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MEMORANDUM

Date: August 11, 2008

To: Mendocino County Grand Jury

From: Raymond Hall, Planning & Building Services Director

Subject: Response to Grand Jury Report: BYZANTIUM BY THE BAY; County Mis-Implementation of the Mendocino Town Plan  
Due Date: September 24, 2008

**1. FINDINGS**

- A. I agree with the findings numbered: 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 22, 24, 25, 32, 33, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46.
- B. I disagree wholly or partially with the findings numbered: 2, 7, 17, 18, 19, 21, 23, 26, 27, 28, 29, 30, 31, 34, 41, 43, 47, 48, 49.

**2. RECOMMENDATIONS**

- A. Recommendations numbered 3, 4 & 7 have not yet been implemented, but will be in the future.
- B. Recommendation number 8 requires further analysis.
- C. Recommendations numbered 5 & 6 will not be implemented because they are not warranted and/or are not reasonable.

Following is the detailed response to the Findings & Recommendations contained in the Grand Jury Report.

The response provided is the consolidated effort of the Planning & Building Services Director and the Senior Planner in the Fort Bragg Office. County Counsel has advised staff that State law does not give authority to the Grand Jury to require responses from anyone other than the "Agency Head". This consolidated response is intended to comply with the intent of the Grand Jury Request for Response as well as provide a uniform, consistent response from the County Planning & Building Services Department.

The Planning and Building Services Department agrees with what it believes to be a basic premise of the Grand Jury Report. Staffing limitations and work priorities have not provided the opportunity to bring some form of closure to the 2001 CAC Report which included a recommendation to restrict VHR's/SUR's in the residentially zoned areas of the Town of Mendocino. Further, the County can be fairly criticized for not providing the resources to maintain the data necessary to determine the ongoing number of visitor serving units in the Town of Mendocino.

As acknowledged within the Grand Jury Report, the County has recently (early 2008) committed the funds to determine the number of visitor serving units in the Town to ascertain if additional units can be allowed while achieving compliance with the policies of the MTP which sets caps on the number of visitor serving units. Such an administrative review is very time consuming and complex, however the Planning Team is committed to completing this task in the very near term. Upon completion of this review and assuming that VSF cap space exists, Planning & Building Services should process the waiting list of applications for VHR's and SUR's.

Rather than commenting on the Summary of the Report and the comments, staff will simply note the general bias of the author(s) of the Report. The Report misinterprets the Plan as a mandate to constantly maintain 53 VHR/SUR's. Rather, when the MTP is looked at comprehensively it is clear there is a **maximum** allowable number of visitor serving units in an effort to maintain the balance of residential, commercial and visitor serving facilities. The Plan's foundation is that maintaining this balance is necessary to protect the character of the town. The unit cap in conjunction with (1) the stipulation that the licenses be non-transferable and (2) new VHR/SUR's require a conditional use permit, was an attempt to closely control the number of transient units and protect long-term residential uses.

## **FINDINGS**

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

2. The Mendocino Town Plan (MTP) was not just "accepted", but approved by the California Coastal Commission in 1992.
  
7. 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.

17. 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. See response to Finding #7.

19. See 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.

21. 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.
23. 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.
26. The Grand Jury Findings are not incorrect, however it does not convey the entire statement which was provided to the 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. 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. 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. See response to Finding #28
30. 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. 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.
34. See Finding #21 and #23
41. The Finding references a letter from the "Coastal Planning Director". No such position exists.
43. 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".
47. 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.
48. 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 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.

## **RECOMMENDATIONS**

3. This recommendation will be completed within 3 months.
- 4 & 7. 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 over concentration 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. 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. 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.
8. 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.