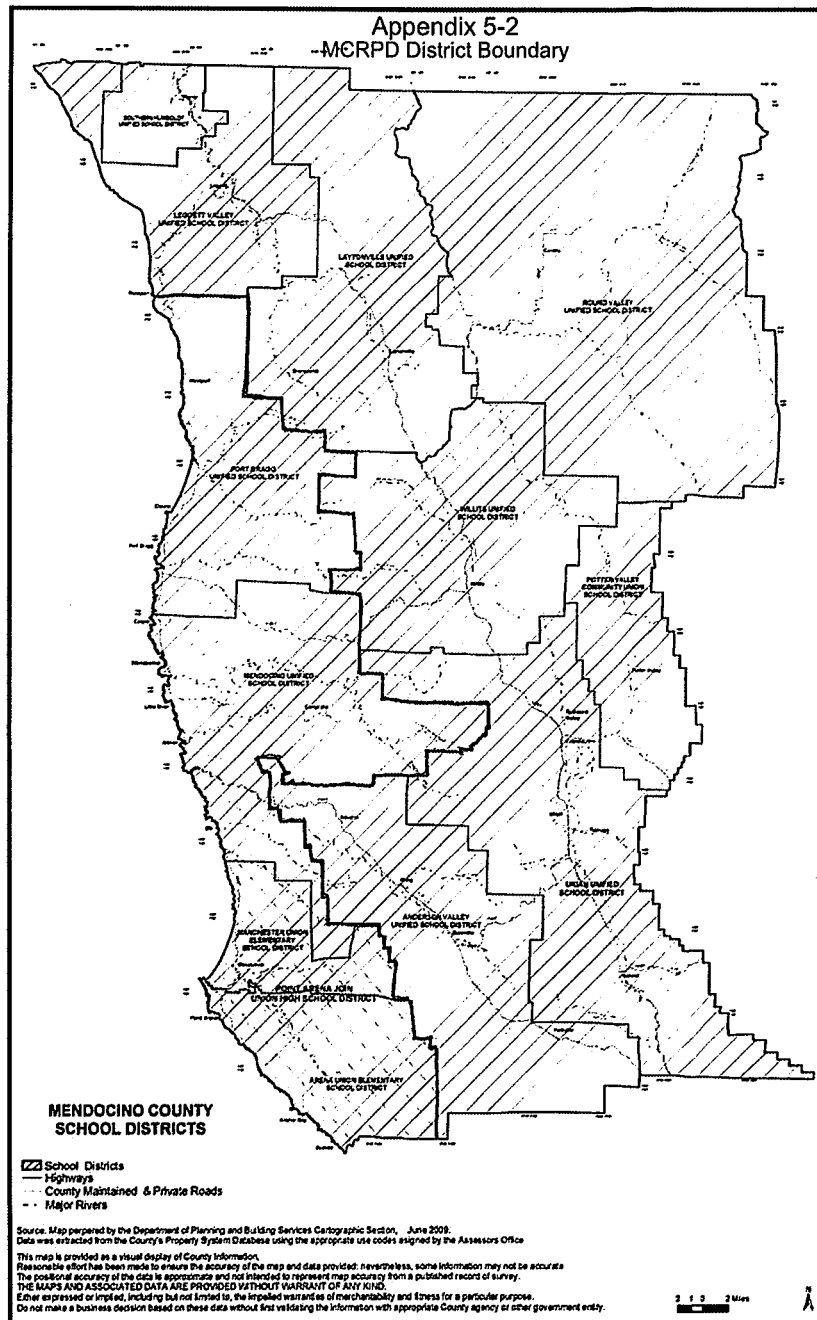
- 5-1 MCRPD Funding and Spending Pie Chart
- District Map

| |
|---|
| Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury. |
|---|

Appendix 5-1

MCRPD FUNDING and SPENDING





MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE TO GRAND JURY REPORT TITLED:

PLANNING AND BUILDING CODE ENFORCEMENT DIVISION

The Mendocino County Board of Supervisors welcomes this opportunity to respond to the Grand Jury report titled Planning and Building Code Enforcement Division.

Pursuant to the request of the Grand Jury, the Board is responding to the following:

- F1. The CED Officers have considerable discretion as to whether or not fines should be asserted. California Penal Code §829.5 states that CED officers are, "...authorized to issue citations, or file formula complaints".

Disagree partially. On January 10, 2017, the BOS adopted an ordinance creating a new Chapter 1.08 titled "Administrative Citations and Penalties". This chapter created standardized non-discretionary penalties and a hearing process in order to address the need to be able to effectively and timely enforce code violations while recovering county costs. In addition, Chapter 8.75 was modified to remove discretionary administrative fines. The BOS incorporates by reference Planning and Building Services response.

- F2. The CED approach to complaints is reactive and rarely considers issues outside the parameters of the complaint.

Disagree. Code Enforcement regularly evaluates possible violations outside the parameters of the initial complaint.

- F3. There are insufficient appropriate vehicles directly assigned to CED to allow safe and efficient performance of the assigned tasks.

Disagree. The BOS has approved the purchase of additional vehicles for FY 2017-18 in addition to the added vehicles from 2016-17. Code Enforcement Division currently has sufficient vehicles to safely perform their duties.

- F4. The turnover and lack of staff to conduct CED activities within Mendocino County contributes to issues not being corrected in a timely and consistent manner.

Disagree partially. Turnover has contributed to inconsistency in the department. However, as stated by Planning and Building Services in their response, CED is currently fully staffed and turnover is not expected to continue. In addition the strong Code Enforcement Manager currently in place has greatly improved efficiency and tracking of complaint thus allowing transparency and oversight.

- F5. The shortage and turnover of CED management staff contributes to lack of clear direction for employees.

Disagree. In April 2017, a Code Enforcement Division Manager was hired. This new position, along with a reorganization which made Code enforcement a Division rather than a unit, has provided clear direction for Code Enforcement staff. The BOS incorporates the CEO and Planning and Building responses.

- F6. The backlog number of complaints has been significantly reduced to approximately 300. The validity of this number cannot be proven due to lack of publicly available documentation.

Disagree partially. As stated, the number of backlog of complaints has been significantly reduced. This number is now monitored closely with the CED new management system and database. The BOS receives a regular report of the number of complaints to include cleared complaints and backlog statistics at public meetings.

- F7. There are no online data regarding code enforcement complaints and the status of code enforcement activity. This lack of transparency is detrimental to the efficient function of CED. The Grand Jury finds this lack of accuracy unacceptable because it is difficult:

- to determine if a complaint has been filed on a specific property
- to know when a complaint has been corrected
- to know if there are duplicate filings of a complaint
- to have statistics to fairly assess the performance of the department
- to understand departmental operations in the interest of transparency

Disagree. The decision to not publish code enforcement complaints, status and activity online is not detrimental to the efficiency of the Division. Records are available with a public records request. The BOS receives regular statistical updates at our public meetings. Inquires made by the Board are quickly and efficiently addressed.

- F8. There are no regularly scheduled meetings between the staff of CED and the rest of P&B. This impairs the efficient function of both staffs.

Disagree. The BOS incorporates by reference Planning and Building response.

- F9. There are no departmental action plans in the report given by the P&B Director to the BOS.

Disagree partially. The BOS receives monthly reports from PBS at regularly scheduled public meetings. While no formal action plan is given, there are updates regarding departmental activity and agendas.

- F10. There is a new online program available to licensed contractors to obtain permits. In interviews it was not clear what additional changes are planned for online

access by licensed contractors or the public.

Agree. The new online program is implemented and PBS continues to analyze methods to increase online access but the changes have not been proposed or scheduled.

- F11. The mold growth that was found is hazardous to the health of workers and citizens who frequent County facilities.

Disagree partially. Any mold which is found is immediately referred to the Executive Office for evaluation and remediation. The BOS incorporates the CEO response to F11.

Recommendations:

- R1. To reduce the backlog of complaints, there is a need for additional staff in CED; the BOS discuss and consider expanding CED staff. (F2, F4-F6)

This recommendation has been implemented. The BOS directed and approved the addition of 3 new positions in the Code Enforcement Division. The Division is currently fully staffed and continues to clear the backlog of complaints.

- R2. The BOS consider and discuss assigning the enterprise designation to the CED. (F2, F4)

This recommendation requires further analysis. At this point, it seems prudent to focus the CED on removing the backlog of complaints prior to consideration of assigning an enterprise designation. Current budgeting is based on current complaint driven functions. The BOS incorporates the Planning and Building response.

- R3. The BOS consider assigning each CED Officer a dependable all-wheel drive vehicle. (F3)

This recommendation will not be implemented. There are sufficient all-wheel drive vehicles available for the CED Officers without each Officer needing an assigned vehicle. That is not considered the best use of resources.

- R4. The Director of P&B schedule at least a monthly meeting to all staff to discuss and advise on all issues concerning P&B and CED. (F8, F9)

This recommendation has been implemented. The BOS incorporates by reference Planning and Building response.

- R5. The Director of P&B provide in the monthly report to the BOS a summary of the monthly staff meeting with action items included. (F6, F7, F9, F10)

This recommendation requires further analysis. Monthly reports are given to the BOS in open session, to include agendas and departmental actions, but a formal list of action items is not currently included.

- R6. The Department of P&B place all building and complaint actions in an online database for public access by street address and property number (APN) leaving off the name(s) of the complainant(s). (F6, F7, F10)

This recommendation has been partially implemented. The Mendocino County website has a user friendly online database of building permits issued each month. Further analysis is needed to determine if an online database of complaints and subsequent actions are legally allowed or advisable.

- R7. The BOS direct staff to bring all County facilities into compliance with applicable State and County codes within the next fiscal year, and report the result back to the BOS. (F11)

This recommendation has been implemented. All mold (F11) is immediately referred to the Executive Office for evaluation and remediation in compliance with State and Federal regulations.

- R8. The BOS direct staff to develop and enact policies by the close of fiscal year 2018 to provide consistency in the assertion and the amount of fines for violations. (F1, F2)

This recommendation has been implemented. On January 10, 2017, the Board of Supervisors added Chapter 1.08 to the Mendocino County Code titled "Administrative Citations and Penalties."

PLANNING AND BUILDING

Code Enforcement Division

SUMMARY

The Mendocino County 2016-17 Grand Jury finds that the Code Enforcement Division of the Mendocino County Planning and Building Services Department does not initiate investigations, but as a policy matter primarily responds to complaints. There is a continuing backlog of unresolved complaints that are over one year old. The reasons for these shortcomings are inertia, lack of adequate staffing, and lack of direction from the Board of Supervisors and Department management. Interviews revealed that it is *“not a priority”* to provide online access of data maintained in both departments.

On November 3, 2015, the Board of Supervisors gave direction to apply County ordinances to County maintained buildings. To date, it is obvious that the condition of the buildings have not significantly improved. When interviewees were questioned by the Grand Jury, the condition of County maintained buildings was acknowledged as poor.

With the potential enactment of new and revised cannabis ordinances, it is clear that the Department will have to hire additional staff. It is also clear that new procedures need to be developed and implemented.

BACKGROUND

The Mendocino County 2016-17 Grand Jury (Grand Jury) reviewed the Code Enforcement Division (CED) operations in view of proposed upcoming additions to the duties of the division and ongoing concerns as to the processing of existing complaints of code violations. There is question as to the backlog of open complaints. While records were not available to establish exactly what the number of outstanding complaints was open for over one year, the general claim from various staff is the backlog has been reduced from over 2,000 complaints to approximately 300.

Mendocino County Planning and Building Services (P&B) and CED do not maintain a list of

complaints online, nor is a list available over-the-counter. The failure to have online data leads to the following concerns:

- to determine if a complaint has been filed on a specific property
- to know when a complaint has been corrected
- to know if there are duplicate filings of a complaint
- to have statistics to fairly assess the performance of the Department
- to understand departmental operations in the interest of transparency

The Grand Jury visited various locations at the County Administration Building and other County maintained buildings to observe if the County was complying with its own ordinances and regulations regarding code enforcement issues. The Grand Jury found a number of potential code enforcement violations that could affect the health of anyone visiting or working at the County Administration Building and satellite buildings.

APPROACH

The Grand Jury interviewed staff and management of P&B, reviewed online posted documentation from CED, read published policies and procedures and the 2003-04 Grand Jury report entitled, *A Review of the Code Enforcement Division of the Department of Planning and Building*. The Grand Jury also reviewed the report given by the Director of P&B to the Board of Supervisors (BOS). The Grand Jury visited several County offices and observed the conditions of the buildings, and interviewed members of the BOS and individuals associated with P&B.

DISCUSSION

How Code Enforcement Works

The CED responds to complaints when the document¹ is filed. California Penal Code §829.5 gives the authorization to the Code Enforcement Officer (Officer) "to issue citations, or file formal complaints." An Officer is dispatched to investigate the complaint; if found to be valid, a notice of violation may be issued at the discretion of the Officer.

Currently, CED functions as a reactive agency. This means CED does not investigate potential violations on its own initiative. The investigations are primarily performed when a complaint is filed.

¹ See Appendix 3-1, copy of complaint form

This is due, in part, to a lack of staff.²

There are a number of issues that can generate a complaint.³ Most complaints deal with obvious odors, visible violations or loud noises. If a complaint is verified by the Officer, a notice may be issued to the owner of the property. To resolve this notice, the condition must be corrected and a fine paid, if applicable.

The Officer has considerable discretion as to the assertion of fines. Compliance with the notice must be accomplished within a 30 day timetable. Staff and management acknowledged this timetable is not always met.

Many complaints are relatively easy to correct in a short time according to staff and management interviewed. This is reflected in the number of complaints that are resolved within the 30 day timetable. It was not clear to the Grand Jury exactly what the parameters are for the assessment of fines or the amount of the proposed fines. It was clear from the interviews that the issue of fines is completely at the judgment of the officers, giving the impression of arbitrary assertion of fines.

There is a lack of communication between the various divisions within P&B. None of the individuals interviewed could establish any regularly scheduled meetings between CED and other divisions of P&B. Without regularly scheduled meetings, it is very difficult to coordinate departmental actions. An issue arose concerning the vehicle pool and availability of all-wheel drive vehicles. Given the 3,506 square mile geographical area of Mendocino County, an all-wheel drive vehicle is often needed to safely access the property being investigated. Most interviewees expressed frustration with the lack of adequate vehicles.

The County does not maintain a public database, available through the internet or over-the-counter, disclosing each complaint filed. The reason given for no public access to this data is to maintain confidentiality regarding names of the complainants.

² See Appendix 3-2 – department organization chart

³ See Appendix 3-3, copy of complaint procedures

Potential Operational Changes

The backlog of complaint cases has decreased considerably over the past five years. P&B staff now reports monthly to the BOS on the status of departmental activity. The statistics in the February 2017 report, the only one available at the time of this Grand Jury report, do not balance.⁴ It is difficult to draw logical conclusions from the information given. Without a detailed action plan, it is impossible to accurately demonstrate departmental efficiency.

The monthly activity report does not specify how many complaints are over one year old. While the backlog has been significantly reduced, it has not been eliminated. The approximate remaining 300 countywide complaints will require more actions by CED. When asked how to resolve this backlog, the most frequent response from the interviewees was "...hire more Code Enforcement Officers". When searching for enforcement actions or a list of properties on which complaints have been filed, no data is available online. The staff and management interviewed could not state the exact number of outstanding complaints. There was a general knowledge of individual complaints, but a vagueness surrounding the total number.

With the BOS meetings in April 2017, new assignments are planned for CED to work in cooperation with the Agricultural Commissioner and staff to enforce the new and revised cannabis ordinances. This will require the hiring and training of additional staff.

As currently established, CED is reactive. There is language in the proposed ordinance⁵ that seems to call for CED to become an enterprise agency. If the agency is changed to an enterprise agency, the agency operations are paid for by fines and assessments arising from the enforcement activities. As an enterprise agency, the Officers would be expected to travel the County looking for code violations without having received a complaint prior to visiting a location. The end result would change the approach of CED from reactive to proactive. This change would bring CED more into the public's eye. The enforcement of code violations could also potentially change the appearance of Mendocino County as public eyesores are addressed and corrected.

⁴ See Appendix 3-4 - P&B Activity Report for February 2017

⁵ Mendocino County Code §9.30.100

There are public health issues that would be more promptly addressed by a proactive department than by responding to filed complaints. These issues are with water safety, environmental concerns, trash, and living conditions throughout Mendocino County.

At the time of this report, the CED and P&B are undergoing changes in management. The Director of P&B has been appointed as Deputy County Chief Executive Officer and the Senior Code Enforcement Officer has retired.

The position of Senior Code Enforcement Officer has been filled through an internal promotion, but three openings exist on the current staffing list.⁶ Reviewing several organizational charts over the past year, the Grand Jury did not find that the department was fully staffed at any time. Turnover of staff is an ongoing problem.

As of the date of this report, the position of Director of P&B has not been filled with a new permanent appointment. There has been an appointment of an interim Director while a search for a permanent appointee is conducted. This is yet another example of the County resorting to re-hiring retirees to fill vacant positions.

Currently, P&B is taking positive steps to streamline the permitting process. There is an online permit application program available to licensed contractors. At the time of this report, interviewees stated 20 contractors have signed up for this program. This has "significantly shortened" the time it takes to obtain a permit, according to P&B management.

Application of Code Enforcement to County Structures

The Grand Jury investigated the application of code enforcement to violations present in County operated buildings. With the passage of Mendocino County Resolution 15-161 on November 3, 2015, the BOS has changed the enforcement guidelines to include County buildings. Now, building inspectors are reviewing County buildings for various potential code violations. As violations are found, they are reported to management. Repairs are being ordered as funds are available.

⁶ Appendix 3-2 – department organization chart

There are a number of County buildings that do not comply with all of the County's various ordinances regarding environmental violations. The most notable of these violations center on water damage which resulted in mold contamination.

There are several areas of mold growth visible in the County buildings at the County Administration Building. There are a number of other County buildings with various kinds of water damage that are still in need of repair.

FINDINGS

- F1. The CED Officers have considerable discretion as to whether or not fines should be asserted. California Penal Code §829.5 states that CED officers are, "...authorized to issue citations, or file formal complaints".
- F2. The CED approach to complaints is reactive and rarely considers issues outside the parameters of the complaint.
- F3. There are insufficient appropriate vehicles directly assigned to CED to allow safe and efficient performance of the assigned tasks.
- F4. The turnover and lack of staff to conduct CED activities within Mendocino County contributes to issues not being corrected in a timely and consistent manner.
- F5. The shortage and turnover of CED management staff contributes to lack of clear direction for employees.
- F6. The backlog number of complaints has been significantly reduced to approximately 300. The validity of this number cannot be proven due to lack of publicly available documentation.
- F7. There are no online data regarding code enforcement complaints and the status of code

enforcement activity. This lack of transparency is detrimental to the efficient function of CED.

The Grand Jury finds this lack of accuracy unacceptable because it is difficult:

- to determine if a complaint has been filed on a specific property
- to know when a complaint has been corrected
- to know if there are duplicate filings of a complaint
- to have statistics to fairly assess the performance of the department
- to understand departmental operations in the interest of transparency

F8. There are no regularly scheduled meetings between the staff of CED and the rest of P&B. This impairs the efficient function of both staffs.

F9. There are no departmental action plans in the report given by the P&B Director to the BOS.

F10. There is a new online program available to licensed contractors to obtain permits. In interviews it was not clear what additional changes are planned for online access by licensed contractors or the public.

F11. The mold growth that was found is hazardous to the health of workers and citizens who frequent County facilities.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. To reduce the backlog of complaints, there is a need for additional staff in CED; the BOS discuss and consider expanding CED staff. (F2, F4-F6)

R2. The BOS consider and discuss assigning the enterprise designation to the CED. (F2, F4)

R3. The BOS consider assigning each CED Officer a dependable all-wheel drive vehicle. (F3)

R4. The Director of P&B schedule at least a monthly meeting of all staff to discuss and advise on all issues concerning P&B and CED. (F8, F9)

- R5. The Director of P&B provide in the monthly report to the BOS a summary of the monthly staff meeting with action items included.(F6, F7,F9, F10)
- R6. The Department of P&B place all building and complaint actions in an online database for public access by street address and property number (APN) leaving off the name(s) of the complainant(s). (F6, F7, F10)
- R7. The BOS direct staff to bring all County facilities into compliance with applicable State and County codes within the next fiscal year, and report the result back to the BOS. (F11)
- R8. The BOS direct staff to develop and enact policies by the close of fiscal year 2018 to provide consistency in the assertion and the amount of fines for violations.(F1, F2)

RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individual(s):

- Mendocino County Chief Executive Officer (All Findings and All Recommendations)

Pursuant to Penal Code §933.05, responses are *required* from the following governing body:

- Mendocino County Board of Supervisors (All Findings and All Recommendations)

Pursuant to Penal Code §933.05, responses are *requested* from the following individual(s):

- Mendocino County Interim Director of Planning and Building Services (All Findings and All Recommendations)
- Mendocino County Deputy Chief Executive Officer (All Findings and All Recommendations)

APPENDICES:

3-1 Complaint Form

3-2 Department Organization Chart

3-3 Department Procedures

3-4 Department Activity Report

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

Appendix 3-1



MENDOCINO COUNTY
DEPARTMENT OF PLANNING AND BUILDING SERVICES
 800 NORTH DASH STREET - UTAH - CA - 95482
 120 WEST FIR STREET - FORT BRAGG - CA - 95437

PHONE 707-234-6550
 FAX 707-463-6709
 FB PHONE 707-964-6379
 FB FAX 707-961-2427
 pbs@co.mendocino.ca.us

COMPLAINT

CASE #:

**SUBJECT
PROPERTY
INFO**

Property Owner Name: _____
 Site Address or Location: _____
 Mailing Address: _____
 APN: _____ Owner Phone #: _____

DESCRIPTION OF COMPLAINT:**Complainant**

CONFIDENTIALITY: Every effort will be made to keep the complainant's identity confidential within the limits of existing laws.

☐ by phone Printed Name: _____ Phone #: _____
☐ by mail Signature: _____ Date: _____
☐ in person Residence Address: _____
☐ emailed Mailing Address: _____
 Email: _____

REFERRALS:

| | |
|---|---------------------------|
| Planning & Building Services (234-6650) | Air Quality (463-4354) |
| Environmental Health (234-6625) | DQT (463-4363) |
| Agricultural Commissioner (463-4206) | Animal Control (463-4052) |
| State Agency (specify): _____ | Other: _____ |
| None | |

INVESTIGATION SUMMARY: (attach added sheets as necessary)

Date: _____

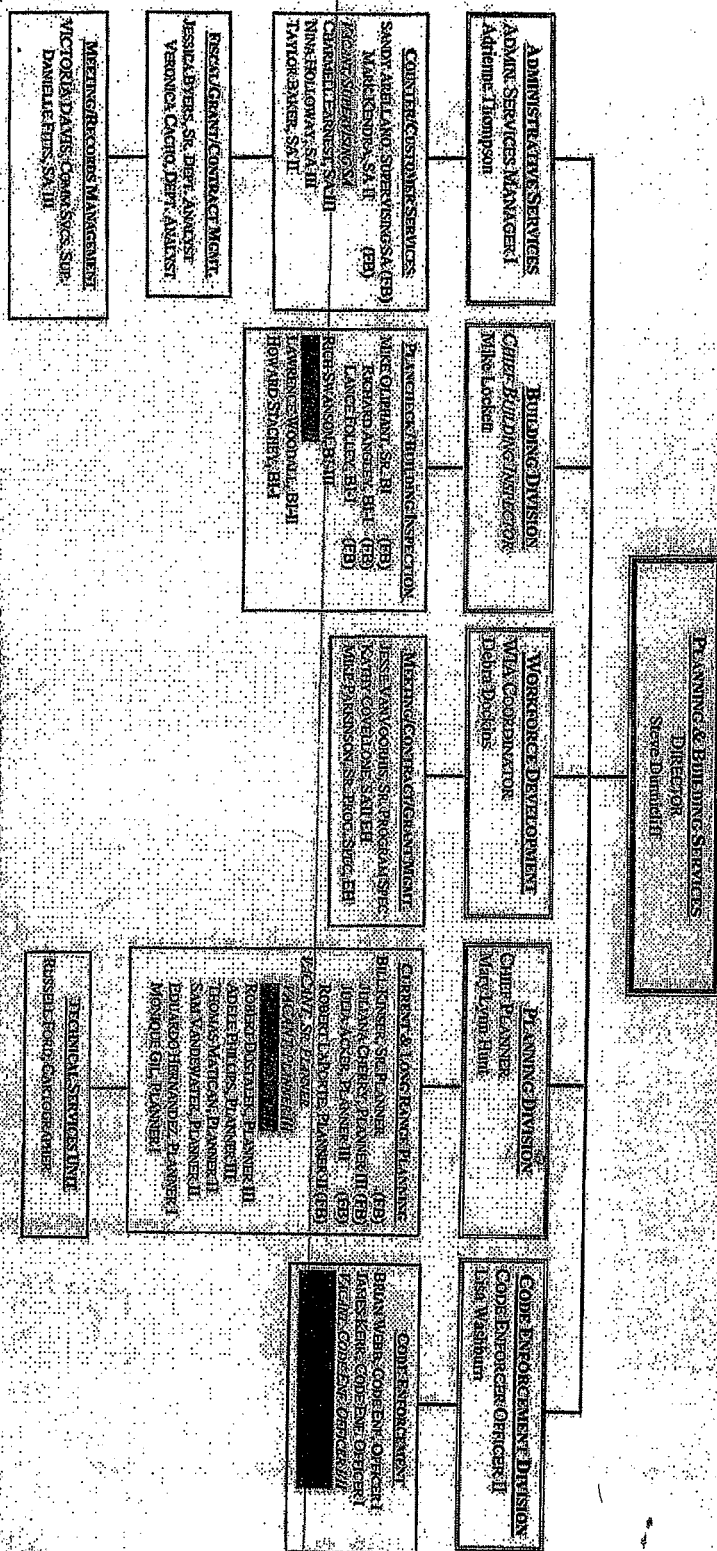
DISPOSITION:

☐ No violation found ☐ Referred ☐ Violation abated Date Department Closed Case: _____

231.PBS Form/COMPLETED Form/Complaint Form 2015.doc



Department of Planning & Building Services Organizational Chart



SA ADMINISTRATIVE SERVICES - FORMS OPERATIONS CHIEF/SA III - Dennis J. Cook

Updated 4/12/2017

APPENDIX 3-3

Page 1 of 2

CODE ENFORCEMENT DUE PROCESS AND ENFORCEMENT PROCEDURES

MENDOCINO COUNTY PLANNING AND BUILDING SERVICES

CODE ENFORCEMENT

Code enforcement personnel are responsible for enforcement of building, zoning, and stormwater discharge violations as contained in MCC chapters 18, 20, and 16 respectively. Our goal is to investigate complaints fairly and objectively while making the public's health, safety and welfare a top priority. The authority for code enforcement is contained in the California Constitution, State statutes, regulations in Mendocino County Code (MCC), and civil court law. We receive complaints from many sources, including referrals from other government agencies, members of the public and observations by Planning and Building personnel while conducting work in the field. Our objective is to resolve violations through voluntary compliance; however, the administrative and judicial steps listed in this brochure are often utilized by our officers when necessary to ensure violations are abated in a timely fashion. Typically, a Request for Inspection document is mailed to the property owner of the alleged violation to establish initial communication and schedule a time for the officer to investigate the complaint with the consent of the responsible party.

NOTICE OF VIOLATION

The Notice of Violation (NOV) is an administrative tool that serves as an initial document citing any violation(s) that were confirmed by the code enforcement officer during his visit. The first NOV typically does not include fines or penalties and allows either thirty (30), sixty (60) or ninety (90) days to correct the violation. The responsible party can contest the violation(s) cited in the NOV by following the due process procedures listed in this document itself, or other policies listed within this informative brochure.

NOTICE OF VIOLATION AND INTENT TO FILE A LIEN

The Notice of Violation and Intent to File a Lien process is utilized at the officer's discretion based upon the nature and circumstances surrounding the violation(s). It should be noted that building violation fines differ from zoning violation fines and these differences are highlighted within the NOV and Intent to File a Lien that is mailed to the responsible party. The responsible party is then given thirty (30) days to abate the violation(s) and is fined pursuant to California Government Code Section 26132. The individual can contest the violation(s) cited in the Notice of Violation and Intent to File a Lien document by following the due process procedures listed in the NOV and Intent to File a Lien itself, or other policies listed within this informative brochure.

MCC 8.75 UNIFORM NUISANCE ABATEMENT PROCEDURE

The Notice and Order to Abate (NOTA) is an administrative enforcement tool utilized by code enforcement officers to address the most egregious and long standing violations that have been declared to be a nuisance and may pose an increased threat to public health and safety. It may also be used in cases where alternative methods have not been successful in achieving compliance. Alleged violations cited under MCC 8.75 are given ninety (90) days to achieve compliance by abatement of the violations cited in the Notice and Order to Abate.

Pursuant to MCC 8.75.075 (1), for a first violation, the NOTA may impose administrative civil fines ranging from \$25.00-\$100.00/day for the ninety (90) NOTA period. Any subsequent NOTA for the same violation may impose fines up to \$500.00/day. These fines are totaled for the entire 90 day period.

There is a specific due process/appeal procedure for a NOTA that provides the alleged violator an opportunity to contest the violations cited in the NOTA (MCC 8.75.090). The alleged violator must submit a request for an appeal in writing. The request for appeal must be accompanied by an appeal fee of \$1,040.00 and be filed with the Planning and Building Services within ten (10) days of the date of issuance of the Notice and Order to Abate.

APPENDIX 3-3

PAGE 2 of 2

NOTICE OF VIOLATION DUE PROCESS

Building Violations: Any person accused of an activity prohibited by Mendocino County Code Chapter 18 has the right to appeal. The following provides the due process procedures for an NOV:

Administrative Appeals:

- A. A request for a meeting before the Planning and Building Services Department Building Official or Director shall be made by the property owner or interested party to contest any violation, decision, determination, or requirement of the Planning and Building Services Department by filing a notice in writing with the Planning and Building Services Department within ten (10) days from the date of the Notice of Violation.
- B. You may appeal the decision rendered by the Building Official or Director to the Board of Supervisors by submitting a written appeal to the County Executive Office along with the filing fee. You may also have the right to a hearing in the Superior Court. Consult an attorney if you have questions about your case.

Zoning Violations: Any person accused of an activity prohibited by the Mendocino County Zoning Code Chapter 20 has the right to appeal an adverse decision. Mendocino County Zoning Code, Section 20.208.010, 20.544.010, and 20.728.010 provide the procedures for an appeal.

- A. A request for a hearing before the Planning Commission may be made by the property owner or any interested person from any decision, determination, or requirement of the Planning and Building Services Department by filing a notice in writing with the Planning and Building Services Department within ten (10) days after such decision, determination or requirement is made. Such appeal shall be accompanied by a fee.
- B. The Planning and Building Services Department shall prepare a written report that includes findings which shall be forwarded to the Planning Commission for action. The action of the Planning Commission is final unless appealed to the Board of Supervisors pursuant to Section 20.208.015, 20.544.015, and 20.728.015 by filing an appeal in writing within 10 days of the Planning Commission's decision and shall be accompanied by a fee.

C. Notification is not necessary for an administrative appeal. (Ord. No. 3639 (part), adopted 1987)

A lien will be recorded with the Mendocino County Recorders Office for any violation of the provisions of this Division that are not cleared within the timeframe set by the officer. The lien will be for the notice of violation and the estimated permit costs (if applicable), penalties (such fees shall be further evaluated at the time of restitution), fines, and administrative costs. The notice shall specify the name(s) of the record owners and particularly describing the real property. The use of these administrative remedies does not preclude the use of other legal remedies prescribed by law to gain compliance.

Stormwater Violations: Any person accused of activity prohibited by the Mendocino County Code Chapter 16 relative to stormwater discharge violations is subject to enforcement through the Notice of Violation and/or Notice and Order to Abate process. The enforcement mechanism used to address violations of this chapter will be at the discretion of the code enforcement officer based upon the relative severity of the violation as determined by the nature and circumstances surrounding the incident.

Ukiah Office:

860 North Bush Street
Ukiah, California 95482
Telephone: (707) 463-4281
Facsimile: (707) 463-5709

Fort Bragg Office:

120 West Fir Street
Fort Bragg, California 95437
Telephone: (707) 964-5379
Facsimile: (707) 961-2427

*This information is not all-inclusive; to access further information regarding the Uniform Nuisance Abatement Procedure and Summary Abatement Procedure of the Mendocino County Code visit Chapter 8.75 online at www.co.mendocino.ca.us under the Board of Supervisors drop-down menu.

APPENDIX 3-4



Mendocino County Planning and Building Services Monthly Activity Report 2/1/17 to 2/28/17 Current Fiscal Year: 7/1/16 to 2/28/17

| Building | Month | FY |
|--|-------|-------|
| Building Permit Applications Received | 149 | 7,382 |
| Amnesty Permit Applications Received | 4 | 48 |
| Plan Checks Completed | 71 | 685 |
| Building Permits Issued | 135 | 1,299 |
| Amnesty | 0 | 12 |
| Quick Check | 0 | 81 |
| New Single Family | 2 | 18 |
| New Multi Family | 0 | 1 |
| New Commercial/Industrial | 1 | 8 |
| Commercial Fee Waiver | 0 | 2 |
| Additions / Remodels | 17 | 136 |
| Grading | 3 | 18 |
| Inspections Performed | 264 | 3,083 |
| Planning | | |
| Business License Applications | 26 | 223 |
| Minor Planning Applications Received | 14 | 134 |
| Coastal Development Admin Permits | 2 | 7 |
| Boundary Line Adjustments | 7 | 37 |
| Certificates of Compliance | 0 | 8 |
| Administrative Permits | 1 | 35 |
| Agricultural Preserve Applications | 0 | 0 |
| Categorical Exclusions and Emergency Permits | 2 | 31 |
| Major Planning Applications Received | 7 | 37 |
| Subdivisions | 2 | 10 |
| Use Permits | 0 | 11 |
| Variances | 2 | 2 |
| Coastal Development Standard Permits | 3 | 25 |
| Rezones | 1 | 1 |
| General Plan Amendments | 1 | 2 |
| Ordinance Amendments | 0 | 2 |
| Projects to Hearing | 16 | 153 |
| Code Enforcement | | |
| Cases Opened | 51 | 283 |
| Cases Closed | 43 | 408 |
| Notice of Violations Issued | 7 | 102 |
| Abandoned Vehicles Abated | 23 | 144 |
| Stop Work Orders Posted | 0 | 21 |
| Total Active Cases | | 208 |
| Total Inactive Cases | | 76 |

277

RESPONSE FORM

Report Dated: June 22, 2017

☐ The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

- ☒ The following Recommendation(s) require further analysis, and attached as required, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)
R2, R5
- ☒ The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:
R3

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 4

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: John McCowen

Title: Chair, Board of Supervisor

Signed: John McCowen

Date: 10/4/17