

**From:** Christina Aranguren <admin@mendomatters.org>  
**Sent:** Monday, March 4, 2024 6:01 PM  
**To:** Rob Fitzsimmons; pbscommissions  
**Cc:** Jason Morse  
**Subject:** Re: CASE #: U\_2023-0004

MAR 04 2024

Planning & Building Services

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We will do that; thank you, Mr. Fitzsimmons;

...But it's been four days awaiting a correct date and time for the upcoming public hearing on this Project. Why the delay in responding and directing us to a corrected meeting date and email address?

This detail prompts an additional request. When posting public comment submissions for this Project, we request that Staff please date and post them in sequential order as submitted by the public. Today's posting of Sridhar Sadasivan are those of a state agency, not the public, and were submitted only following our request and attachment of the Technical Assistance Work Plan, signed by Sadasivan nearly two months ago on January 8, 2024, be placed into the Staff Report and administrative record for this Project. To our knowledge, this Work Plan had not been made public before then by the parties involved. Comment submitted from members of the public should remain priority.

Thank you,

Christina Aranguren  
Chair, MendoMatters

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**From:** Rob Fitzsimmons <fitzsimmons@mendocinocounty.gov>  
**Sent:** Monday, March 4, 2024 2:15 PM  
**To:** Christina Aranguren <admin@mendomatters.org>  
**Subject:** Re: CASE #: U\_2023-0004

Good afternoon,

Thank you for bringing your concerns to our attention - they are currently under review. They have been added to the public comment record for this project. In the future, you can send public comments on matters before the Planning Commission to pbscommissions@mendocinocounty.gov.

Best,

**Rob Fitzsimmons**  
Planner II  
*Planning and Building Services*  
*Mendocino County*

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**From:** Christina Aranguren <admin@mendomatters.org>  
**Sent:** Monday, March 4, 2024 11:40 AM  
**To:** Rob Fitzsimmons <fitzsimmons@mendocinocounty.gov>  
**Cc:** Jason Morse <jmorse@mcn.org>  
**Subject:** Fw: CASE #: U\_2023-0004

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Mr. Rob Fitzsimmons  
Staff Planner, Planning & Building Services  
County of Mendocino

Mr. Fitzsimmons;

MendoMatters continues to await the courtesy of your reply to our March 1, 2024 request for a rescheduling of a public hearing of Case # U\_2023-0004 since it was improperly noticed in legal noticing with an incorrect date and because of the lack of notification by the Lead Agency, MUSD, as requested in former comments submitted by MendoMatters on the SMND required for this Project.

Additionally, we are requesting the hearing be rescheduled in light of new information recently received from the State Water Resources Control Board, Division of Drinking Water, SAFER Section (attached), which has significant potential to affect any consideration and decision by the Mendocino County Planning Commission of a Coastal Development Use Permit for the Project and the lack of sufficient time for the public to prepare comment.

We request again that today's requests and our former comments of June 9, 2023 be placed into the administrative record for this item.

Thank you again,

Christina Aranguren  
Chair, MendoMatters  
admin@mendomatters.org

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**From:** Christina Aranguren  
**Sent:** Friday, March 1, 2024 1:55 PM  
**To:** fitzsimmons@mendocinocounty.gov <fitzsimmons@mendocinocounty.gov>  
**Subject:** CASE #: U\_2023-0004

Mr. Rob Fitzsimmons  
Staff Planner,  
Planning & Building Services  
County of Mendocino

Rob;

It's come to our attention that a public hearing is scheduled to be held at a meeting of the Mendocino County Planning Commission on March 7, 2023 for a Coastal Development Use Permit by owner/applicant, MUSD.

No only is the date posted in the legal notice in error, MendoMatters has not received benefit of any notification regarding this hearing from the Lead Agency, MUSD, as previously requested in comments submitted on the SMND (see communication below). At this time, we respectfully request that the public hearing be rescheduled and a legal notice with a correct date and time properly noticed and published.

Below are our comments of June 9, 2023 on the SMND for the project. We ask that you please include them in the Planning Commission staff report for the upcoming public hearing.

Please also acknowledge that you have received this communication at: [admin@mendomatters.org](mailto:admin@mendomatters.org)

Thank you kindly,

Christina Aranguren  
Chair, MendoMatters

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June 9, 2023

Mr. Jason Morse, Superintendent  
Mendocino Unified School District  
44141 Little Lake Road Mendocino, CA. 95460

Re: Subsequent Mitigated Negative Declaration for Water System Reconstruction Project - Water Supply and Storage Improvements

Dear Mr. Morse;

MendoMatters appreciates the opportunity to review and comment upon the Subsequent Mitigated Negative Declaration (“SMND”) for the Water System Reconstruction Project - Water Supply and Storage Improvements. The following comments have been drafted in consultation with Amy Minter, of Carstens, Black, & Minter LLP, an experienced practitioner under the California Environmental Quality Act (“CEQA”):

**Procedural Issues**

- The SMND represents an entirely different project. Reliance upon an Initial Study and Mitigated Negative Declaration (“IS/MND”) for a project planned, prepared, and approved in 2016-2022 as a Mendocino Unified School District (“MUSD”) Water System Reconstruction Project is no longer valid, is insufficient, and constitutes improper segmentation pursuant to CEQA. A subsequent MND is only allowable when there are significant changes to an existing project. (CEQA Guidelines S. 15162.) The 2023 project (“Modified Project”) is substantially changed in scope, nature, and purpose — it is a

completely new project. Full environmental review and comprehensive mitigation measures are needed to address significant changes in conditions, to avoid improper segmentation, and to protect public lives, properties, and the natural resources held in trust for them by the State of California.

- The SMND incorrectly identifies MUSD as the lead agency for the Modified Project. In approving a Memo of Understanding between MCCSD and MUSD on August 29, 2022, MCCSD President D. Murphy publicly announced that MCCSD would maintain full discretion in any and all decisions relating to the project. CEQA requires that the lead agency must have discretion authority over the proposed project. (CEQA Guidelines, S. 15367; MCCSD BOD Meeting, Agenda Item 13.(a), 8/29/22.)
- Additionally, CEQA provides that “Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria: (a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency”. (CEQA Guidelines S. 15051.) Here, the Modified Project would be carried out by the Mendocino City Community Services District (“MCCSD”), thus MCCSD and not MUSD is the correct lead agency under CEQA.

### **The SMND Relies on an Incomplete and Inadequate Project Description**

- CEQA requires that an environmental review document contain “(a)n accurate, stable, and finite project description”. (County of Inyo v. City of Los Angeles (1977) 71 Cal.App. 3d 185, 193; see also Washoe Meadows Community v. Department of Parks and Recreation (2017) 17 Cal. App. 5th, 277, 288.) This includes a requirement that “(a)ll phases of project planning, implementation and operation must be considered.” (CEQA Guidelines S. 15063, subd. (a).) This also requires an assessment of “the whole of an action”, including activities that are a reasonably foreseeable consequence of a project. (CEQA Guidelines S. 15378.) The SMND fails to account for a reasonably foreseeable future project under consideration to develop a regional, municipal, or public water system the Modified Project is currently under discussion to become and is new information. Further evaluation and full environmental review are needed to account for any/all significant cumulative impacts caused or created by a said system, including those with the potential to be growth-inducing. The SMND lacks the conditions and provisions necessary to prevent any adverse impacts that an organized water system could cause or create. Any claims in the SMND that “The Modified Project is not part of a potential future larger community water system and such a future system project would not be required to fully utilize the design capabilities included in the Modified Project” is not supported by evidence and contradicts prior discussions and communications of participating agencies and project management. As a reasonably foreseeable future project whose development is dependent upon construction of the Modified Project, it is inconsistent with the SMND in failing to account for it. (MCCSD Regular Meeting, 2/27/23; Letter of the SWRCB, Northern Engagement Unit, Division of Drinking Water, SAFER, 5/19/23.)

- The SMND conflicts with terms of grant agreements between MUSD and the State Water Resources Control Board (“SWRCB”) and the MCCSD and the California Department of Water Resources (“DWR”), and fails to adequately consider substantial changes and conflicts-of-interest which have significant potential to append new information, void the contracts, and change analyses and conclusions essential for comprehensive and complete environmental review. A public request submitted on May 24, 2023 for an extension to the public comment period ending June 9, 2023 at 5 p.m. to allow that an amendment to the grant agreement of MCCSD and DWR could be reviewed by the public was considered by MUSD, denied, and did not allow opportunity for legal review prior to submission of the comments of MendoMatters. (Email communications from J. Morse, MUSD, 5/24/23 and 5/30/23; Grant Agreement of MUSD and SWRCB; Grant Agreement of MCCSD and DWR.)
- The SMND fails to provide evidence that the Modified Project and any reasonably foreseeable future project is in compliance with MUSD’s mission, authority, and obligations as a California public school district to extract, treat, stored, distribute, allocate, provide, and/or sell State water resources to parties and/or parcels outside its purview and jurisdiction. The regulations that permit and allow for their authority to do so needs inclusion for comprehensive and complete environmental review.
- The SMND fails to specify the intended recipients of any water extracted, treated, stored, provided, and/or sold. Service area boundaries and specifications are needed which detail whether the Modified Project and any reasonably foreseeable future project will service the MUSD’s entire 240 square mile jurisdiction, MCCSD’s single square mile jurisdiction, and the transient populations therein. Note that projects using State water resources and funded by State grants are intended for California residents only and cannot be used for commercial or industrial uses pursuant to the 2012 California Human Right to Water Act. (D. D’Adamo, Vice Chair/attorney, SWRCB, 8/23/22.)

### **The SMND is Inadequate**

- Because issuing an MND truncates the CEQA process with often minimal environmental review, CEQA’s “legal standards reflect a preference for requiring an EIR to be prepared”. (Mejia v. City of Los Angeles (2005) 130 Cal. App. 4th 322, 332.) An agency proposing to rely on an MND must make the analysis accompanying the proposed MND as complete and comprehensive as possible. (Long Beach Savings and Loan Association. v. Long Beach Redevelopment Agency (1986) 188 Cal. App. 3rd 249, 263.) When considering whether to require preparation of a full EIR or allow review culminating in an MND instead, a court will examine whether there is substantial evidence in the record to support a fair argument that the stated mitigation measures may not achieve the goal of reducing impacts below a level of significance. (Citizen’s Com. To Save Our Village v. City of Claremont (1995) 37 Cal. App. 4th 1157.) An EIR must be prepared instead of an MND when there is substantial evidence to support that the project may have significant environmental impacts. (Public Resources Code S. 21151.) “The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR”. (Pocket Protectors v. City of Sacramento (2004) 124 Cal. App. 4th 903, 928.) If any substantial evidence of a potential environmental impact after the agency’s proposed mitigation measures are implemented exists, then preparation of an MND is not appropriate, even if substantial evidence exists to the contrary. (Public Resources Code S. 21080(d); CEQA Guidelines S. 15064(f)(1); Friends of “B” Street v. City of Hayward (1980) 106 Cal. App. 3d 988, 1002.)

- “(T)he significance of an activity may vary with the setting.” (CEQA Guidelines S. 15064(b).) A development that may have minimal impacts in an urban setting could have significant impacts in a rural area. Courts show a clear preference for resolving doubts in favor of preparing an EIR. (*Architectural Heritage Association v. County of Monterey* (2004) 122 Cal. App. 4th 1095, 1110; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal. App. 4th 608, 6171-6618; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 151; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602-03.)
- Additionally, there must be a basis within the record to support the conclusions reached by the Initial Study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4th 1170, 1201.). “Where an agency ... fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate.” (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal App. 4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project’s potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with the law. Further, failure to analyze a potential impact of component of a project “enlarges the scope of fair argument by lending plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) Cal. App. 3d 296, 311.) This is because an "agency should not be allowed to hide behind its own failure to gather relevant data”. (*Sundstrom, supra*, 202 Cal. App. 3d 296, 311; see also *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591, 1597.)
- Here, the SMND is inadequate because it fails to analyze potentially significant hydrological, biological, transportation, and other impacts. Moreover, there is substantial evidence that support a fair argument that the Modified Project and any reasonably foreseeable future project may have adverse cumulative environmental effects, necessitating the preparation of an EIR.
- The SMND also fails to specify quantitative criteria needed to account for the volume, distribution, allocation, sale, and user costs of any water extracted, treated, stored, transported, provided, and/or sold by the development of the Modified Project or any reasonably foreseeable future project. Without essential criteria established in advance, the SMND fails to adequately support its conclusions. Criteria is needed along with the data to support it.
- The SMND fails to specify the boundaries, transportation, tanking, and any related requirements for water deliveries involving off-loading potable water to public, mutual, and/or private storage tanks for community (or other) uses by the Modified Project or any reasonably foreseeable future project. This has significant potential to affect air quality, greenhouse gas emission, and transportation analyses. Criteria that includes any/all specific uses that will allow for water deliveries and supportive data is needed.

- While MendoMatters agrees that extensive hydrologic studies are needed for the protection of groundwater resources in the interest of the common good of present and potential uses, Ordinance 2020-01 of the MCCSD Groundwater Management Plan applies to new developments, expansions of existing use, and/or changes of use within “all real property within the boundaries of the MCCSD”. The Ordinance and many of its provisions and requirements are not applicable to the MUSD-owned parcels required for construction of the Modified Project. Alternate hydrologic analyses and conclusions are needed. The SMND relies on Ordinance 2020-01 as mitigation for the Modified Project’s impacts on groundwater; because this ordinance does not apply to the Project site, it has failed to provide fully enforceable mitigation and is in violation of CEQA requirements. (CEQA Guidelines S. 15126.4, subd. (a)(2).)
- The statement that MUSD performed public outreach to identify wells of interest based upon the proposed well field requires correction: MCCSD performed the public outreach. (Appendix B; Outreach Letter, MCCSD/GHD, 9/22/22.)
- The SMND fails to include in its Appendices a March 29, 2023 Well Siting Study prepared for MCCSD by GHD Engineering. Without opportunity for review, the public is unable to review and comment. Without this documentation, the SMND lacks evidentiary support for its claims of less than significant impacts.
- The SMND fails to include data to confirm the Modified Project and any reasonably foreseeable future project will have sufficient water supplies available to serve its users during all water year types (very wet, wet, normal, dry, very dry, and multiple dry years) and to limit the maximum annual extraction volume in any/all water year types. Note that water hauling trucks can be observed servicing the Mendocino community during wet water years.
- The SMND fails to include historic water hauling and delivery data to corroborate the volume of water that will be required by (a yet undeterminable number and type) of users in any/all water year types for this and any reasonably foreseeable future project.
- A Hydrogeological Report prepared for MCCSD by GHD Engineering of April 19, 2023 provides that the pumping schedule may be revised from any initial recommendations based upon the actual capacity of individual wells, monitoring data, measured aquifer response, and actual future emergency water supply needs, but fails to specify a limit on the maximum annual extraction volume in any/all water year types for this and any reasonably foreseeable future project. (Appendix A; Hydrogeological Report, MCCSD, 4/19/23.) Limits on extraction, based on evidentiary support, must be established to prevent potential impacts to existing wells, groundwater users, and to protect public trust resources.

- Spring-fed headwaters that form Slaughterhouse Gulch stream have significant potential to be adversely affected by the over-extraction of groundwater caused or created by the future use of existing and future wells, the proposed well field, and any reasonably foreseeable future project. Further bioassessment and a complete water budget analysis of the subwatershed are needed with additional mitigation measures. Continuing, post-construction monitoring which utilizes stream gauges needs specification to prevent impacts to downstream and/or downgradient users and to protect stream flows and public trust resources.
- Slaughterhouse Gulch, a perennial Class II stream, is cited as having the potential to be adversely impacted by the proposed groundwater pumping to a potentially significant level. However, the SMND fails to note it as such. Further bioassessment and mitigation measures are needed.
- While the SMND reports anecdotal calculations of historic streamflows of Slaughterhouse Gulch, it fails to provide the evidence that supports them. Further evaluation is needed to identify existing users and diversions (if any), and to establish streamflow volumetric rates to serve as a baseline in determining adverse impacts caused or created by the Modified Project or any reasonably foreseeable future project.
- The SMND acknowledges that rare and special status species occur or are likely to occur on the Modified Project site. CEQA requires the lead agency to consult with trustee agencies prior to determining whether a MND or EIR is required for a project. (Public Resources Code S. 21080.3, subd. (a).) The California Department of Fish and Wildlife (“CDFW”) is a trustee agency for natural resources, including wildlife and rare plant species, thus they are a trustee agency for the Modified Project. However, there is no evidence that MUSD consulted with CDFW prior to issuing its notice of intent to adopt a SMND. CEQA also plainly requires that a “lead agency shall send copies of the proposed MND to the State Clearinghouse for distribution to” responsible or trustee agencies that “exercise jurisdiction by law over natural resources affected by the project”. There is no evidence of compliance with this legal requirement. (J. Morse, Summary Form F, List of Responsible and Trustee Agencies.)
- The SMND fails to specify the maximum annual groundwater extraction volume as opposed to an approximate or anticipated one. Subterranean streams and headwater springs are protected public trust resources. As they have significant potential to be adversely impacted by the Modified Project or any reasonably foreseeable future project, further bioassessment and consultation with CDFW and SWRCB, Division of Water Rights are needed. If these watercourses are seasonal and determined not to continually flow off the property in some water year types, a Statement of Water Diversion and Use may be required by the SWRCB based upon the maximum volume of water diverted.
- MendoMatters is requesting as a mitigation measure the installation of stream gauges on each of two identified but unnamed, distinct seasonal branches of upper Slaughterhouse Gulch stream.



- We request the posting of real-time monitoring metrics of all gauges required by the Modified Project or any reasonably foreseeable future project in order that the data can be publicly accessed and reviewable on the MCCSD and MUSD websites.
  
- We also request all well extraction data, water usage data, and/or sales data generated by the Modified Project or any reasonably future project be posted on the MCCSD and MUSD websites in order that the data can be publicly accessed and reviewable on the MCCSD and MUSD websites.
  
- The SMND fails to fully evaluate groundwater depletion as a potentially significant impact. Based upon the pumping analysis, off-site residential wells are not anticipated to experience drawdown associated by the operation of the proposed well field. In the protection of private and mutual wells, including any other than nine private wells determined by the SMND and reports as having the potential for drawdown and, in the protection of public health, safety, properties, and trust resources impacting a disadvantaged community (“DAC”), additional mitigation measures are needed in the event that drawdown, drying, or dewatered wells are caused or created by future operations of the proposed well field or any reasonably foreseeable future project. Specific provisions are needed to mitigate and remedy any drawdown, drying, or dewatered wells.
  
- The SMND fails to fully evaluate the depletion of interconnected surface waters as a potentially significant impact. As the depletion of surface waters has the potential to impact downstream streambeds, further bioassessment is warranted together with consultation with the CDFW to confirm whether a Lake and Streamed Alteration Agreement (“LSA”) may be required by the Modified Project or any reasonably foreseeable future project. (CDFW, LSA Agreements, California Fish & Game Code S. 1602.)
  
- The SMND fails to consider potentially significant impacts to groundwater-dependent ecosystems (“GDEs”) for the Modified Project and any reasonably foreseeable future project. Beyond GDEs within statute and regulations, GDEs fall under the broader California regulatory definition of the beneficial uses of groundwater and public trust resources. Lower reaches of Slaughterhouse Gulch subwatershed are identified and mapped as critical GDEs, requiring further bioassessment and consultation with the CDFW and SWRCB as well as additional mitigation measures such as the installation of stream gauge(s) within and/or adjacent the critical GDE area with continued, post-construction monitoring to prevent harm. (CDFW; SWRCB; The Nature Conservancy, Global Groundwater-Dependent Ecosystems Map, Version 1.1.0, 2022.)
  
- The SMND fails to fully evaluate potentially significant impacts to benthic macroinvertebrate communities (“BMIs”) of hyporheic and freshwater zones. Further bioassessment and consultation with CDFW is needed as well as additional mitigation measures to prevent harm to BMIs.

- The SMND fails to include a Wildfire Impact Analysis pursuant to Sections IX and XX, CEQA. The Modified Project is located in a Moderate Fire Hazard Severity Zone and is directly contiguous to a High Fire Severity Zone with residential housing, commercial establishments, MUSD offices, and the Mendocino K-8 school. A Wildfire Impact Analysis is needed for this and any reasonable foreseeable future project.
- The SMND fails to quantify groundwater extraction data into wildfire risk models to evaluate the potential for elevated wildfire risks created by the depletion or the chronic lowering of groundwater levels caused or created by the Modified Project and any reasonable foreseeable future project. Models and mitigation measures are needed.
- MendoMatters requests that in the protection of water quality, public health, safety, and sensitive population groups of the Mendocino K-8 school, MUSD offices, adjacent homes, and commercial establishments, that Mitigation Measure AIR-1, which allows that unpaved roads or materials be treated with chemicals or oils for purposes of dust suppression, be omitted.

The primary basis for our comments is that the SMND suffers from a number of deficiencies, inaccuracies, omissions, and errors discussed above, including: (1) it inappropriately relying on an invalid and insufficient IS/MND; (2) it failing to adequately describe the environmental setting, nature, and purpose of the Modified Project; (3) it using arbitrary, undefined, or inappropriate criteria to determine thresholds of significance and appropriate mitigation measures; and, (4) its lack of compliance with other regulatory standards in order to conclude that the Modified Project will not have a significant impact on the environment. Additionally, the SMND contains substantial evidence which supports the fair argument that a reasonably foreseeable future project currently under discussion to develop a public, municipal, and/or regional water system and which requires the development of the Modified Project has substantial potential to cause or create significant cumulative impacts in a number of resource areas and is new information which has not been considered and necessitates the preparation of an EIR.

MendoMatters does not challenge the original intentions of the MCCSD Board of Directors in November 2021 to develop emergency water storage for the community of Mendocino's use during periods of drought when wells go dry. We question the removal of language from the initial MOU between MCCSD and MUSD and the most recent version which effectively eliminates terms that the emergency water supply would be "for the benefit of the village of Mendocino". This not acting in the best interests of the community the MCCSD Board of Directors is obliged to serve. Nor are terms of the MOU giving MUSD priority to the water and provide that MCCSD will only have access to it "once all MUSD potable needs are met".

MendoMatters over-arching concern is that any groundwater extracted, treated, and stored is equitably distributed to the community it was originally intended for, and that limitations are established in advance for the protection of lives, health safety, properties, and the public trust resources of the People of the State of California.

Please place these comments into the administrative record.

Please also acknowledge that you have received them at: [admin@mendomatters.org](mailto:admin@mendomatters.org)

Please also cc C. Aranguren upon reception of these comments at: [villageduo@gmail.com](mailto:villageduo@gmail.com)

Please keep MendoMatters on any notification list pertaining to the project at: [admin@mendomatters.org](mailto:admin@mendomatters.org)

Thank you,

Christina Aranguren  
Chair, MendoMatters

cc: Amy Minter, Carstens, Black, & Minter LLP; MCCSD; California Coastal Commission; CDFW.

bcc: MendoMatters; Interested parties