From: Christina Aranguren
To: pbscommissions
Subject: Public Comment of MendoMatters; Case#: UM_2024-0008.
Date: Wednesday, December 18, 2024 4:50:58 PM
Attachments: MUSD Project Comments-2.pdf

County of Mendocino

Department of Planning & Building Services

Mendocino County Planning Commission, Staff

Ukiah, California

Re: Regular Meeting and Public Hearing of December 19, 2024, Item 6 b., Case#: UM_2024-0008, Mendocino Unified School District, Lead Agency/Applicant, Coastal Development Use Permit Modification, Water System Reconstruction – Water Supply and Storage Improvement Project.

December 18, 2024

Chair Paulin, Commissioners Weidemann, Jones, Pernell, and Babbini;

In light of Staff's late disclosures for tomorrow's Regular Meeting and Public Hearing of the County of Mendocino Planning Commission agenda of Dec. 19, 2024, MendoMatters respectfully requests that the public hearing for this item be rescheduled to a future date due to insufficient time to prepare public comment.

As stakeholders, we are on record in requesting that 72-hours be provided in advance of the posting of supporting materials (e.g., documents, reports, maps) to allow ample time for public review, consideration, and preparation of comment.

We are also on record for requesting notification any/all matters relating to this Project. We have received none which notify us of County Staff's recent additions. (MendoMatters comments to the County of Mendocino Planning Commission and Staff, Dec. 2, 2024; attached.)

CEQA requires public agencies to “look before they leap” and consider the environmental consequences of their discretionary actions. It is intended to inform government decisionmakers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage. As this item considers CEQA and that public participation is a hallmark of the CEQA process,

we urge that you to postpone this hearing to a later date.

Please acknowledge that you have received these comments (including those of Dec. 2, 2024) and place them into the public record.

Thank you,

Christina Aranguren

Chair, MendoMatters

admin@mendomatters.org

cc: Julia Krog, Director, Mendocino County Planning & Building Services; Rob Fitzsimmons, PBS; Mark Cliser, PBS Planner; Tamara Gedik, CCC; Amy Minteer, Carstens, Black, and Minteer LLP.

bcc: Interested parties.

County of Mendocino
Department of Planning & Building Services
Mendocino County Planning Commission, Staff
860 North Bush Street
Ukiah, California

Re: Regular Meeting and Public Hearing of December 5, 2024, Item 6 b., Case#: UM_2024-0008, Mendocino Unified School District, Lead Agency/Applicant, Coastal Development Use Permit Modification, Water System Reconstruction – Water Supply and Storage Improvement Project.

December 2, 2024

Chair Paulin, Commissioners Weidemann, Jones, Pernell, and Babbini;

MendoMatters.org ("MendoMatters") appreciates the opportunity to review and comment upon Item 6b., Case#: UM_2024-0008, Modification of a Coastal Development Use Permit ("CDP") for the Mendocino Unified School District ("MUSD") Water System Reconstruction – Water Supply and Storage Improvement Modified Project ("Project"). Our former comments submitted to the MUSD in June, 2023 and the Mendocino County Planning Commission in March, 2024 are in the administrative record for the Project.
(Comments of MendoMatters to MUSD Superintendent J. Morse, June 9, 2023; Comments of MendoMatters to the Mendocino County Planning Commission, Dept. of Planning & Building Services, March 28, 2024.)

As there is a new discretionary determination being made, a determination of the correct CEQA review needs to be made again. A resolution finding the Subsequent Mitigated Negative Declaration with Addendum ("SMND") adequate and a decision to approve a modification to a Coastal Development Use Permit is premature. Significant questions and concerns remain unanswered which were not adequately considered and addressed in the Staff Report and SMND with Addendum contrary to California Coastal Act ("CCA") policy, state water law, and California Environmental Quality Act ("CEQA") requirements, many having the potential to cause or create significant adverse environmental impacts to the natural resources of a sensitive coastal area and affect public welfare. Additional information, clarification, and environmental review are needed to protect natural resources and public welfare prior to Mendocino County approval of the resolution and CDP under consideration.

The primary basis for our comments is that the Staff Report and SMND with Addendum suffer from a number of procedural failures: a lack of proper notifications, errors, deficiencies, inaccuracies, and the omission of critical new information not previously disclosed whose impacts have not been analyzed. As CEQA requires subsequent environmental review when there is a new discretionary approval, as in this case, and there are substantial changes to the Project that require major revisions of the SMND due to the potential of new and substantially increased impacts, subsequent environmental review is required.
(CEQA Guidelines S. 15162.)

New information was recently disclosed in the "draft Source Water Study" developed by GHD Engineering, Inc. "(GHD") for the Mendocino City Community Services District ("MCCSD") which proposes to develop a centralized public water system ("CWS"), consolidate smaller water systems, and expand its water source and service areas. One of the water systems it proposes to consolidate is

the Modified Project in discussion. Made public on November 12, 2024, the draft Water Source Study confirms what the Applicant's agent, Matt Kennedy, has continued to deny despite documentation otherwise: that the Project's water system is being actively considered as part of a larger, centralized water system. This Project has been disguising itself as something it is not.
(Draft Source Water Study, GHD, Inc., November 11, 2024; page 37.)

This should be of concern to Commissioners because it discloses substantial new information which was not known at the time the Final Subsequent MND was certified as complete. It shows new and substantially more significant impacts, challenges the feasibility of mitigation measures, and neglects to address growth-inducing impacts. Each are of substantial importance to the Modified Project. Prior to disclosure, the Lead Agency's response to public concern that the Project was intended to become part of a larger public water system was that the plans were not "advanced enough" to be considered.
(Water System Reconstruction Project - Water Supply and Storage Improvements, Response to Comments on Subsequent MND, State Clearinghouse Number 2020080439, Page 3-29; Public Resource Code S. 21166(c); Guidelines S. 151662(a)(3).)

We respectfully disagree; if the administrative record didn't already contain substantial evidence to support the fair argument that a reasonably forseeable future project was under consideration by MCCSD and MUSD as early as April, 2019, far prior to approval of the SMND for the Project on June 28, 2023, it clearly does now. Nearly five years ago at a April 18, 2019 meeting of MUSD, GHD Project Manager, Kennedy, recommended to the MUSD Board of Trustees that it consolidate its water system and join with two privately-run mutual water systems located near the school district's wells (and current Project site). He identified the two as Hills Ranch and Point of View subdivisions. Both are located outside MUSD boundaries but within the MCCSD service area, and all three systems (two mutual, one public) employ the same water system manager/operator, Donna Feiner, of Feiner Fixings, who doubly presides on the MCCSD Board of Directors. Feiner is expected to continue managing the MUSD water system.

By early 2023, Kennedy further elaborated on his concept for the Project as the beginnings of a public water system to the Board of Directors of the MCCSD. When directly asked by then Director, now Vice President, Michael Miksak, at a MCCSD meeting in February, 2023, Kennedy cited the specific numbers the Project could be expected to supply a municipal [sic] water system, saying that the numbers did not account for Mendocino's transient population, but added that it was, "...certainly a start in meeting the town's demands should a water system be undertaken". He continued, "GHD recommends that no more than half of the 12 wells are to be operated at any one time":
6 wells @ 5 gpm pumping continuously = 40,000 - 45,000 gpd.
900 resident population @ 50 gpd = 45,000 gallons."
(MCCSD Regular Meeting, 2/27/23, comments of M. Kennedy, Project Manager, GHD, Inc.)

The map shown as Figure 2 of the Technical Assistance Work Plan for the CWS shows a water main beginning adjacent to the Project, which makes the concept conceivable. Additionally, an earlier staff report noted that the Project would provide a connection to the MUSD's water distribution system. Should the Project be intended as part of a larger public water system, it would have significant potential to substantially change the intensity of water use, induce growth, and adversely impact public trust and water resources within this sensitive coastal area. To claim the Modified Project reduces the severity of environmental impacts because of a reduction in the construction footprint belies the fact that potentially more serious impacts could be caused or created by Project development to a CWS. The CCA requires that adverse environmental impacts must be mitigated to the maximum extent possible. Without evidence that a larger, centralized public water system would not cause or create

further harm than Project reports currently assert, the SMND with Addendum is insufficient and the CDP under consideration cannot be permitted. A full Environmental Impact Report ("EIR") is warranted.
(Public Resource Code 30260 (b) (3), Division 20, California Coastal Act, 1976)

CEQA Guidelines define a project as "the whole of the action" that may result either directly or indirectly in physical changes to the environment. This broad definition is intended to provide the maximum protection of the environment. Piecemealing or segmenting means dividing a project into two or more pieces and evaluating each piece in a separate environmental document rather than evaluating the whole of the project in one environmental document. This is explicitly forbidden by CEQA, because dividing a project into a number of pieces would allow a Lead Agency to minimize the apparent environmental impacts of a project by evaluating individual pieces separately, each of which may have a less-than-significant impact on the environment, but which together may result in a significant impact.

Segmenting a project may also hinder developing comprehensive mitigation strategies. In general, if an activity or facility is necessary for the operation of a project, or necessary to achieve project objectives, or a reasonably foreseeable consequence of approving the project, then it should be considered an integral project component that should be analyzed within the environmental analysis. The project description should include all project components, including those that will have to be approved by responsible agencies. When future phases of a project are possible, but too speculative to be evaluated, the EIR should still mention that future phases may occur, provide as much information as is available about these future phases, and indicate that they would be subject to future CEQA review.

CEQA case law has established the following general principle on project segmentation for a project type as the one under consideration: "For a phased development project, even if details about future phases are not known, future phases **must** be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts." The approval of this Project without disclosure of its consideration as central to a public water system is improper segmentation pursuant to CEQA.
(CEQA Guidelines, Section 15378; Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal. 3D 376; Mendocino Beacon, Community Column, "Surprised by a Community Water System", Christina Aranguren, 8/18/22; Comments of MendoMatters for the SMND, June 9, 2023, June 28, 2023.*)*

While MendoMatters acknowledges mitigation measures in the SMND with Addendum, we refute numerous points made in response to previously submitted comment and contend that the Staff Report, accompanying studies, and SMND with Addendum suffer from a number of deficiences, inaccuracies, errors, and omissions, including: (1) it inappropriately relying on an invalid and insufficient IS/MND; (2) it using arbitrary, undefined, unproven, or inappropriate criteria to determine thresholds of significance and appropriate mitigation measures; (3) the lack of compliance with other regulatory standards and state and federal law to conclude that the Modified Project is being planned within legal parameters; and additionally, (4) it disregards new information and substantial evidence which supports the fair argument that a reasonably foreseeable future project to develop a public water system has substantial potential to cause or create significant cumulative environmental impacts in a number of resource areas. New information has not been considered or addressed by the Lead, Implementing, or

Responsible Agencies. Instead, there has been an failure to analyze cumulative impacts having the potential to cause or create a substantial or severe increase in groundwater extraction or surface water depletion generated by a public water system project. As Planning Commissioners, you have the authority to deny the findings of the SMND with Addendum and require that an EIR is completed prior to consideration of a CDP.

We have additional concerns:

- Misinformation in the Project description. The Project is described as intended to supply MUSD's daily needs and water for the residents of MCCSD during drought conditions, but fails to disclose that it intends to supply impacted parcels and residents within the entire MUSD district who may be experiencing a loss or lack of water supply. Any cumulative impacts defined by the current MOU have not been considered or analyzed in the SMND with Addendum.

- Verification of legal authority. That MUSD has the legal authority within state water law to appropriate, extract, store, treat, sell, share, provide, and/or distribute state water resources beyond its jurisdictional boundaries and its primary mission to educate requires verification prior to permitting. Responding to MendoMatters' submitted comment in the SMND with not knowing "what we mean" by "questioning the authority or mission of the MUSD" is evasive. The authority for MUSD to beneficially use state water resources and to appropriate, extract, store, treat, sell, allocate, distribute, provide, share, and/or sell the resource requires legal confirmation. That the school district is simply operating its own water supply which it intends to transfer and provide to residents throughout its 420 square miles and to MCCSD customers during drought emergencies –"after its needs are met"– remains vague and ambiguous.

Complicating matters, during a June 28, 2023 MUSD meeting to approve the SMND, Chair Michael Schaeffer assured concerned residents and neighbors in attendance that MUSD would fulfill their water needs from the school's supply should their wells be impacted but failed to provide specifics. Further, the MUSD Board of Trustees did not define the criteria or geographical boundaries for access to the water, leaving the school district's obligations unresolved and the responsibility for residents without adequate supply with a process for resolving their problem. This begs a larger question: should private or mutual wells be impacted by this Project, which party will be responsible for establishing the burden of proof?
(MUSD Meeting, Board of Trustees, June 28, 2023, M. Schaeffer; Katz v. Walkinshaw, 1903.)

- Lack of a legally-binding contract. Although several Memos of Understanding ("MOU") have been approved between MUSD and MCCSD (the first approved by MCCSD without proper public notice in August, 2022), there is no legally-binding agreement signed to date. Over seven months ago, at a April 29, 2024 meeting of the MCCSD Board of Directors, President Dennak Murphy reported that their members had been meeting with MUSD members in a joint committee to develop an operating agreement that would include allotment criteria. He reported that the water would be available for people that live within the school district's boundaries, an area covering 420 square miles, and that "residents would be prioritized over commercial" interests. Last week, on November 25, 2025, he and the MCCSD Board of Directors approved a fourth MOU, reporting that the MUSD Board of Trustees had approved the same MOU four days earlier. No provisions are provided in the MOU which address

the forementioned concerns and define distribution and allotment criteria the public has long waited for.

- Determination of water supply distribution and eligibility criteria. Criteria which defines the eligibility, allocation, and distribution requirements for state water resources specific to both districts, MUSD and MCCSD, requires determination prior to any SMND or CDP approval, as does the geographical boundaries of said distribution and users' costs for the water (residential users' costs versus commercial users' costs - since businesses are equipped to absorb elevated fees when most residents cannot). The MCCSD has recently begun describing the area as a Severely Disadvantaged Community as defined by the Department of Water Resources, which makes eligibility and affordability requirements particularly important given that MUSD covers an area 420 times larger than the single-square-mile the small community services district currently manages.

Concerns regarding allocation and distribution were voiced by MUSD Chair Michael Schaeffer at a meeting of the Board of Trustees when they originally considered the concept of a combining the MUSD and MCCSD projects. Similar concerns were also raised by two former MCCSD Directors during district meetings in 2021/22; theie concerns were not supported by the remainder of the Board. Years later, a legally-binding operating agreement with criteria has not been established to date; MCCSD remains unwilling or able to explain the reason for the delay.
(MCCSD Regular Meeting, November 25, 2024, oral comment by MendoMatters.)

Without criteria determined in advance of Commission approval, cumulative impacts, levels of significance and appropriate mitigation measures remain undeterminable. UMBDR grant eligibility requires that the number of households benefitting from the project be specified. Without these numbers, as well as specific criteria established in advance to account for the total volume, allocation, distribution, provision, and/or sale of state water resources, any impacts, levels of significance, and mitigation measures claimed in the Staff Report or SMND and Addendum remain inadequate, inacccurate, and inconclusive.

Within MCCSD's service area, the hospitality sector is a primary user. As Section 106 of the California Water Code declares that the use of water for domestic purposes as the highest use of water, protections are needed so that commercial interests do not consume the bulk of the groundwater supply in order that state residents – for which state grant funding is intended – access to the water should they require it.
(California Water Code, Section 106.)

It is in the best interest of the general public, the MCCSD customers the Project was originally intended for, MUSD residents, and any adjacent and/or down-gradient well owners who may be adversely impacted by the Project, including downtown Mendocino, that criteria is established prior to approval of the SMND and CDP.

- Water needs and avoidance of over-extraction. Throughout the history of this Project, the public has been unable to determine the amounts required for specific water needs, groundwater extraction volumes, or limitations to avoid the over-extraction of a valuable resource. In an area designated as a Critical Water Resource Area, answers to these questions are essential. Concerns persist in the public's mind about about how much water MUSD will require, how much MCCSD will require, how much

commercial interests will be permitted, and how much the fire department will require **in addition** to the amount they are permitted to draw from the Hills Ranch subdivision's water supply and recently-approved MUSD Recycled Water Systems Upgrades Project.

- Well drilling and permitting requirements. The Project relies on MCCSD Ordinance 2020-01, the district's Groundwater Extraction Permit Requirements for all real property within its boundaries. It was not intended and does not provide for the development of well fields in **or** outside its jurisdiction. The Project site is located outside MCCSD's boundaries. In addition, both Ordinance 2020-01 and the California Coastal Commission application require that aquifer pump testing is performed **prior** to application for a CDP. The Project is outside the purview and policy of MCCSD Ordinance 2020-01. (MCCSD Ordinance 2020-01, GWEP.)

- Development of a full and comprehensive water budget and water balance study. The notion that a full water budget for this Project is "outside the scope" as GHD engineers concluded in their January, 2023 Hydrogeological Report is insufficient. Aquifer studies, hydrological data, groundwater modeling, and most importantly, evidence of an adequate surplus and sustainable water supply, as the Local Coastal Plan requires, should be analyzed in the SMND with Addendum. It is not. California Water Code Section 113 directs that the state's groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for both current and future beneficial uses.
(Hydrogeological Report, GHD, Inc., January, 2023, Chapter 4.2, Page 16; California Water Code, Section 113.)

Additionally, aridification of the sub-basin area remains a public concern whose imacts have not been adequately considered and addressed to date. These include adverse impacts to adjacent and down-gradient wells including those west of Highway 1, adverse impacts to groundwater dependent ecosystems, elevated fire risk, etc. The California Coastal Commission oversees land and groundwater development in coastal areas. Habitat and Resource protections including those impacting GDEs and Environmentally Sensitive Habitat Areas ("ESHA") cannot be proven to not degrade without additional groundwater modeling, well testing, extraction volumes and limits, additional stream gauging, etc. which would be considered and analyzed in a full EIR. Further, Public Resource Code Section 30231 directs that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.
(PRC Section 30231, Division 20, CCA, Chapter 3, Article 4.)

Therefore, we urge the Commission not approve findings that the SMND with Addendum are adequate and deny a Coastal Development Use Permit until a full EIR is developed to better analyze all cumulative impacts. It is in the best interest of the public to know this Project has adequate surplus water, as the Local Coastal Plan requires, and that it will not adversely affect their future health, welfare, property, and the public trust resources of the sensitive Mendocino coast area.

We ask that you please acknowledge that you have received these comments and place them into the administrative record.

Please also keep MendoMatters on any notification list pertaining to the Project: admin@mendomatters.org

Thank you,

Christina Aranguren

Chair, MendoMatters.org

admin@mendomatters.org

cc: Julia Krog, Director, Mendocino County Planning & Building Services; Rob Fitzsimmons, PBS; Mark Cliser, PBS Planner; Tamara Gedik, CCC; Amy Minteer, Carstens, Black, and Minteer LLP.