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By James Feenan at 8:07 am, Mar 29, 2024

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

FOR PUBLIC RELEASE

Re: Regular Meeting of April 4, 2024, Item 6b., Coastal Development Use Permit for the MUSD Water System Reconstruction – Water Supply and Storage Improvement Project.

March 28, 2024

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

MendoMatters.org (“MendoMatters”) welcomes the opportunity to review and comment upon Item 6b., a Coastal Development Use Permit for the Mendocino Unified School District (“MUSD”) Water System Improvement Project – Water Supply and Storage Improvement Project (“Project”). The former comments of MendoMatters for the Subsequent Mitigated Negative Declaration (“SMND”) submitted to MUSD Superintendent Jason Morse of June 9, 2023 have been previously forwarded to the Department of Planning & Building Services on March 1, 2024. As part of the administrative record for this Project, we ask that you please consult them prior to considering any decision to permit. (Comments of MendoMatters to MUSD Superintendent J. Morse, June 9, 2023.)

Approval of a Coastal Development Use Permit for this Project is premature. Significant questions and concerns remain unanswered which were not adequately considered and addressed in the Staff Report or SMND contrary to California Coastal Act (“CCA”) and California Environmental Quality Act (“CEQA”) requirements, many of which have the potential to cause or create significant adverse environmental impacts to the water resources of this sensitive coastal area and affect public welfare.

The primary basis for our comments today is that the Staff Report and SMND for the Project approved by MUSD in June, 2023 suffers from a number of procedural failures: errors, deficiencies, inaccuracies, and omissions, most recently, the lack of critical new information, a “Technical Assistance Work Plan” (“Work Plan”) which seeks to expand the Mendocino City Community Services District (“MCCSD”) service area, consolidate water systems, and develop a regionalized water system. Only recently made available to the public, please note that the Work Plan was submitted to the Planning Commission by the Work Plan Grant Recipient, GHD, Inc., on March 4, 2024, only **after** it was submitted and brought to the attention of the Department of Planning & Building Services by members of the public.

(Technical Assistance Work Plan, GHD, Inc., Recipient, on behalf of MCCSD, January 9, 2024.)

This plan should be of concern to the Commission since it is directly related to the permit under consideration and was not considered or addressed during the environmental review for this Project. At the time, the Lead Agency’s response to public concern that the Project was intended to become part of a larger public water system was that the plans were not advanced enough to be considered.

(Water System Reconstruction Project - Water Supply and Storage Improvements, Response to Comments on Subsequent MND, State Clearinghouse Number 2020080439, Page 3-29.)

We respectfully disagree; the administrative record contains substantial evidence to support the fair argument that a reasonably foreseeable future project was in discussion by MCCSD as early as April,

2019, far prior to the approval of the SMND for the Project on June 28, 2023. At the time, nearly five years ago, at a April 18, 2019 meeting of the MUSD, GHD Project Manager, Matt Kennedy, recommended to the Board of Trustees that MUSD consolidate its water system and join with two privately-run mutual water systems located near the school district's wells (and current Project site). He identified the two as Hills Ranch and Point of View subdivisions. Note that either are not located within MUSD boundaries but are located within the MCCSD service area; all three water systems also employ the same water system manager/operator.

By 2021, Kennedy further described plans for a future water system, reporting to the MCCSD that, "There are funding opportunities through the State of California that MCCSD is preparing to pursue in early 2022 related to water system planning and design with the intent of revisiting the idea of a community water system and how such a system could be realized for the long-term benefit of the residents and businesses within the MCCSD service area". (Mendocino Beacon, "School Board Mulls Major Water System Project", C. Calder, April 25, 2019; Memorandum, M. Kennedy, GHD, December, 2021.)

By early 2023, he described the concept of the Project as the beginnings of a public water system in greater detail. When directly asked by MCCSD Director, Michael Miksak, at a MCCSD meeting in February, 2023, Kennedy cited the specific numbers the Project could be expected to supply a municipal [sic] water system, saying that the numbers did not account for Mendocino's transient population. Further, Kennedy added that it was, "...certainly a start in meeting the town's demands should a water system be undertaken". He continued, "GHD recommends that no more than half of the 12 wells are to be operated at any one time:

6 wells @ 5 gpm pumping continuously = 40,000 - 45,000 gpd.

900 resident population @ 50 gpd = 45,000 gallons."

(MCCSD Regular Meeting, 2/27/23, comments of M. Kennedy, Project Manager, GHD, Inc.)

The map shown as Figure 2 in the 2024 Work Plan clearly shows a water main beginning adjacent the proposed well field, making the concept conceivable. Additionally, the Staff Report notes that the Project would provide a connection to the MUSD's water distribution system. Should the Project be intended as part of a larger public water system, it will have significant potential to directly change the intensity of water use and impact water and public trust resources within this sensitive coastal area. The CCA requires that adverse environmental effects must be mitigated to the maximum extent possible. Permitting should be conditioned to guard against any expansion of existing use that GHD may be planning.

(Public Resource Code 30260 (b) (3), Division 20, California Coastal Act, 1976)

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

Segmenting a project may also hinder developing comprehensive mitigation strategies. In general, if an activity or facility is necessary for the operation of a project, or necessary to achieve the project

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

CEQA case law has established the following general principle on project segmentation for a project type as the one under consideration: “For a phased development project, even if details about future phases are not known, future phases must be included in the project description if they are a reasonably foreseeable consequence of the initial phase and will significantly change the initial project or its impacts.”

MendoMatters commented on the concept of this Project planned as the beginnings of a larger public water system in our comments submitted to MUSD Superintendent Jason Morse of June 9 and 28, 2023. The Project was approved by MUSD regardless of the intent of CEQA which holds that the whole of any Project be considered. The Work Plan represents new information which has not been considered or addressed and is improper segmentation pursuant to CEQA.

(CEQA Guidelines, Section 15378; Laurel Heights Improvement Association v. Regents of University of California (1988) 47 Cal. 3D 376; Mendocino Beacon, Community Column, “Surprised by a Community Water System”, Christina Aranguren, 8/18/22; Comments of MendoMatters for the SMND, June 9, 2023, June 28, 2023.)

While we acknowledge mitigation measures in the FSMND, MendoMatters refutes numerous points made in response to our submitted comment and contend that the Staff Report and FSMND suffers from a number of deficiencies, inaccuracies, errors, and omissions in our and others’ previously submitted comments, including: (1) it inappropriately relying on an invalid and insufficient IS/MND; (2) it using arbitrary, undefined, or inappropriate criteria to determine thresholds of significance and appropriate mitigation measures; and, (3) a lack of compliance with other regulatory standards and state and federal law to conclude that the Modified Project is being planned within legal parameters; additionally, (4) it excluding new information and substantial evidence which supports the fair argument that a reasonably foreseeable future project to develop a regional water system has substantial potential to cause or create significant cumulative environmental impacts in a number of resource areas. The Work Plan has not been considered nor addressed.

Our concerns include:

- **Verification of legal authority.** That MUSD has the legal authority to extract, store, treat, sell, share, provide, and/or distribute state water resources beyond its jurisdictional boundaries and its primary mission to educate requires verification prior to permitting. Responding to MendoMatters’ submitted comment by not knowing “what we mean” by “questioning the authority or mission of the MUSD” is evasive. The authority for MUSD to beneficially use state water resources and to allocate, distribute, provide, and/or sell them requires legal confirmation. That MUSD is simply operating its

own water supply which it will transfer and provide to MCCSD for distribution during emergencies is vague and ambiguous.

- Determination of water supply distribution and eligibility criteria. Criteria which dictates the eligibility, allocation, and distribution requirements for state water resources specific to both districts, MUSD and MCCSD, requires determination prior to any permitting, as does the the geographical boundaries of said distribution, and users' costs for the water (residential users' costs versus commercial users' costs, since businesses are equipped to absorb elevated fees when residents may not). Defining eligibility requirements for customers and residents located outside the MCCSD's jurisdictional boundaries is especially critical given that the MUSD covers an area 420 times larger than the single-square-mile the small community services district currently manages.

Concerns regarding allocation and distribution were made by MUSD Chair Michael Schaeffer at a meeting of the Board of Trustees when they originally considered the concept of a combininf their intentions. Similar concerns were also raised by former MCCSD Directors Maggie O'Rourke and Christina Aranguren at MCCSD meetings in 2021/22; they were not supported by the remainder of the board. To date, no criteria has been established.

Without water distribution and eligibility criteria determined in advance of approval to permit, levels of significance and appropriate mitigation measures remain undeterminable. Grant eligibility requires that the number of households benefitting from the project be specified. Without verification of these numbers as well as specific criteria established in advance to account for the allocation, distribution, provision, and/or sale of state water resources, any levels of significance and mitigation measures claimed in the Staff Report or SMND are inadequate, inaccurate, and inconclusive.

As MUSD is not regulated by the Mendocino County Local Agency Formation Commission ("LAFCO"), it is unable to employ latent powers that special districts such as the MCCSD are able. It in the best interest of the public that the Commission require that criteria is established prior to approval of a Coastal Development Use Permit.

- Clear definition of a water emergency. That the Project will be used as an emergency water supply for MCCSD customers warrants special attention. The Staff Report indicates that stored water will be utilized when MCCSD-declared water shortage emergencies have been issued **AND** interim **OR** immediate relief is needed via hauled water.

Complicating matters, during a June 28, 2023 MUSD meeting to approve the SMND, Chair Michael Schaeffer assured concerned residents and neighbors in attendance that MUSD would fulfill their water needs from the school's supply whenever necessary, but failed to provide any specifics. At the time, the MUSD Board of Trustees did not further define the criteria or geographical boundaries for inclusion, leaving the school district's obligations unresolved and ambiguous. Any permitting should be conditioned to include MUSD's pledge to residents located outside the MCCSD's jurisdictional boundaries.

(MUSD

Meeting, Board of Trustees, June 28, 2023, M. Schaeffer.)

Within MCCSD's service area, the hospitality sector is a primary user. Even in this, a wet water year, in March 2024, water hauling trucks can be seen servicing lodging. Essential to any permitting is clear policy which establishes what constitutes an emergency in the MCCSD-declared water shortage stages 1, 2, 3, 4, **OR** whether it is whenever hauled water is required, as the Staff Report indicates. Without policy to prevent it, any emergency water supply stored for periods of drought and for fire suppression purposes could be utilized any any time, in any the water year, regardless of drought conditions.

Further, as Section 106 of the California Water Code declares the use of water for domestic purposes as the highest use of water, protections are needed so that commercial interests do not consume the bulk of the water supply and to ensure state residents have access to the water when they require it. (California Water Code, Section 106.)

Despite the description in the IS/MND that the Project is located in the Fort Bragg Terrace Area and is not identified as an overdrafted groundwater basin by the Department of Water Resources, the Project site is mapped in the Mendocino County LCP as a Critical Groundwater Area. Water in this area is historically scarce. This point was recently emphasized by MCCSD Director and SAFER Advisory Board Member, Jim Sullivan, when he noted at a district meeting, "That water is [sic] very limited amount of water".

(DWR, 2019; MCCSD Regular Meeting, 2/26/24, Comments of MCCSD Director, J. Sullivan.)

- **Development of a full and comprehensive water budget.** The notion that a full water budget for this Project is "outside the scope" as GHD engineers concluded in a January, 2023 Hydrogeological Report is insufficient. Aquifer studies, hydrological data, and proof of adequate water supply prior to final approval of proposed use needs to be conditioned in any permitting for evidence that an adequate and sustainable water supply exists and that state water resources will be not be harmed or depleted, private properties or public welfare harmed, or public trust resources compromised in the process. California Water Code Section 113 mandates that the state's groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses.

(Hydrogeological Report, GHD, Inc., January, 2023, Chapter 4.2, Page 16; California Water Code, Section 113.)

Additionally, aridification of the sub-basin area remains a public concern whose impacts have not been adequately considered and addressed to date (i.e., adverse impacts to adjacent and down-gradient wells including those in Mendocino's "downtown" community west of Highway 1, adverse impacts to groundwater dependent ecosystems, elevated fire risks, erosion, etc.)

Public Resource Code Section 30231 mandates that the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural

vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. (PRC Section 30231, Division 20, CCA, Chapter 3, Article 4.)

We urge the Commission to deny any decision to approve a Coastal Development Use Permit until science-based evidence in the form of a full water budget is developed to assure permitting the Project would not adversely affect the public's welfare and public trust resources of this sensitive coastal area.

The Public Trust Doctrine requires the sovereign, or state, to hold in trust designated resources for the benefit of the people. Traditionally, the public trust applied to commerce and fishing in navigable waters but its uses were expanded in California in 1971 to include fish, wildlife, habitat and recreation. The State Water Board is responsible for the protection of resources such as fisheries, wildlife, aesthetics, and navigation, which are held in trust for the public. It must consider these responsibilities when planning and allocating water resources and protect public trust uses whenever feasible, and must consider public trust values in the balancing of all beneficial uses of water in accordance with the Water Rights Mission Statement and Water Code Section 1253 which is, "... to establish a stable system of water rights in California to best develop, conserve, and utilize in the public interest the water resources of the State while protecting vested rights, water quality, and the environment". (Public Trust Doctrine; California Constitution, Article X, Section 2; California Water Code Section 1253.)

- Real-time, public access to water records and data. Online daily groundwater, surface water, streamflow, water quality, dam bypass, and distribution data is common; it is collected and provided by agencies large and small (i.e., USGS, CDFW, owners/operators of small municipal dams). Guidance in developing online access is available (i.e., US EPA). In addition, the Open and Transparent Water Data Act of 2017, which promotes data sharing, documentation, quality control, transparency, and public access to water and ecological data requires attention. MendoMatters believes the public has the right to know where, how much, by whom, and for what price their state water resources are being utilized, and more and more, the state legislature agrees. In the interest of public health, welfare, and safety, real-time, publicly-accessed, online water records and data should be conditioned when permitting, to include data provided by Slaughterhouse Gulch stream gauges (MUSD's response in the SMND indicates more than one gauge; the Mitigation Measures describe one). This is particularly critical as the aquifer is utilized by many groundwater users down-gradient of the proposed wellfield and since it is of highly-scenic and ecological values before its discharge along the Mendocino coastline at Agate Cove, hence, the Pacific Ocean. Protection of the Slaughterhouse Gulch stream's riparian corridor and habitat should include any future alteration(s) to it. (California Water Code, Section 12406(b), 12415)

- Unresolved conflict of interest issues. Contracted MUSD water system operator/manager, Donna Feiner, who in her dual role as an elected member of the governing board of the MCCSD, actively participated in Project developments without recusal until July 31, 2023. GHD Project Manager

Kennedy is on record as saying the current operator is expected to continue to managing and operating a new, larger system. The Staff Report notes that MCCSD will operate and maintain the wells and be responsible for costs associated with the maintenance, use, replacement of the wells, and proportionate costs of operation and maintenance of the tanks and water treatment system for water accessed by MCCSD.

Failure to comply with state and federal conflict of interest laws is contrary to provisions in related contracts and has the potential to result in contracts for the Project being declared null and void. Feiner's position is further complicated by MCCSD intentions to expand its service area, investigate and develop a regionalized water system, and consolidate its water systems which may affect her firm and financial interests. Any decision to approve a permit should be postponed and reconsidered until the FPPC has concluded its investigation.

(MCCSD Special Board Meeting, July 31, 2023, Item 14, Statement by Donna Feiner.)

- **The need for a full EIR.** Because issuing a MND or SMND truncates the CEQA process, often with minimalized environmental review, CEQA's legal standards reflect a preference for requiring an EIR be prepared. The Staff Report incorrectly indicates that FSMND included a full environmental review of the Project. State Clearinghouse records indicate otherwise. A FSMND is on file; an EIR is not.

(CEQAnet, State

Clearinghouse Number 2020080439, June 30, 2023.)

In summary, it is our hope that as Commissioners, you'll recognize the numerous problems associated in approving a Coastal Development Use Permit for this Project at this time. Many significant questions and concerns remain unaddressed and unanswered. The associated documents fail to reflect current information.

MendoMatters urges that you not approve to permit at this time and request instead that a full EIR be prepared which can more fully and adequately consider and address all reasonably foreseeable environmental impacts the Project and any future modifications and/or phases to it that may have the potential to cause or create. Equity matters. Sustainability matters. The long-term sustainability of local coastal resources matter.

We do not challenge the original intentions of the MCCSD Board of Directors in November, 2021 to develop emergency water supply and 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 Memo of Understanding ("MOU") between MCCSD and MUSD and its most recent version which effectively eliminates terms that the emergency water supply would be "for the benefit of the village of Mendocino". This is not acting in the best interests of the community the MCCSD Board of Directors is obliged to serve. Nor are terms giving MUSD priority to the water with the provision that MCCSD will have access to it "once all MUSD potable needs are met".

(Memo of Understanding, MUSD and MCCSD, April, 2023.)

Our over-arching concern is that any groundwater extracted, treated, and stored for emergency purposes is equitably distributed to the community it was originally intended for, that criteria is determined well in advance for its allocation, distribution, and costs, and that limitations are established in the protection of the health, welfare, and safety of the California residents, their properties, and the public trust resources of the People of the State of California.

We hope you agree that any decision to approve at this time is resoundingly premature.

MendoMatters respectfully requests that you not approve to permit and require instead that a full and complete EIR be prepared prior to the reconsideration of a Coastal Development Use Permit for this Project. At their last meeting in February, 2023, the MCCSD went on record in saying the Project is **not** critical infrastructure for them. As such, the Commission has the assurance and one could argue, the obligation, to get this right and see that environmental review for this Project is complete, in compliance with law, fully protective of the health, welfare, and safety of the public, and that coastal and aquatic resources are protected well into the future.

(MCCSD Regular Meeting, February 26, 2024, Comments of Director I. Aum and Superintendent R. Rhoades.)

Please acknowledge that you have received these comments and place them into the administrative record.

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

Thank you kindly,

Christina Aranguren

Chair, MendoMatters

admin@mendomatters.org

cc: Mendocino County Staff Planner, Rob Fitzsimmons; Julia Krog, Director, Mendocino County Planning & Building; Amy Minter, Cartstens, Black, and Minter, LLP

bcc: MendoMatters members; Interested parties.