

BYZANTIUM BY THE BAY
County Mis-Implementation of the Mendocino Town Plan
June 17, 2008

Summary

A Grand Jury investigation found that the County of Mendocino has failed, since 2001, to administer licensing of Vacation Home Rentals and Single Unit Rentals (VHR/SUR) in the Town of Mendocino as required by the Mendocino Town Plan (MTP). The MTP and the related Implementation Plan (IP) constitute the Mendocino Town Segment Local Coastal Program (LCP). The LCP was certified by the California Coastal Commission (CCC) and filed with the Secretary for Resources on December 9, 1996.¹ This is the legal document governing all land use and development in the Town of Mendocino.²

On March 8, 1999, the Board of Supervisors (BOS) accepted a staff review and update of VHR/SUR license data. Staff determined that 53 VHR/SURs licenses are permitted by the MTP and that attrition had reduced the number of available units, leaving 19 licenses available. The BOS concurred with staff that the minimal development in Mendocino did not merit an application to the CCC to amend the MTP/LUP. The BOS directed staff to update the MTP Tables that list licensed VHRs and SURs and to allow license applicants on the chronological waiting list to proceed with their applications. Nine new licenses were issued.

In response to political pressure, the BOS reluctantly established a Mendocino Citizens Advisory Committee (CAC) to explore and advise the County on five areas, including VHR/SUR licensing. As the name implies, a CAC is an *advisory* body with no legal authority to alter *any* County policy. The CAC submitted its report with recommendations that would eliminate VHRs in residentially zoned areas of the Town and significantly reduce the total number of VHR/SUR units.

In December 2005, Planning staff advised the BOS that “...*there are currently 23-30 fewer VHR/SUR units than the 53 units authorized by the MTP.*” This reduction is specifically forbidden by the certified LCP and is inconsistent with the Coastal Act requirement to provide public access to coastal resources.³

In addition, Planning Department staff members have:

- failed to maintain a chronological waiting list of applicants for VHR/SUR licenses, as required by the certified MTP;
- denied a Use Permit (required to obtain a VHR license) to at least one applicant on the basis of the CAC recommendations;

¹ In conjunction with the LUP certification in November 1996, the CCC granted a Categorical Exclusion Order that exempts single-family homes, water wells and septic systems in mapped areas of Mendocino from the need to obtain a Coastal Development Permit.

² MTP excerpts that are relevant to licensing of VHR/SUR units are presented in *Exhibit I*. The timeline for certification of the Mendocino LCP is presented in *Exhibit II*.

³ See underlined text in *Exhibit I*

- discouraged other prospective applicants from pursuing a license;
- continued to distribute copies of the Mendocino Town Plan and Zoning Code that bear incorrect certification dates, and
- have not yet revised the VHR/SUR Tables prepared in 1992 to correct mapping errors that omitted eight units that were licensed prior to that time. The Tables do not show the corrected baseline number of 53 allowable licenses.

On October 2, 2001, the BOS, by order of the Chair, directed the Fifth District Supervisor to “...work with staff and interested members of the CAC, to coordinate the followup action in response to the recommendations presented by the Town of Mendocino CAC.” This appears to have resulted in a de facto VHR/SUR licensing moratorium. The Board of Supervisors (BOS) never formally endorsed a freeze on VHR/SUR licensing, and no LCP amendment application was submitted to seek CCC certification of this change in practice.

Limits on visitor-serving facilities were allowed by the CCC to protect the residential character of the Town. It is not possible to estimate the impact of licensed and/or unlicensed VHR/SUR accommodations without a legal and transparent licensing process *and* mechanisms for enforcement of the licensing requirements. The de facto moratorium on the issuance of VHR/SUR licenses has resulted in a:

- loss of income to property owners,
- loss of revenue to the Town,
- loss of the 10% Transient Occupancy Tax (TOT) to the County, and
- drastic reduction in licensed visitor-serving accommodations that are suitable for families.

In February 2008, a County long-range planning team began a review to update the MTP Tables that document the number and location of licensed VHR/SUR units. The BOS has also directed the planning team to establish processes to maintain and monitor this data and to maintain the required chronological waiting lists.

Methods

The Grand Jury interviewed Mendocino County Supervisors and Planning and Building Services staff and reviewed relevant documents.

Background

The California Coastal Commission (CCC) was established by a voter initiative (Prop 20) in 1972 and the Legislature’s adoption of the California Coastal Act of 1976.⁴ The Coastal Act establishes the statutory standards which the Commission and local governments apply to planning and regulatory decisions.

⁴ www.coastal.ca.gov

The coastal zone, as mapped by the Legislature, ranges from a few hundred feet up to five miles in width and includes a 3-mile band of ocean the length of the California coast. The Coastal Act is primarily implemented through development of local coastal programs (LCPs) that are required to be completed by each of the 15 counties and more than 60 cities located in whole or in part within the coastal zone.

Many of the coastal counties and cities have divided their local coastal zone jurisdictions into geographic segments, resulting in some 126 separate LCPs. As of 2002, about 70% of these LCPs had been certified, many of them in the late 1980s.

The Coastal Act requires that the Coastal Commission review each certified LCP every five years. Although some local governments have updated their LCPs over the years by processing hundreds of LCP amendments through the Commission, with few exceptions, the LCPs are significantly out of date. The CCC, itself, has initiated only six periodic reviews and has completed only two.⁵

Findings

The California Coastal Commission

1. Local Coastal Programs (LCPs) are basic planning tools used by local governments to guide development in the coastal zone. They contain ground rules for development and protection of coastal resources.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

2. An LCP includes a *land use plan* (LUP) which may be relevant parts of a local general plan (GP) and an *implementation plan* (IP) (also known as a *Land Use Development Code* or LUDC). The IP/LUDC consists of relevant zoning codes, maps and other legal instruments required to implement the LUP. (The Mendocino Town Plan is the LUP portion of the Town's LCP. It was accepted by the CCC in 1992 but was not "effectively

⁵ The CCC has initiated LCP reviews for Trinidad, Long Beach, Sand City, San Luis Obispo County, Monterey County, and the Marina del Rey LCP segment. Only the reviews of Sand City and San Luis Obispo County have been completed.

certified” until the complete LCP was filed with the Secretary for Resources on December 9, 1996).

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors disagrees partially with this finding, per the Mendocino County Department of Planning and Building Services Director’s response.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees partially with this finding, per the Mendocino County Department of Planning and Building Services Director’s response.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees partially with this finding, per the Mendocino County Department of Planning and Building Services Director’s response.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

I disagree partially with the finding. The Mendocino Town Plan (MTP) was certified by the California Coastal Commission in 1992, however the County of Mendocino elected to make revision to the implementation program (zoning ordinance) and this final portion of the LUP was completed in December 1996.

3. Local or County governments cannot legally apply an LCP or amendments to an LCP prior to certification by the CCC.⁶ An LCP does not take effect until:

- a local government has adopted the LUP and IP/LUDC by formal resolution;
- the Coastal Commission has certified the LCP as being in compliance with Coastal Act policies;
- the local government has formally accepted the Commission’s approval, along with any suggested modifications adopted by the Commission;
- the CCC has filed a Notice of Certification with the State Resources Agency.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

⁶Public Resources Code 30514 may be accessed at www.leginfo.ca.gov/calaw.html

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

I agree with the findings.

4. Most development in the Coastal Zone requires a Coastal Development Permit (CDP).⁷ Once an LCP and its IP/LUDC have been “effectively certified,” authority is vested in the local agency for issuing CDPs for development inland from the mean high tide line.⁸

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

I agree with the findings.

5. Depending on the type and location of a permitted project, it may or may not be subject to appeal to the CCC. With the exception of major public works and energy projects, most denials by local government are not subject to appeal to the CCC and may only be challenged through the courts.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

⁷ In mapped areas of the Coastal Zone, including the Town of Mendocino, residential development, water wells and septic systems are designated as “categorically exempt” and do not require a CDP.

⁸ Although local agencies may opt to exercise coastal development permit authority, subject to appeal to the Commission, following certification of only an LUP, only the City of Los Angeles has exercised this option.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)
I agree with the findings.

6. When a locally approved coastal development permit is appealed, the CCC has 49 days to hold a hearing. At a minimum, it must determine whether or not the local approval raises a substantial issue with respect to consistency with the policies of the certified LCP.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)
I agree with the findings.

7. If no substantial issue is found, the local approval stands; if the CCC determines that there is a substantial issue, there is no limit on how long it can take to hold a full de novo hearing.⁹ The only recourse in the event of a contested CCC decision is to the courts.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors disagrees partially with the finding, per the Mendocino County Department of Planning and Building Services Director's response.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Department of Planning and Building Services Director's response.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Department of Planning and Building Services Director's response.

⁹ In a de novo hearing, prior testimony and the findings of local authorities are not considered. The entire process begins anew.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated:

It is unclear based upon the formatting of the Report if the following quote from the Report is a part of Finding #7: "...the County's conscious and systematic reduction in the number of licensed VHR & SUR units in the Town of Mendocino on the basis of a CAC recommendation that had no power of law". The certified Town Plan specifically states the "...The County shall not require a reduction in the total number of VHR's and SUR's in existence on June 10, 1992."

First, there was no conscious, systematic action by the County to reduce the number of licensed VHR's/SUR's. As discussed above, use permits for new VHR's/SUR's have not been processed because staffing levels and other program priorities have impeded the County's ability to (1) bring closure through adoption or formal rejection to the CAC recommendations, and (2) maintain and track the number of existing VHR's/SUR's to guarantee that new facilities would not exceed the quota allowed for in the Mendocino Town Plan.

Secondly, the quote in the Grand Jury Report does not accurately reflect the Mendocino Town Plan. The Plan states, in part:

"...but shall not require any reduction in the number of Vacation Home Rentals or Single Unit Rentals in existence on the date of certification by the Coastal Commission of this amendment."

The last sentence in the Finding correctly states that the Coastal Act gives visitor-serving lodging higher priority than residential uses. However, that statement alone fails to acknowledge that the Mendocino Town Plan as certified by the California Coastal Commission, includes numerous statements and policies intended to maintain a balance of residential, commercial, and visitor serving facilities within the Town. Examples include:

"The intent of this plan is to reasonably preserve the long term housing inventory in the Town of Mendocino..." pg. 3

4.13-1 "...Mendocino shall be recognized as a historic residential community."

4.13-4(5) "...To preserve town character and maintain the town as a residential community..."

Thus, while the Coastal Act provides a statewide policy encouraging visitor serving facilities within the Coastal Zone, the more specific and Coastal Commission certified, Mendocino Town Plan states "The intent of this plan is to reasonably preserve the long term housing inventory in the town of Mendocino..."

In conclusion, the Grand Jury statement/findings inaccurately assert that visitor serving facilities are a priority above long term residential uses when clearly the Mendocino Town Plan attempts to provide a balance of uses and maintain the town's character.

Mendocino County governed land use and development in Mendocino prior to the Coastal Act. The original Mendocino Town Plan (MTP/LUP) was a chapter in the 1985 County General Plan. The CCC certified the Town as a separate “Segment” in June 1990. The Coastal Commission has certified four Local Coastal Programs in Mendocino County including the:

- Point Arena LCP certified on 12/3/81 with a comprehensive update completed in 2007;
- City of Fort Bragg LCP certified on 7/4/83 with subsequent amendments certified in 1985;
- Mendocino County LCP effectively certified on 12/9/96;
- Mendocino Town Segment LCP certified on 11/14/96 and filed with the Secretary for Resources on 12/9/96.¹⁰

This report focuses on the Mendocino Town Segment LCP and the County’s conscious and systematic reduction in the number of licensed VHR and SUR units in the Town of Mendocino on the basis of a CAC recommendation that had no power of law. The certified Town Plan specifically states that “...*The County shall not require a reduction in the total number of VHR and SURs in existence on June 10, 1992.*”¹¹

In January 1992, the County submitted amendment No.1-92 (Major) to amend the Mendocino Town Plan (LUP) and Zoning Code (IP). In October 1992, the CCC determined that the LUP certification process was legally adequate. It was “effectively certified” on December 9, 1996 when the Mendocino Local Coastal Program was filed with the Secretary for Resources.

The Town of Mendocino is bordered by the Headlands State Park and includes the Mendocino National Historic District as well as non-historic residential neighborhoods to the north and east. Highway One divides Zones A and B of the Historic District and carries a steady flow of visitors and residents of the greater Mendocino area. All land use and development in the coastal zone is under the auspices of the California Coastal Commission. It is subject to regulation by the Coastal Act which gives visitor-serving lodging a higher priority than residential uses.

¹⁰ Certification dates are documented by CCC correspondence dated January 9, 1997 and Notice of Determination. These documents may be viewed with this report at www.co.mendocino.ca.us/grandjury

¹¹ According to Planning Division records, there were 34 VHRs and 19 SURs in existence when the 1992 Tables were developed. The 1999 Review added 8 units to the baseline Tables and determined that a maximum of 53 VHR/SURs are allowed.

Findings

8. Because Mendocino is unincorporated, County government is responsible for implementing land use and development regulations as certified by the CCC.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

9. The Mendocino Town Plan (LUP) first existed as a chapter in the 1985 Mendocino County General Plan. The CCC certified Mendocino as a separate segment in June 1990.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

10. In January 1992, the County submitted CCC application No. 1-92 (Major) to amend the MTP and Mendocino Implementation Code. Together, these documents constitute the Mendocino Segment LCP.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

11. On April 7, 1992, the CCC accepted the LCP with suggested modifications. The County requested a 90-day extension which the CCC granted.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

12. On September 14, 1992, the BOS approved Resolution No. 92-169 accepting the MTP/LUP. Because no action was taken on the IP, the CCC action on the IP lapsed and neither the IP nor the completed LCP was certified at that time.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

13. In October 1992, the CCC determined that the MTP/LUP Resolution was “legally adequate.” Effective certification was delayed by the incomplete IP.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I agree with the findings.

14. In April 1995, the County submitted an amended Mendocino Town Segment IP that was certified by the CCC on November 14, 1996.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I agree with the findings.

15. Once certified by the CCC, a Local Coastal Program or an amendment to a certified LCP becomes effective only when it has been accepted by the local jurisdiction and filed with the Secretary for Resources.¹²

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I agree with the findings.

¹² California Government Code §30514(a)

16. The Mendocino Town Plan (MTP/LUP) and Zoning Code fulfilled these requirements and became effective as the Mendocino Segment LCP on December 9, 1996.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)
I agree with the findings.

17. Upon effective certification, permit granting authority for the Town of Mendocino transferred from the CCC to the County. The County is fully responsible for implementing the LCP, as certified. Neither the terms of a certified LCP nor amendments to a certified LCP may legally be implemented prior to “effective certification.”

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated:

While the County is responsible for implementing the LCP, the Grand Jury Finding should also acknowledge that the Coastal Commission, through appeals or cases of “original jurisdiction” also is responsible for implementing the LCP.

In response to the second sentence, a City or County does have the authority under State law to adopt urgency ordinances, which could allow for implementation of a Plan prior to “effective certification”.

18. The Coastal Act gives visitor-serving facilities a priority above that of long-term residential use in order to ensure public access to coastal resources.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, please see supporting information as provided in response to Finding no. 7.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees partially with the finding, please see supporting information as provided in response to Finding no. 7.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees partially with the finding, please see supporting information as provided in response to Finding no. 7.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated in response to Finding #7.

19. The CCC recognized the potential impact of tourism on the Town of Mendocino and designated it as a “special community” under Coastal Act §30251 which protects highly scenic areas. This allowed the MTP to include specific protections against a loss of “balance” between visitor-serving facilities and long-term residential housing.¹³

¹³ The Town of Mendocino is not within a designated “highly scenic area.” California Government Code §30253(5) also discusses protection of “special communities.” At the time of effective certification, it was no longer an option to declare the Town a *Sensitive Coastal Resource Area* because the window of opportunity to do so was closed by the Legislature as of September 1, 1978. See CCC correspondence dated 8/7/78 posted with this report at www.co.mendocino.ca.us/grandjury

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated on response to Finding #7.

With regards to footnote #13 regarding Sensitive Coastal Resource Area, it should be noted that this topic has been discussed by the Mendocino County Board of Supervisors and that there is also an opinion/position that the County has the authority to declare the Town of Mendocino a Sensitive Coastal Resource Area.

20. The certified MTP clearly specifies, in a series of Tables, the types of visitor-serving facilities, and the numbers of each, that may be licensed to operate in the Town.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I agree with the findings.

21. The certified MTP establishes the baseline numbers of VHR/SURs that were in existence in 1992. It clearly states that this number may not be increased or decreased by the County, apart from correcting mapping errors, without an amendment that has been “effectively certified” by the Coastal Commission.¹⁴

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated:

Unfortunately the language in the policy is not clear. It is not entirely clear if the policy was intended to (1) recognize and legitimize those VHR’s/SUR’s in existence at the time of certification of the Plan but reduce the number as the properties transfer to other owners so that ultimately the balance stated in the Plan can be achieved, or (2) continue to allow SUR’s up to 46 (as shown on tables in MTP) or 53 (in existence in 1992) VHR’s regardless of changes in ownership or other policies in the Town Plan advocating a 13:1 ratio of dwelling units to VHR’s/SUR’s.

I do not believe that the difference between the 46 units show in Tables in the MTP and the 53 units cited in the 1999 staff review were “mapping errors”. First, VHR’s and SUR’s are not “mapped” but listed in Tables 4.13-2 and 4.13-4. Second, it is likely that the difference in the numbers is the result of property owners obtaining business licenses for a VHR or SUR after preparation of the MTP by the CAC but prior to approval or certification of the Plan by the Coastal Commission.

The Grand Jury Findings are not incorrect, however it does not convey the entire statement which was provided to them. By memorandum dated March 21, 2005 the Planning & Building Services Director advised the Board of Supervisors:

“The Mendocino Town Plan Review was sent to the California Coastal Commission with the Reed LCP amendment in June 2000. Despite a letter from Planning and Building Services Department arguing that the Reed application was considered by the County in the context of the Town Plan Review, the Coastal Commission on September 13, 2000 denied the

¹⁴ See underlined text in Exhibit I.

Reed LCP amendment due to concerns of town character and highway capacity. The Commission rejected the position of a majority of the Board of Supervisors that “The Town Plan Review contains updated information within the Town of Mendocino since 1992 and in reaching its conclusions, the Review included the increase of four units associated with the Reed proposal...” This denial in essence constituted a rejection by the Commission of the County position that the Town Plan Review was complete. Given the Commission position relative to the Reed LCP amendment application and Mendocino Town Plan Review, there was/is no point in initiating “...a clean up” amendment for the Mendocino Town Plan and zoning code which included corrections to the visitor serving facility tables and an update to Policy 4.13-2.”

The Grand Jury concludes that there is a benchmark of 53 allowable units. See response to Finding #21.

Additionally it should be noted that seven, not nine, use permits for VHR’s/SUR’s were approved.

The Grand Jury states that applicants were subject to a minor use permit fee and special use permit conditions. It should be clarified that policy 4.13-4 (5) directs that new locations for VHR’s/SUR’s “...shall be subject to a conditional use permit...”.

Further the Grand Jury Report is in error in stating that the applicants for the nine new VHR licenses were subject to conditions that (1) limit occupancy of a VHR to one person for each 300 square feet, or ten persons total and (2) require off street parking for seven cars. In fact only one of the processed use permits included these conditions. In that specific instance, the site was frequently being rented for large weddings.

22. Policy 4.13-2 of the MTP, as amended in 1992 and “effectively certified” in 1996, requires that the plan “...shall be reviewed three years after certification to determine the effect of development on town character.” The plan is to be revised, if necessary, to preserve the residential town character described in policy 4.13-1.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*
I agree with the findings.

23. Forty-six VHR/SUR units were documented in Table 4.13-2 (SURs) and 4.13-3 (VHRs) in 1992. A staff review in 1999 revealed that there were actually 53 legally licensed units in 1992. The omitted units were added to correct these “mapping errors.” The Tables were also corrected to remove 19 units that were no longer in operation, leaving 34 units in operation in 1999.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated:

I do not believe that the difference between the 46 units show in Tables in the MTP and the 53 units cited in the 1999 staff review were “mapping errors”. First, VHR’s and SUR’s are not “mapped” but listed in Tables 4.13-2 and 4.13-4. Second, it is likely that the difference in the numbers is the result of property owners obtaining business licenses for a VHR or SUR after preparation of the MTP by the CAC but prior to approval or certification of the Plan by the Coastal Commission.

24. On March 8, 1999, the Board of Supervisors accepted the MTP staff review and concluded that the amount of development did not require action to amend the LCP. At that time, the BOS chose not to appoint a Mendocino CAC to further comment on the staff review.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

I agree with the findings.

25. The BOS ordered that applicants on the chronological waiting list for VHR/SUR licenses be allowed to proceed with their applications.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with the finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with the finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with the finding.

Response: (*Director of Mendocino County Department of Planning and Building Services*)
I agree with the finding.

26. The BOS also directed staff to prepare a “clean up” amendment to the Mendocino Town Plan to correct the data errors that had been identified.¹⁵ No such amendment was submitted. The reason given to the Grand Jury by Staff was that a clean up amendment was not submitted because the Staff Review had been submitted in support of a General Plan amendment application by an individual applicant and that amendment was denied. The Staff Report, itself, was never submitted as an amendment and was never heard by the CCC.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors disagree partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

¹⁵ A “clean up amendment” is typically filed to correct various errors and inconsistencies and pull an LUP and IP into a coherent package. The recommended action could also have been achieved with a Minor Amendment to correct the mapping errors. Neither type of amendment is effective until it is effectively certified.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

I disagree partially with the finding for the reasons stated:

The Grand Jury Findings are not incorrect, however it does not convey the entire statement which was provided to them. By memorandum dated March 21, 2005 the Planning & Building Services Director advised the Board of Supervisors:

“The Mendocino Town Plan Review was sent to the California Coastal Commission with the Reed LCP amendment in June 2000. Despite a letter from Planning and Building Services Department arguing that the Reed application was considered by the County in the context of the Town Plan Review, the Coastal Commission on September 13, 2000 denied the Reed LCP amendment due to concerns of town character and highway capacity. The Commission rejected the position of a majority of the Board of Supervisors that “The Town Plan Review contains updated information within the Town of Mendocino since 1992 and in reaching its conclusions, the Review included the increase of four units associated with the Reed proposal...” This denial in essence constituted a rejection by the Commission of the County position that the Town Plan Review was complete. Given the Commission position relative to the Reed LCP amendment application and Mendocino Town Plan Review, there was/is no point in initiating “...a clean up” amendment for the Mendocino Town Plan and zoning code which included corrections to the visitor serving facility tables and an update to Policy 4.13-2.”

27. Ultimately, nine (9) new VHR/SUR licenses were issued. This left the total number of VHR/SUR licenses at 43; this is 10 units less than the benchmark of 53 allowable units.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director’s response.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

I disagree partially with the finding for the reasons stated:

The Grand Jury concludes that there is a benchmark of 53 allowable units. See response to Finding #21. Additionally it should be noted that seven, not nine, use permits for VHR’s/SUR’s were approved.

28. Applicants for the nine new VHR licenses were subjected to a \$1,000 minor use permit fee and to special use permit conditions that:

- limit occupancy of a VHR to one person for each 300 square feet, or ten persons total;
- require off street parking for seven cars;
- require each VHR license holder annually to submit a copy of the current business license and a signed statement of the dates on which the property was rented as a VHR for overnight occupancy;
- establish a minimum of 60 days of overnight rental in any 24-month period as a requirement to maintain the VHR license.
- repeat several requirements that are already stated in the MTP including, that VHRs hold a valid County license and pay 10% Transient Occupancy Tax. Failure to meet the stated conditions can lead to an action to revoke or modify the minor use permit.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

I disagree partially with the finding for the reasons stated:

The Grand Jury states that applicants were subject to a minor use permit fee and special use permit conditions. It should be clarified that policy 4.13-4 (5) directs that new locations for VHR's/SUR's "...shall be subject to a conditional use permit...".

Further the Grand Jury Report is in error in stating that the applicants for the nine new VHR licenses were subject to conditions that (1) limit occupancy of a VHR to one person for each 300 square feet, or ten persons total and (2) require off street parking for seven cars. In fact only one of the processed use permits included these conditions. In that specific instance, the site was frequently being rented for large weddings.

29. A requirement of seven off street parking places would make virtually any property in Mendocino ineligible for a VHR license, including the nine sites whose licenses were issued subject to these terms.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I disagree partially with the following findings for the reasons stated in response to Finding #28

30. Requiring license holders to submit a copy of the County business license and an annual signed statement of the nights rented is burdensome and does little to augment information already collected by the County through quarterly Transient Occupancy Tax (TOT) statements that are mailed to license holders and that must be filed by specified deadlines in order to retain the license.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I disagree partially with the following findings for the reasons stated:

The intent of the condition is to obtain rental information from the owner to verify that the unit is being used as a visitor serving facility and is not simply taking up one of the allowed number of visitor serving units established by the MTP. Simply reviewing the aggregated Transient Occupancy Tax that has been paid does not identify the number of nights a VHR/SUR has been rented in a given period.

31. No process was developed for license holders to conform to these requirements and no effort has been made by the County to monitor or enforce compliance.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I disagree partially with the finding for the reasons stated: The conditions themselves provide the process for the license holder to comply with the requirements. As stated in the use permit conditions, the business owner is to annually submit a copy of their business license and a signed statement of the dates on which the property was rented as a VHR/SUR.

32. On June 14, 2000, staff submitted the completed MTP staff review to the Coastal Commission, including administrative updates to the VHR/SUR Tables. Formal certification of an MTP/LCP staff review is not mandated and was not undertaken.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I agree with the findings.

33. The MTP document currently in circulation is dated June 1992. This is when the CCC considered revisions to the amendment application. The complete LCP was not "effectively certified" until December 9, 1996. The Mendocino Zoning Code document is dated February 1996, the date when it was produced in hard copy; the effective certification date is December 9, 1996. Staff did not know whether or not the documents in circulation are identical to those certified in 1996.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I agree with the findings.

34. The current MTP document has no addendum to acknowledge the 1999 review and the correction of mapping errors. Likewise, the baseline number of 53 VHR/SUR units existing in June 1992 has not been corrected in the document, although it has been acknowledged repeatedly as the correct baseline.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Fifth District Supervisor*)

The Fifth District disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees partially with the finding, per the Mendocino County Planning and Building Services Director's response.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I disagree partially with the following findings for the reasons stated in response to Finding #21 and #23

35. Dissatisfied with the 1999 staff review, some coast residents exerted pressure on the BOS and Planning to revisit the staff review. In response, the BOS established a Citizens Advisory Council. On September 22, 1999, seven members were appointed to the CAC and charged with providing policy recommendations in five areas:

- Vacation Home Rentals and Single Unit Rentals
- Incentives for residential development to increase affordable housing,
- Home occupations and cottage industry,
- Parking and circulation,
- Formation of a Municipal Advisory Council¹⁶

¹⁶ The Board of Supervisors may establish Citizen Advisory Committees (CAC) to complete specific tasks. A CAC is dissolved when the task is completed. The BOS may also vote to establish a Municipal Advisory Council (MAC) as a permanent local advisory body. While a MAC is also an "advisory" body, once established, it may not be dissolved by the BOS.

This Grand Jury report addresses only the area of VHR and SUR licensing. The moratorium on VHR/SUR licenses is a partial response to the several CAC recommendations.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services*)
I agree with the findings.

36. On November 3, 2000, the Clerk of the Board's office received an 11-page report from the CAC dated September 26, 2000. The CAC recommended that:

- No more Vacation Home Rental licenses be approved in residential sections;
- Current permitted VHRs in residential sections be eliminated by attrition, defined as sale of the property, non use of the property as a VHR for thirty (30) days, or the death of the current permit holder;
- The number of VHRs in the commercial or mixed use zones be allowed to rise to a total of ten (10);
- A long-term renter or owner live on the property when part of a property is permitted to be used as a Single Family Rental (SUR).

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services*)
I agree with the findings.

37. In January 2001, at the request of the CAC, the Director of Planning and Building Services commented on the CAC report. In a memo addressed to the Fifth District Supervisor, he recommended that the CAC be given the opportunity to review his comments and either modify their report or request that the BOS consider it as is. He

asked the Fifth District Supervisor to distribute his comments on the report to CAC members.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services)*
I agree with the findings.

38. The January 2001 staff report on the CAC notes that:

- CAC recommendations regarding VHRs "...Are consistent with many of the comments heard by the County Planning Commission..." during public hearings for the staff review.
- Staff is preparing an inventory to identify VHRs in residential areas.
- Staff recommends that the County take appropriate enforcement action against unpermitted visitor-serving facilities.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services)*
I agree with the findings.

39. On October 2, 2001, the Board of Supervisors heard presentations from the CAC and acknowledged receipt of the CAC report. Minutes of that meeting state that "...*The General Consensus of the Board (was)... to accept the recommendation as presented relative to the number of vacation rentals and single unit rentals with further discussion on 1(a) – clarity of wording and attrition factor; clarification of how the Board would address 'appropriate enforcement;' and clarification as to accommodations for family rentals.*" Minutes direct Planning staff to: "1) assist the Board in further refining the CAC recommendations, and 2) coordinate follow-up action in response to the CAC recommendations."

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services)*
I agree with the findings.

40. Minutes further show that “...*By order of the Chair, Supervisor Colfax will work with staff and interested members of the Citizen’s Advisory Committee to coordinate follow up action in response to the recommendations presented by the Town of Mendocino Citizen’s Advisory Committee.*”

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors agrees with this finding.

Response: *(Fifth District Supervisor)*
The Fifth District Supervisor agrees with this finding.

Response: *(Mendocino County Chief Executive Officer)*
The Chief Executive Officer agrees with this finding.

Response: *(Director of Mendocino County Department of Planning and Building Services)*
I agree with the findings.

41. A 1992 form letter from the Coastal Planning Director to VHR/SUR license applicants accurately describes the licensing regulations and process as set forth in the certified MTP.

Response: *(Mendocino County Board of Supervisors)*
The Board of Supervisors disagrees partially with the finding, as there is a lack of clarity regarding the position referenced as author of the letter.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees partially with the finding, as there is a lack of clarity regarding the position referenced as author of the letter.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees disagree partially with the finding, as there is a lack of clarity regarding the position referenced as author of the letter.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I disagree partially with the following findings for the reasons stated: The Finding references a letter from the “Coastal Planning Director”. No such position exists.

42. Since 2002, use of this memo appears to have been discontinued, and staff have discouraged applicants from paying the fee to add their names to the required waiting list by advising them that they are highly unlikely to secure a license.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

I agree with the findings.

43. In a December 2005 memorandum, the Planning Director advised the BOS that “...(1) *there has been a net increase of 11 new dwellings since the 1999 MTP staff review and (2) there are currently 23-30 fewer vacation home rentals/single unit rentals...*” (compared to the 53 units authorized by the MTP).

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors disagrees partially with this finding per the Planning and Building Services Director’s response below.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees partially with this finding per the Planning and Building Services Director’s response below.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagree partially with this finding per the Planning and Building Services Director's response below.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

I disagree partially with the following findings for the reasons stated:

The Grand Jury Report accurately quotes the December 2005 Memorandum specifically mentioning the range (23-30) of allowed VHR's/SUR's as a result of the lack of clarity in the MTP regarding the future number of allowed VHR's/SUR's. (See response to Finding # 21). The Grand Jury Finding only mentions that "...53 units authorized by the MTP".

The Grand Jury writes "The property in question was licensed as a VHR prior to the purchase by the current owner". MTP policy 4.13-4 (5), states that a business license for a VHR is not transferable to a new owner. In processing the discretionary permit (CDU 33-2000), significant public comment was provided that there was a concentration of VHR/SUR in the residential neighborhood and many people spoke out against the request for the use permit. The public record includes petitions signed by more that 30 residents and several individual letters recommending denial of the requested use permit. If the MTP intended to process to obtain a license to be automatic, the plan would not require a discretionary use permit, but rather a ministerial business license review.

- 44.A Planning Department memorandum, dated June 3, 2008, contends that a chronological waiting list is being maintained and that prospective applicants are not discouraged from adding their names to this list.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

I agree with the findings.

45. Between January 2001 and November 22, 2002, three names were added to the waiting list. This was the last time the list was revised. No names have been added since. At that time, five SURs and 7 VHRs were listed. None has been licensed.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)
I agree with the findings.

46. The same 2008 memorandum states that no applicant for a VHR license was denied the required minor use permit on the basis of the property being residentially zoned. It then explains that the application in question was denied because “...staff determined that the project was not consistent with the CAC recommendations or the applicable town plan policies.” The BOS based its denial of the appeal on this staff determination.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)
The Chief Executive Officer agrees with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)
I agree with the findings.

47. The pertinent CAC recommendation was to not approve any new VHR licenses in *residentially zoned areas of the Town*. The property in question was licensed as a VHR prior to purchase by the current owner. No evidence was found to suggest that any change had occurred that would make it non-compliant with the certified MTP.

Response: (*Mendocino County Board of Supervisors*)
The Board of Supervisors has insufficient information to agree or disagree with this finding.

Response: (*Fifth District Supervisor*)
The Fifth District Supervisor has insufficient information to agree or disagree with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer has insufficient information to agree or disagree with this finding.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

I disagree partially with the finding for the reasons stated:

The Grand Jury writes “The property in question was licensed as a VHR prior to the purchase by the current owner”. MTP policy 4.13-4 (5), states that a business license for a VHR is not transferable to a new owner. In processing the discretionary permit (CDU 33-2000), significant public comment was provided that there was a concentration of VHR/SUR in the residential neighborhood and many people spoke out against the request for the use permit. The public record includes petitions signed by more than 30 residents and several individual letters recommending denial of the requested use permit. If the MTP intended to process to obtain a license to be automatic, the plan would not require a discretionary use permit, but rather a ministerial business license review.

48. The staff recommendation also states that the ‘window of opportunity’ to apply for a license, had passed. Staff acknowledged that the MTP does not establish that ‘windows of opportunity’ exist. It requires a chronological waiting list so that applicants may be issued a license when one is abandoned through the sale of a licensed VHR/SUR property.

Response: (*Mendocino County Board of Supervisors*)

The Board of Supervisors disagrees with the finding per the Planning and Building response below.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor disagrees with this finding per the Planning and Building response below.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer disagrees with this finding per the Planning and Building response below.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

I disagree partially with the following findings for the reasons stated:

The Planning Division established a process to allow a time frame for persons on a chronological waiting list to apply for a use permit. That was what spurred the use permit activity in 1999/2000. The new list was started after the old list was no longer valid or relevant. The applicants for CDU 33-2000 submitted their use permit application after the opportunity had been provided to them on the chronological waiting list. The “window of opportunity” was a general statement about the batching and processing of the required use permits not a replacement to the process established by the MTP.

49. The December 6, 2005 memorandum recommended that the BOS schedule a follow-up meeting to provide direction and take action on the recommendations of the CAC. The Grand Jury discovered no evidence that further action was taken.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors disagrees with this finding in that further action was taken in the next year.

Response: *(Fifth District Supervisor)*

The Fifth District Supervisor disagrees with this finding in that further action was taken in the next year.

Response: *(Mendocino County Chief Executive Officer)*

The Chief Executive Officer disagrees with this finding in that further action was taken in the next year.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

I disagree partially with the following findings for the reasons stated: The Finding states that there was no evidence that further action was taken by the County to provide direction and action on the recommendation of the CAC, yet Finding #50 acknowledges that the Planning Team is reviewing the Mendocino Town Plan. The Board of Supervisors have been advised that public decisions on whether to update the MTP or pursue the CAC recommendations will be made when the administrative review under policy 4.13-2 of the MTP is complete.

50. In August, 2006, the Chief Executive’s Office established a long-range planning team. In early 2008, the team began an administrative review to update the Mendocino Town Plan VHR/SUR Tables. The BOS has also directed the planning team to establish processes to maintain and monitor this data and to maintain current chronological waiting lists.

Response: *(Mendocino County Board of Supervisors)*

The Board of Supervisors agrees with this finding.

Response: (*Fifth District Supervisor*)

The Fifth District Supervisor agrees with this finding.

Response: (*Mendocino County Chief Executive Officer*)

The Chief Executive Officer agrees with this finding.

Recommendations

The Grand Jury recommends that:

1. The Mendocino County Planning Team complete the current effort to review data in the Mendocino Town Plan Tables 4.13-2 and 4.13-3 and to establish the number of available VHR/SUR licenses; (Findings 19-23, 25, 32, 43-45, 48, 50)

Response: (*Mendocino County Board of Supervisors*)

This recommendation is in the process of being implemented and will be completed by December 31, 2008.

Response: (*Fifth District Supervisor*)

This recommendation is in the process of being implemented and will be completed by December 31, 2008.

Response: (*Mendocino County Chief Executive Officer*)

This recommendation is in the process of being implemented and will be completed by December 31, 2008.

2. The Planning Team develop a process to maintain current data in all of the Mendocino Town Plan Tables and implement the required (separate) chronological waiting lists of applicants for VHR and SUR licenses so that licenses are re-assigned *as they become available*; (Finding 18, 20-23, 25, 30-32, 43-45, 48, 50)

Response: (*Mendocino County Board of Supervisors*)

This recommendation requires analysis and, in accordance with the results of that analysis, will be implemented by June 30, 2009.

Response: (*Fifth District Supervisor*)

This recommendation requires analysis and, in accordance with the results of that analysis, will be implemented by June 30, 2009.

Response: (*Mendocino County Chief Executive Officer*)

This recommendation requires analysis and, in accordance with the results of that analysis, will be implemented by June 30, 2009.

3. Any applicants on the current waiting list be contacted and offered first right to apply for these licenses; (Findings 18, 23, 27, 41-43, 50)

Response: (*Mendocino County Board of Supervisors*)

This recommendation requires completion of Recommendation 2 above and will be implemented by September 30, 2009.

Response: (*Fifth District Supervisor*)

This recommendation requires completion of Recommendation 2 above and will be implemented by September 30, 2009.

Response: (*Mendocino County Chief Executive Officer*)

This recommendation requires completion of Recommendation 2 above and will be implemented by September 30, 2009.

Response: (*Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office*)

Recommendation numbered 3 has not yet been implemented, but will be in the future. This recommendation will be completed within 3 months.

4. Residential zoning not be allowed as a factor in granting the required Use Permits for VHR and SUR licensing until and unless an MTP amendment to this effect has gone through a full public review and has been effectively certified; (Findings 1-7, 18, 19, 28-31, 36, 41, 46-47)

Response: (*Mendocino County Board of Supervisors*)

This recommendation will be implemented as modified in the Planning and Building response below, by the end of 2009.

Response: (*Fifth District Supervisor*)

This recommendation will be implemented as modified in the Planning and Building response below, by the end of 2009.

Response: (*Mendocino County Chief Executive Officer*)

This recommendation will be implemented as modified in the Planning and Building response below, by the end of 2009.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

Recommendation numbered 4 has not yet been implemented, but will be in the future. Simply because the CAC has recommended a reduction in the number of VHR's/SUR's should not be a basis for denial of a use permit. However, community character including overconcentration of VHR's/SUR's in any particular neighborhood, parking, water availability may be factors. Additionally, the County does have the authority, through the adoption of an urgency ordinance authorized under State law, to establish criteria or prohibit future uses/activities provided certain findings are made by the Board of Supervisors. The recommendation of the Grand Jury, with the comments above, will be implemented within 3 months.

5. The terms applicable to minor use permits required for issuance of a VHR license be revised to support a reasonable and enforceable process for management of these licenses. Specifically, that:

- The requirement of seven off-street parking places be revised to a number that is reasonable and relative to the size of the individual unit;
- License holders not be required to submit copies of business licenses that are issued by the County and statements of occupancy that are already reflected in required Transient Occupancy Tax payments;
- Coordination, and legally appropriate information sharing among County agencies become an established part of the process to keep licensing information current and to support enforcement;
- NO conditions be attached to any VHR/SUR use permit without a clearly defined process and delegation of responsibility for monitoring and enforcing compliance.

(Findings 18, 19, 28-31, 35-36, 47-48, 50)

Response: *(Mendocino County Board of Supervisors)*

This recommendation requires further analysis to determine its appropriateness and feasibility. This Analysis will be completed by the end of 2009.

Response: *(Fifth District Supervisor)*

This recommendation requires further analysis to determine its appropriateness and feasibility. This Analysis will be completed by the end of 2009.

Response: *(Mendocino County Chief Executive Officer)*

This recommendation requires further analysis to determine its appropriateness and feasibility. This Analysis will be completed by the end of 2009.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

Recommendation numbered 5 will not be implemented because they are not warranted and/or are not reasonable. As discussed in Finding #28, only one of the previously approved use permits included a requirement for 7 parking spaces. Response to Finding #30 explains the valid rationale for requiring occupancy statements. Finally, as discussed in response to Finding #31, the conditions of the previously issued use permit are quite clear.

6. The correct date of “effective certification” appear on all Mendocino County Building and Planning documents, most specifically, the Mendocino Town Plan (currently dated 6/10/92) and the related Title 20-Division III Zoning Code (current cover date and most pages are numbered 2/96). The effective certification date of both of these documents is 12/9/96; (Findings 10-16, 33-34)

Response: *(Mendocino County Board of Supervisors)*

Recommendation numbered 6 will not be implemented because they are not warranted and/or are not reasonable.

Response: *(Fifth District Supervisor)*

Recommendation numbered 6 will not be implemented because they are not warranted and/or are not reasonable.

Response: *(Mendocino County Chief Executive Officer)*

Recommendation numbered 6 will not be implemented because they are not warranted and/or are not reasonable.

Response: *(Director of Mendocino County Department of Planning and Building Services)*

Recommendation numbered 6 will not be implemented because they are not warranted and/or are not reasonable. Changing the dates on current documents of record will further confuse the public relative to dates of when the MTP and/or ordinance was adopted by the Board of Supervisors, approved by the Coastal Commission or certified by the Coastal Commission. It is suggested that any document available from PBS or available on the PBS website should include this information as an insert or note. This will be accomplished within 3 months.

7. The BOS formally direct all staff in the Department of Planning and Building Services to use only “effectively certified” Land Use Plans and Land Use and Development Code (together with any certified and filed amendments) to review development and land use permit applications in the coastal zone; (Findings 1-9, 12-22, 24, 33, 41)

Response: (*Mendocino County Board of Supervisors*)

This recommendation will be implemented as modified in the Planning and Building response below by the end of 2009.

Response: (*Fifth District Supervisor*)

This recommendation will be implemented as modified in the Planning and Building response below by the end of 2009.

Response: (*Mendocino County Chief Executive Officer*)

This recommendation will be implemented as modified in the Planning and Building response below by the end of 2009.

Response: (*Director of Mendocino County Department of Planning and Building Services*)

Recommendation numbered 7 has not yet been implemented, but will be in the future. Simply because the CAC has recommended a reduction in the number of VHR's/SUR's should not be a basis for denial of a use permit. However, community character including overconcentration of VHR's/SUR's in any particular neighborhood, parking, water availability may be factors. Additionally, the County does have the authority, through the adoption of an urgency ordinance authorized under State law, to establish criteria or prohibit future uses/activities provided certain findings are made by the Board of Supervisors. The recommendation of the Grand Jury, with the comments above, will be implemented within 3 months.

8. The BOS formally direct all staff in the Department of Planning and Building Services to use only "effectively certified" Land Use Plans and Land Use and Development Code (together with any certified and filed amendments) to review development and land use permit applications in the coastal zone; (Findings 1-9, 12-22, 24, 33, 41)

Response: (*Mendocino County Board of Supervisors*)

Recommendation No. 8 requires further analysis, per the Planning and Building response below.

Response: (*Fifth District Supervisor*)

Recommendation No. 8 requires further analysis, per the Planning and Building response below.

Response: (*Mendocino County Chief Executive Officer*)

Recommendation No. 8 requires further analysis, per the Planning and Building response below.

Response: *(Director of Mendocino County Department of Planning and Building Services/Mendocino County Senior Coastal Planner—Fort Bragg Office)*

Recommendation No. 8 requires further analysis. While several of the recommendations make sense others necessitate further analysis such as the purpose of an emergency contact list, authority and feasibility of mandating content of the VHR/SUR internet advertising, etc. This analysis will be concluded within 6 months.

9. The County develop and implement an enforcement plan to reduce the operation of unlicensed visitor-serving facilities of all types, and that this plan include:

- Maintaining and making public a list of legally licensed VHR/SUR properties including an emergency contact number;
- Coordinating VHR/SUR information among County agencies and with the Mendocino City Community Services District;
- Requiring that the license number be included in all VHR/SUR internet advertising and on promotional materials produced after the date of establishment of the enforcement policy;
- Providing each VHR/SUR license holder with an unobtrusive peel-off window decal to identify the property as a legally licensed VHR/SUR;
- Promptly investigating any written complaint that an unlicensed property is being offered as a VHR/SUR.

(Findings 16, 17, 23-31, 39, 50)

Response: *(Mendocino County Board of Supervisors)*

This recommendation requires further analysis, which will be completed by June 30, 2009.

Response: *(Fifth District Supervisor)*

This recommendation requires further analysis, which will be completed by June 30, 2009.

Response: *(Mendocino County Chief Executive Officer)*

This recommendation requires further analysis, which will be completed by June 30, 2009.

Comments

If legally incorporated into the Mendocino LCP, the CAC recommendation to limit VHRs to ten (10) permitted units in commercially zoned areas will substantially reduce lodging access and increase the per person cost of lodging for families and other small groups whose needs are not met by existing Mendocino Inns and B&Bs. This access is required by the Coastal Act and was addressed in the MTP in response to a CCC recommended modification.

The de facto moratorium on VHR/SUR licenses is against the law. It has reduced coastal access for families and other traveling companions, and it has had significant negative consequences for individual property owners, the local economy, and the County's tax revenue.

In the course of this investigation, Supervisors and County Planning employees repeatedly cited political pressure to establish the Mendocino CAC and to enact the recommended freeze on VHR/SUR licenses. The Grand Jury has seen ample evidence of this pressure, but rejects it as a justification for failing to implement the effectively certified Mendocino Town LCP.

It is not the Grand Jury's role to determine whether or not the amendment proposed by the CAC is desirable or politically expedient. Nor is it the Grand Jury's role to speculate on whether the baseline number of VHR/SUR units, or the lack thereof, is a significant factor in perceived changes to the "town character." It is, however, the Jury's role to observe that changes to the Mendocino Town Plan and Zoning Code may not legally be implemented without effective certification, including:

- an application to amend the certified LCP;
- Coastal Commission certification of the amendment;
- acceptance of the certified amendment by the BOS; and
- filing of the certified amendment with the Secretary for Resources.

Required Responses

Director of Mendocino County Department of Planning and Building Services (Findings 1-50; Recommendations 3-8)

Mendocino County Senior Coastal Planner—Fort Bragg Office of the Department of Planning and Building Services; (Findings 1-23, 42, 44-48; Recommendations 3,4,7)

Mendocino County Board of Supervisors; (All Findings; All Recommendations)

Fifth District Supervisor; (All Findings; All Recommendations)

Mendocino County Chief Executive Officer; (All Findings; All Recommendations)

Requested Responses

California Coastal Commission Executive Director; (Findings 1-7, 28-29, 36, 45, 46; Recommendations 4, 5, 7-8)

California Coastal Commission Regional Director, Eureka Office; (Findings 1-7, 28-29, 36, 45, 46; Recommendations 4, 5, 7-8)

Exhibit I - Mendocino Town Plan
Sections Pertaining to Vacation Home Rentals/Single Unit Rentals

“Balance” between residential uses, commercial uses and visitor serving uses shall be maintained by regulating additional commercial uses through development limitations cited in the Mixed Use and Commercial Land Use classifications; and, by limiting the number of visitor serving uses.

Visitor Serving Units listed on Table 4.13-1 (Inns and B&Bs) shall remain fixed, and a ratio of thirteen long term dwelling units to one Vacation Home Rental or one Single Unit Rental (Tables 4.13-2 and 4.13-3) shall remain fixed; until the plan is further reviewed and a plan amendment is approved and certified by the California Coastal Commission.

Table 4.13-2 is a listing of Single Unit Rentals (attached or detached) operated as a short term rental in conjunction with an existing residential dwelling unit or commercial use.

Table 4.13-3 is a listing of Vacation Home Rentals (a dwelling unit that is the only use on the property which may be rented short term for transient occupancy.)

Single Unit Rentals and Vacation Home Rentals shall be subject to Chapter 320 (Uniform Transient Occupancy Tax) and Chapter 6.04 (Business License Tax) of the Mendocino County Code.

Tables 4.13-2 and 4.13-3 shall remain flexible as to location and the County of Mendocino shall have the authority to adjust the locations on these two tables from time to time without a plan amendment process, but not to add to the tables numbers of units that would exceed the following criteria:

To preserve town character and maintain the town as a residential community with limited commercial services, the County shall maintain, at all times, for new Vacation Home Rentals or Single Unit Rentals approved subsequent to certification of this amendment, a ratio of thirteen long term residential dwelling units to either one Single Unit Rental or Vacation Home Rental, but shall not require any reduction in the number of Vacation Home Rentals or Single Unit Rentals in existence on the date of certification by the Coastal Commission of this amendment.



Single Unit Rentals (Table 4.13-2) shall be exempted from the above limitations in the Commercial Zone.

Business licenses for Single Unit Rentals (Table 4.13-2) and Vacation Home Rentals (Table 4.13-3) shall not be transferable.

Applications for new locations to be listed on Tables 4.13-2 and 4.13-3 shall be subject to a conditional use permit and an additional non-refundable fee of \$100 shall be required of such applicants and applications shall be considered in chronological order from date of application, with first priority given to Single Unit Rentals.

Exhibit II - Certification of the

Mendocino Town Plan and Zoning Code¹⁷

Mendocino Town Plan (LUP)		Implementation Plan (Zoning Code)	
1980s	Coastal Commission (CCC) consultant Drafts the Mendocino Town Plan (LUP) which is revised by County Planning.		 CCC consultants work on Zoning Code/Implementation Plan (IP)
8/17/83	BOS approves LUP		
8/3/84	LUP submitted to CCC for certification with accompanying BOS Resolution	9/84	
5/8/85	CCC denies LUP		
9/26/85	CCC certifies modified MTP/LUP		
11/20/85	BOS accepts modifications and MTP/LUP		
1989 to 1991	BOS initiates MTP/LUP revision; hearings held before BOS and Planning Commission	1991	Local public hearings
4/7/92	CCC approves amendment to LUP as No. 1-92 (Major).	4/7/92	CCC certifies IP but there is no response from County and the CCC action lapsed
9/14/92 to 12/92	County accepts modifications and LUP is approved by CCC but is not yet effectively certified.	4/12/95	County resubmits IP
<p>Mendocino Categorical Exemption & Complete Local Coastal Program are Effectively Certified and Permit Granting Authority Transferred from CCC to County of Mendocino December 9, 1996</p>			

¹⁷ Land Use and Development in the unincorporated Town of Mendocino is regulated by Mendocino County under the Mendocino Town Plan (Land Use Plan/LUP) and Implementation Plan (Zoning Code/LUDC). When certified by the California Coastal Commission, and filed with the Secretary for Resources, these two documents constitute the Local Coastal Program (LCP) of the Mendocino Town Segment of the Mendocino County Coastal Element.