

pbscommissions - U_2018-0022, Missing Public Comment

From: Christina Velasquez <christinavelasquez100@gmail.com>
To: Brent Schultz <schultzb@mendocinocounty.org>
Date: 10/30/2020 3:02 PM
Subject: U_2018-0022, Missing Public Comment
Cc: Julia Acker <ackerj@mendocinocounty.org>, Keith Gronendyke <gronendykek@...>
Attachments: 20191114 Public Comment - U_2018-0022.pdf

Mendocino County

NOV 03 2020

Planning & Building Services

Dear Brent,

I am forwarding a written public comment that was submitted for the first public hearing on Use Permit # U_2018-0022 on November 14, 2019. Although it appears to be included in the County's "Planning File" that I received in response to a Public Records Act request and was stamped "received" by PBS on November 14, 2019, this written comment has never been posted online along with the other 11 written public comments for Use Permit # U_2018-0022. Because it has been so long since the November 14, 2019 meeting and it hasn't been included for anyone to review at any of the subsequent meetings concerning this use permit that the County had, I thought I should forward it again to make sure you consider the positions in the letter as your review the application materials for U_2018-0022 for the upcoming, and hopefully final, public hearing on this use permit on November 12, 2020. I may submit additional written comments for the November 12, 2020 meeting once I have a chance to review your staff's agenda report and materials in case there is new information or analysis that has been developed over the past year, including in response to the other written public comments you received.

Thank you,

Christina Velasquez

COMMENTS REGARDING THE FINDINGS REQUIRED TO APPROVE USE PERMIT NO. 2018-0022

MCC § 20.196.020 (A): CONFORMITY TO THE GENERAL PLAN

The following General Plan Policies are applicable to the proposed project that is being considered for potential approval but the details of the project, when considered as a whole, does not conform to the requirements of these General Plan policies. The staff report recommends a finding that the project is in conformity to the General Plan because it asserts, without any analysis or evidentiary support, that the project is consistent with General Plan policies DE-14 and DE-51. Cherry-picking a mere two applicable policies from the hundreds of policies in the General Plan and providing unsupported assertions that the project is consistent with those two policies does not provide a basis to determine that the project is in conformity to the General Plan. Nothing in the record, including nothing in the staff report or the draft resolution, provides any evidence, let alone substantial evidence, that this required finding is justified. Rather, the complete record provides substantial evidence that the Zoning Administrator cannot make this required finding, as described below.

APPLICABLE POLICIES FROM THE DEVELOPMENT ELEMENT:

Policy DE-14: Land Use Category: RR-Rural Residential

Intent: The RR classification is intended to encourage local small-scale food production (farming) in areas which are not well suited for large scale commercial agriculture, defined by present or potential use, location, mini-climate, slope, exposure, etc. The Rural Residential classification is not intended to be a growth area, and residences should be located as to create minimal impact on agricultural viability.

General Uses: Residential uses, agricultural uses, cottage industries, residential clustering, public facilities, public services, conservation and development of natural resources, utility installations.

Minimum Parcel Size:

- RR-1: 40,000 square feet.
- RR-2: 80,000 square feet.
- RR-5: Five acres.
- RR-10: Ten acres.

Maximum Dwelling Density: One dwelling per 40,000 square feet, 80,000 square feet, five acres or ten acres, as designated on the land use map. County review and approval required for more than one dwelling per legally created parcel.

Conformity Analysis: The project conforms to the requirements of this policy because the location of the proposed development and use is considered a legal nonconforming parcel for

the land use designation of Rural Residential: 10, which has a ten-acre minimum parcel size but the parcel is approximately 2.3 acres. Both conforming and legal nonconforming RR-10 parcels permit cottage industries, which the project proposes.

Policy DE-32: Allow development of legal nonconforming lots, structures and uses that are consistent with General Plan, environmental and community objectives and seek the discontinuance of those which are not consistent. The following standards shall apply:

- Legal nonconforming lots may be developed, subject to current development standards, legal nonconforming structures may be used, and legal nonconforming uses may continue when basic health and safety are provided.
- Discontinued or destroyed legal nonconforming uses and structures must be reestablished within a reasonable time, as established in the Development Code, or future uses must conform to applicable regulations.

Conformity Analysis: The project does not conform to the requirements of this policy because, although it involves proposed uses and development on a legal nonconforming lot, the proposed development is not consistent with numerous policies in the General Plan such that, on balance, the project cannot be found to be more consistent than not with the applicable General Plan policies, as discussed throughout this analysis. Further, the project only conforms to a single, relevant applicable General Plan policy, Policy DE-14, but does not conform to any other relevant and applicable policies. Moreover, the full scope of the project, which includes the prior unpermitted lot clearing and grading as well as the construction of the metal accessory building in a location previously covered by native Mendocino Cypress Woodlands, in addition to the requested use of the improperly constructed building as Cottage Industry General, Automotive and Equipment – Repairs, Heavy, is not consistent with the County’s environmental or community objectives as reflected in the numerous General Plan policies that are intended to protect and retain existing natural features and habitats, including rare and endangered Mendocino Cypress Woodlands. The prior unpermitted work harmed the existing natural environment and is thus inconsistent with the environmental objectives encouraging or requiring the retention and protection of these sensitive natural habitats and ecosystems.

The use and development of legal nonconforming lots is only possible when basic health and safety are provided by the development but no health or safety features are included in the requested minor use permit in part because no restroom facilities are provided in the shop building for the use of the applicant’s existing or future employees, which violates applicable workplace regulations and encourages unsanitary practices around the project site, including unsanitary practices adjacent to the location of the water well for the neighboring residential properties. The requested minor use permit also fails to provide safe and adequate road access to the project site because the road is not developed to current County standards applicable to any type of road, let alone a road serving a commercial development like an auto mechanic shop. The substandard characteristics of the existing private access road contributes to unsafe

conditions for area residents and visitors due to conflicts among vehicles, and between pedestrians and vehicles concurrently using the private access road.

Policy DE-51: Encourage home occupations and cottage industries in conjunction with residential uses when limited in scope and compatible with residential or neighborhood character. Cottage industries and home occupations that grow beyond site or building limitations or become incompatible with the neighborhood should be relocated to appropriately zoned properties.

Conformity Analysis: The project does not conform to the requirements of this policy because the scope of the proposed cottage industry is not compatible with the residential character of the neighborhood due to the large vehicle traffic accessing the site via a substandard private road of inadequate width to accommodate such vehicles or facilitate adequate emergency access. Moreover, the existing unpermitted use of the property as an auto repair facility has already grown beyond the site and building limitations based on the numerous vehicles and vehicle components that are stored around the property far in excess of the size limitations applicable to cottage industries for the interior of the building and the outdoor parking areas. As such, the use proposed as a cottage industry already meets the requirement of Policy DE-51 that when that use grows beyond the site and building limitations or becomes incompatible with the neighborhood, it should be relocated to an alternative location in a zone that permits that use by right rather than under a use permit. In this case, the cottage industry use is heavy automobile maintenance and repair, which is not a permitted use in Rural Residential zoning, but the existing unpermitted use of the shop building and outdoor parking areas already exceeds the proposed use permit scope and size limitations so it should already be relocated to an appropriate location zoned for commercial or industrial uses.

Policy DE-98: The County will protect residential areas and other noise-sensitive uses from excessive noise by doing the following:

- 1) Requiring that new land uses, new roadways, and other new noise sources do not create unacceptable noise levels on adjacent parcels.
- 2) Allowing homes or noise-sensitive uses to be developed only in places where existing and projected noise levels will meet the exterior noise guidelines and standards shown in Policies DE-100 and DE-101.
- 3) Requiring that County decisions which would cause or allow an increase in noise created by stationary or mobile sources (such as development of noise-generating land uses or the construction of new or wider roadways) be informed by a noise analysis and accompanied by noise reduction measures to keep noise at acceptable levels.

Conformity Analysis: The project does not conform to the requirements of Policies DE-98 through DE-102 because the documented noise levels from existing unpermitted activities, which are substantially similar to the activities contemplated under the requested minor use permit because the proposed use involves the same facilities and equipment that were constructed on the site and then used without appropriate permits or , regularly exceed the

applicable exterior noise guidelines and standards by a factor of two or three times the applicable noise limits. Moreover, insufficient noise reduction measures in the form of special conditions have been proposed to address the excessive noise exposure that is a reasonably foreseeable consequence of the approval of the minor use permit because the existing unpermitted activities are basically equivalent to the proposed activities to be regulated by the minor use permit.

Likewise, no noise analysis or noise-reducing measures have been incorporated into the proposed use permit conditions. Instead, proposed Condition No. 18, appears to permit "excessive noise" between the hours of 8:00 AM and 8:00 PM but noise that is "excessive" for residential receiving uses is 50 dBA for more than thirty minutes in any hour from 7:00 AM to 10:00 PM, which is far below measured noise levels. Policy DE-100 establishes the maximum exterior noise exposure level at 60 dBA for the same time period and prohibits development that would expose residential property to noise in excess of those levels even when lower intermittent "excessive" noise is permitted. The neighboring property regularly receives noise in excess of 80 dBA for more than thirty minutes per hour based on readings taken by the property owners, including sporadic exposure in excess of 112 dBA. As such, the project will require additional special conditions to mitigate for the excessive noise exposure, including potential installation of noise-dampening insulation in the building, prohibition of noise-generating work outside the building or inside the building when the doors are left open, and

Policy DE-99: To implement Policy DE-98, the following shall apply:

- 1) No new use regulated by the County shall be permitted to generate noise that would cause the ambient noise on any adjacent parcel to exceed the "completely compatible" 24-hour guidelines shown in Policy DE-101 or the 30-minute noise standards in Policy DE-100.
- 2) The County shall ensure that noise mitigation to achieve a "completely compatible" 24-hour exterior noise level and conformance with the 30-minute exterior noise standard is provided in conjunction with any decision it makes that would cause a violation of item 1) above.
- 3) Developers of new residential or other noise-sensitive uses which are placed in environments subject to existing or projected noise that exceeds the "completely compatible" guidelines in Policy DE-101 shall be responsible for ensuring that acceptable exterior and interior noise levels will be achieved.
- 4) The County shall ensure that roadway projects include mitigation measures to maintain at least "tentatively compatible" noise levels as shown in Policy DE-101. Mitigation for roadway noise may be deferred where "tentatively compatible" noise guidelines would be exceeded on vacant lands, but shall be installed as part of the roadway project where the noise would affect existing homes. Deferred mitigation shall be the responsibility of the project which places residential units on vacant lands.
- 5) Developers of new noise-creating uses shall be responsible for implementing noise reduction techniques either at the source or at the residential use to achieve acceptable exterior and interior noise levels.

- 6) The County shall be responsible for providing noise mitigation required as the result of County decisions to increase transportation noise standards.
- 7) The County shall seek to obtain noise mitigation from other agencies (including the State of California) required to address the noise impacts of decisions made by those agencies (including, but not limited to, roadway widenings).

Action Item DE-99.1: Apply the State Noise Insulation Standards, zoning and building controls, buffers, sound barriers, traffic controls, and other effective measures to reduce exposure to unsafe and undesired noise sources.

Action Item DE-99.2: Require acoustical studies for:

- 1) Significant new noise generators,
- 2) New noise-sensitive uses in noise-impacted areas or near noise generators, or
- 3) New uses which are proposed to be developed in areas which do not meet the “completely compatible” exterior noise guidelines contained in Policy DE-100 or Policy DE-101.

If information on the noise environment at a project site is not available, a measurement of the noise environment by a qualified acoustical engineer may be needed to make a determination whether a proposed project complies with the guidelines and standards in Policy DE-100 or DE-101.

Action Item DE-99.3: The County will seek to obtain noise mitigation from other agencies (including the State of California) required to address the noise impacts of decisions made by those agencies (including, but not limited to, roadway widenings and railroad operations).

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-98.

Policy DE-100: The following are the County’s standards for maximum exterior noise levels for residential land uses.

TABLE 3-J
EXTERIOR NOISE LEVEL STANDARDS (LEVELS NOT TO BE EXCEEDED MORE THAN 30 MINUTES IN ANY HOUR)

Land Use Type	Time Period	Maximum Noise Level (dBA)
Single-Family Homes and Duplexes	10 p.m. to 7 a.m.	50
	7 a.m. to 10 p.m.	60
Multiple Residential 3 or More Units Per Building (Triplex +)	10 p.m. to 7 a.m.	55
	7 a.m. to 10 p.m.	60

- Where existing ambient noise levels exceed these standards, the ambient noise level shall be the highest allowable noise level as measured in dBA Leq (30 minutes).
- The noise levels specified above shall be lowered by 5 dB for simple tonal noises (such as humming sounds), noises consisting primarily of speech or music, or for recurring impulsive noises (such as pile drivers, punch presses, and similar machinery).
- The County may impose exterior noise standards which are less restrictive than those specified above, provided that:
 - 1) The noise impact on the residential or other noise-sensitive use is addressed in an environmental analysis,
 - 2) A finding is made by the approving body stating the reasons for accepting a higher exterior noise standard, and
 - 3) Interior noise standards will comply with those identified in Policy DE-103.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-98.

Policy DE-101: The following are noise compatibility guidelines for use in determining the general compatibility of planned land uses:

**TABLE 3-K
NOISE COMPATIBILITY GUIDELINES (EXPRESSED AS A 24-HOUR DAY-NIGHT AVERAGE OR LDN)**

Land Use	Completely Compatible	Tentatively Compatible	Normally Incompatible	Completely Incompatible
Residential	Less than 55 dBA	55-60 dBA	60-75 dBA	Greater than 75 dBA
Commercial	Less than 65 dBA	65-75 dBA	75-80 dBA	Greater than 80 dBA
Industrial	Less than 70 dBA	70-80 dBA	80-85 dBA	Greater than 85 dBA

See Policy DE-102 for the definitions of these levels of compatibility.

- These guidelines apply to land designated by this General Plan for these uses. Residential, retail, or public parks which have been developed on land designated for other uses shall be subject to the exterior noise guidelines for the land on which they are located.
- Non-residential uses located on residentially designated land shall be subject to the exterior noise guidelines for residential lands.
- All uses on Commercial lands, including non-commercial uses, shall be subject to the standards for Commercial land.
- Land use designations not listed above do not have exterior noise compatibility standards. Land use designations with no exterior noise compatibility standard include office and industrial.

- Standards for public schools are set and enforced by the State of California and are not regulated by the County. Therefore, no standards for public schools are shown in Table 3-K.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-98.

Policy DE-102: The following definitions shall be used in combination with the standards in the Noise Compatibility Guidelines shown above.

- “Transportation Noise” consists of noise generated by motor vehicles, trains, and airports.
- “Completely Compatible” means that the specified land use is satisfactory and both the indoor and outdoor environments are pleasant.
- “Tentatively Compatible” means that noise exposure may be of concern, but common building construction practices will make the indoor living environment acceptable, even for sleeping quarters, and the outdoor environment will be reasonably pleasant.
- “Normally Incompatible” means that noise exposure warrants special attention, and new construction or development should generally be undertaken only after a detailed analysis of noise reduction requirements is made and needed noise insulation features are included in the design. Careful site planning or exterior barriers may be needed to make the outdoor environment tolerable.
- “Completely Incompatible” means that the noise exposure is so severe that new construction or development should generally not be undertaken.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-98.

Policy DE-121: New discretionary development will be required to demonstrate that basic infrastructure is available and has adequate capacity to serve the project without degrading existing level of service standards.

Conformity Analysis: The project does not conform to the requirements of this policy because the existing private road that provides access to the site does not meet County road standards for residential uses let alone commercial uses, which are proposed under the minor use permit. The existing private road is of inadequate width to permit safe or adequate access by large vehicles, including Waste Management vehicles used for solid waste collection, which refuses to access the parcels and requires placement of solid waste containers at Little Lake Road for weekly collection. The road is approximately eleven feet wide at many points, which is also inadequate to permit safe ingress and egress of emergency vehicles because the private road does not also include a turn-around locations. Similarly, the narrow road does not provide adequate access for the large tow trucks that will deliver vehicles to the parcel without preventing other vehicles from using the road at the same time. Since there are few turn outs or

wider points and many blind turns, this presents extremely dangerous conditions for vehicular access, particularly for unfamiliar tow truck drivers or delivery vehicles.

Policy DE-203: All development projects shall include plans and facilities to store and manage solid waste and hazardous materials and wastes in a safe and environmentally sound manner.

Conformity Analysis: *The project does not conform to the requirements of this policy because there are no provisions for the storage or management of solid waste or hazardous materials. In fact, the lack of such facilities has already resulted in improper on-site storage of damaged or deteriorated vehicles and vehicle components that have resulted in code enforcement cases and unsafe environmental conditions. For example, leaking vehicle components are being stored in the vicinity of the water well of the neighboring property potentially contaminating that property's drinking water supply. Likewise, the lack of adequate solid waste storage or disposal facilities or the ability of Waste Management to access the site to facilitate the removal of solid waste generated from vehicle maintenance and repair has resulted in improper on-site disposal of hazardous and toxic materials, including the documented burial of vehicle batteries, for example. The proposed permit conditions only require "review" by the Environmental Health Department for solid waste above certain quantity thresholds but provides no on-going monitoring or maintenance of the site to facilitate the implementation of this special condition. The special conditions do not require remediation of, or address in any way, the existing likely contamination and improper disposal of hazardous materials (e.g., the buried batteries).*

Policy DE-214: The County shall deny development proposals that present substantial fire hazard risk to residents and safety providers responding to a wildland fire.

Action Item DE-214.1: Work with CalFire to administer the Fire Safe Guidelines and fire protection programs for State Responsibility Areas and development interfaces.

Conformity Analysis: *The project does not conform to the requirements of this policy because there has been no provision of adequate emergency access through improvements to the existing private access road to bring it up to minimum requirements despite it not meeting any of the applicable County road design standards or CalFire regulations, including a complete omission of the standard requirement of adding an adequate turn-around to permit safe ingress and egress for fire trucks that may respond to fires on the property or in the adjacent state forest. There is no responsive comments from either CalFire or the Mendocino Fire Protection District concerning safe fire access to this property and there is a documented history of structure fires on the property, including a 2011 fire that destroyed a residential structure. There is also no provision for adequate on-site water storage that would be available for fire-suppression efforts should another fire occur on the property due to the operations of the proposed vehicle maintenance and repair shop.*

Policy DE-215: Development shall be located, designed and managed to reduce fire risk to life, property and natural resources, and incorporate adequate fire protection consistent with the General Plan and adopted regulations.

Conformity Analysis: *The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-214.*

Policy DE-216: Development shall facilitate and integrate the ability for fire protection agencies to access and maintain fuel and firebreaks, water supplies, and emergency access routes.

Conformity Analysis: *The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-214.*

Policy DE-217: New development in State Responsibility Areas and urban/rural interfaces should incorporate:

- Fuelbreaks or greenbelts coordinated with water supplies and access providing maximum circulation consistent with topography.
- Adequate and accessible defensible space.
- At least two ingress-egress routes to a public roadway, unless alternative routes accessible to fire equipment are provided.
- Access to publicly maintained evacuation routes at regular intervals.
- Access routes sufficient to accommodate evacuating vehicles, fire equipment and vegetation management zones.
- Primary traffic lanes to all building sites with turnarounds to accommodate fire equipment.
- Water supplies within short distance of fire equipment access.
- Fire flows with adequate duration.
- Develop fire safe plans for communities to assist in qualifying for grants.

Conformity Analysis: *The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-214.*

Policy DE-220: Developments shall be approved only if sufficient fire-fighting resources, such as fire stations, equipment, personnel, hydrants and water supplies, will be available to serve all phases of development.

Action Item DE-220.1: Work with fire protection organizations to achieve funding stability necessary to maintain adequate staffing, facilities and equipment.

Action Item DE-220.2: Collaborate with fire protection authorities, land managers, private landowners, and others to improve fire management strategies for reducing the impacts of wildfires on forest and watershed ecosystems.

Action Item DE-220.3: Work with fire protection providers (i.e., CalFire, U.S. Forest Service, local fire protection districts, and cities) to ensure development is compatible with fire protection capabilities.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policy DE-214.

APPLICABLE POLICIES FROM THE RESOURCE MANAGEMENT ELEMENT:

Policy RM-28: All discretionary public and private projects that identify special-status species in a biological resources evaluation (where natural conditions of the site suggest the potential presence of special-status species) shall avoid impacts to special-status species and their habitat to the maximum extent feasible. Where impacts cannot be avoided, projects shall include the implementation of site-specific or project-specific effective mitigation strategies developed by a qualified professional in consultation with state or federal resource agencies with jurisdiction (if applicable) including, but not limited to, the following strategies:

- Preservation of habitat and connectivity of adequate size, quality, and configuration to support the special-status species. Connectivity shall be determined based on the specifics of the species' needs.
- Provision of supplemental planting and maintenance of grasses, shrubs, and trees of similar quality and quantity to provide adequate vegetation cover to enhance water quality, minimize sedimentation and soil transport, and provide adequate shelter and food for wildlife.
- Provide protection for habitat and the known locations of special-status species through adequate buffering or other means.
- Provide replacement habitat of like quantity and quality on- or off-site for special-status species.
- Enhance existing special-status species habitat values through restoration and replanting of native plant species.
- Provision of temporary or permanent buffers of adequate size (based on the specifics of the special-status species) to avoid nest abandonment by nesting migratory birds and raptors associated with construction and site development activities.
- Incorporation of the provisions or demonstration of compliance with applicable recovery plans for federally listed species.

Action Item RM-28.1: The County shall develop CEQA standards that require disclosure of impacts to all sensitive biotic communities during review of discretionary projects. These standards shall require the following mitigation:

- **Sensitive Biotic Communities** – For all sensitive biotic communities, restore or create habitat at a no net loss standard of habitat value lost. Where it is determined that restoration or creation are ecologically infeasible, preserve at a 2:1 ratio for habitat loss.
- **Oak Woodland** – Maintain and improve oak woodland habitat to provide for slope stabilization, soil protection, species diversity and wildlife habitat through the following measures:

- Preserve, to the maximum extent possible, oak trees and other vegetation that occur near the heads of drainages or depressions to maintain diversity of vegetation type and wildlife habitat as part of agricultural projects.
- Comply with the Oak Woodlands Preservation Act (PRC Section 21083.4) regarding oak woodland preservation to conserve the integrity and diversity of oak woodlands, and retain, to the maximum extent feasible, existing oak woodland and chaparral communities and other significant vegetation as part of residential, commercial, and industrial approvals.
- Provide appropriate replacement of lost oak woodlands or preservation at a 2:1 ratio for habitat loss.

Conformity Analysis: The project does not conform to the requirements of this policy because it includes unpermitted removal of special status trees from the Mendocino Cypress Woodlands that are present on the site, as depicted in aerial photographs of the parcel prior to the construction of the metal building being proposed for the cottage industry use requested under the minor use permit. These photographs demonstrate the misrepresentation of the development history on the site in the project application and resulting inaccurate description in the staff report and CEQA analysis, which described the metal building as replacing an existing deteriorated pole barn on the same site that actually never existed. Instead, the site of the metal building and adjacent outdoor parking and storage areas (AKA junk yard) was clearly an existing natural forested area like most of the parcel, which CDFW has identified as a Sensitive Natural Community (AKA Sensitive Biotic Communities) consisting of Mendocino Cypress Woodlands. The unpermitted removal of the existing trees and unpermitted grading of the site removed important habitat that must be restored or replaced in order to maintain consistency with this and related policies. Because the project involved unpermitted work that disturbed these biological resources and project activities did not benefit from avoidance and mitigation strategies developed by qualified professional or in consultation with state agencies, appropriate mitigation strategies and remedial action must be developed and implemented in order to attempt to become consistent with this and related General Plan policies.

Policy RM-72: New development shall protect sensitive environments and resource corridors while maintaining compatibility with adjacent uses.

Conformity Analysis: The project does not conform to the requirements of this policy because the development history and activities failed to protect the sensitive environment of the pygmy forest of Mendocino Cypress Woodlands by segmenting the scope of the overall project to perform the environmentally damaging work prior to applying for the minor use permit through inaccurate misrepresentations of the factual basis of the original demolition and building permits, thus avoiding environmental analysis of the true impacts of the project. An application for a demolition permit that was never finalized for an alleged pole barn that never existed does not provide a reasonable basis to determine that the project does not involve any new development and thus does not require an environmental review of the potentially significant impacts of the project. Avoiding an environmental analysis prevented the protection of sensitive environments, including a lack of protection of the portion of the pygmy forest that was

removed to facilitate the construction of the shop building now being reviewed for a potential cottage industry use.

Policy RM-73: The design of new development should emphasize the avoidance of sensitive resources and environments rather than their removal and replacement.

Conformity Analysis: The project does not conform to the requirements of this policy because, by improperly avoiding an environmental review of the early stages of this project, including the tree removal and site grading, no analysis of alternative site configuration was performed for this project in an attempt to avoid removing or disturbing the Mendocino Cypress Woodlands by these early project activities.

Policy RM-74: Discretionary development shall be designed or conditioned to achieve no net loss of sensitive resources.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policies RM-72 and RM-73.

Policy RM-75: Protection of existing sensitive resources is the highest priority. Onsite replacement or offsite replacement, protection or enhancement is less desirable.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policies RM-72 and RM-73.

Policy RM-84: Protect “pygmy” ecosystems (“pygmy” and “transitional pygmy” vegetation and soils) through the use of measures that include minimizing:

- Vegetation removal,
- Disruption of vegetation continuity, and
- The introduction of water and nutrients due to human activity, sewage disposal systems, animals or agricultural uses.

Also:

- Limit subdivision of land on agricultural lands adjacent to “pygmy” ecosystems, and
- Promote best management practices to minimize impacts.

Conformity Analysis: The project does not conform to the requirements of this policy as discussed in the conformity analysis for Policies RM-28 and RM-72 through RM-75.

MCC § 20.196.020 (B): ADEQUATE UTILITIES, ROADS, DRAINAGE & OTHER FACILITIES

The staff report recommends a finding that the project provides adequate utilities, roads, drainage, and other necessary facilities, without providing any analysis or evidentiary support for that assertion short of noting that the project site is accessed via a driveway that encroaches from a private road and utility connections have been established for the buildings. Drainage or other necessary facilities are not mentioned at all. Any discussion of the adequacy of the private road access is omitted from the staff report other than noting that the Mendocino County Department of Transportation requires improvements to the private road approach at Little Lake Road to bring it up to commercial standards. The adequacy of the rest of the road is not addressed at all, including a lack of discussion concerning the applicable CalFire regulations about access road requirements to facilitate emergency response. The road does not meet these requirements because it lacks adequate width or necessary turnarounds for fire trucks or other emergency vehicles to access or depart the project site. Nothing in the record, including nothing in the staff report or the draft resolution, provides any evidence, let alone substantial evidence, to justify finding that the access road or drainage are adequate. Rather, the complete record provides substantial evidence that the Zoning Administrator cannot make this required finding because the current width and characteristics of the access road are shown to not meet the requirements of the County's road standards or CalFire's regulations.

MCC § 20.196.020 (C): NUISANCES & GENERAL WELFARE

The staff report recommends a finding that the project, as conditioned, will not constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in or passing through the neighborhood, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county. Nothing in the record, including nothing in the staff report or the draft resolution, provides any evidence, let alone substantial evidence, that this required finding is justified. Rather, the complete record provides substantial evidence that the Zoning Administrator cannot make this required finding because the proposed use is substantially similar to the existing unpermitted use as a vehicle maintenance and repair shop, which is already operating as a nuisance in the rural residential neighborhood and has already injured the property and improvements in the neighborhood.

For example, the unpermitted tree clearance and site grading to facilitate the construction of the metal shop building altered the natural landforms in such a way to alter the drainage patterns of the property, resulting in increased runoff and periodic flooding of at least two of the adjacent rural residential parcels, including damage to an existing septic system. Moreover, debris and solid waste have been improperly disposed of on-site adjacent to the water well of a neighboring property increasing the risk of eventual contamination of the property's water

supply. The dramatically increased noise from the vehicle maintenance and repair activities that are ongoing on the project site have been measured to far exceed the maximum noise exposure thresholds for receiving residential uses, and the private access road has suffered increased deterioration from the frequent heavy traffic due to vehicles being delivered to the project site. Moreover, such vehicles have leaked oil and other hazardous fluids into the private access road, resulting in soil contamination and potential runoff into the nearby streams and waterways entering the adjacent state forest.

The increased maintenance and potential remediation costs to the community due to the project's damage to their shared access road and overall neighborhood conditions and environment demonstrates that the proposed use is not compatible with the rural residential neighborhood in which it is proposed to be located. The suggested conditions lack specific measures to address these documented operational concerns and are too vague to adequately protect against reoccurrence of the same nuisance conditions in the future so they cannot reasonably support a finding that the proposed use will not continue to create nuisance conditions if it is developed as conditioned.

MCC § 20.196.020 (D): INTEGRITY OF THE RR 10 ZONING DISTRICT

The staff report recommends a finding that the proposed use preserves the integrity of the Rural Residential (RR 10) zoning district. RR 10 zoning permits cottage industry uses with a minor use permit, including Automotive and Equipment — Repairs, Heavy. However, this use is not permitted by right within the RR 10 zoning district because, in many instances, such a use would not be compatible with the purpose and intent of a rural residential neighborhood depending on how it is designed, constructed, and operated. Rural Residential zoning “is intended to create and enhance residential areas where agricultural use compatible with a permanent residential use is desired.” This particular proposed cottage industry use does nothing to enhance the residential character or provide for agricultural use in this neighborhood because it exhibits the very aspects that the zoning code, found in MCC Chp. 20.160, suggests would make a proposed cottage industry incompatible with a neighborhood.

Instead of enhancing and preserving the rural or residential character of Prairie Flower Road, the proposed use does the opposite by interfering with the quiet enjoyment of the residents, which is the primary intended use of land zoned RR 10. As such, the record does not provide any evidence, let alone substantial evidence, that this required finding is justified. Rather, the complete record provides substantial evidence that the Zoning Administrator cannot make this required finding because a vehicle maintenance and repair shop with all its attendant noise, traffic, and impacts to the neighboring property that is surrounded by state forest and rural residential uses interferes with the existing residential uses that are integral to rural residential neighborhoods as envisioned by RR 10 zoning.