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July 17, 2019

Mendocino County Planning Commission  
Julian Acker-Krog, Chief Planner  
Mendocino County Planning and Building Services  
860 North Bush Street  
Ukiah, CA 95482

RE: OA\_2018-0009 – Coastal LCP update re ADUs  
GP\_2018-0003

Dear Interested Parties,

We greatly appreciate the time and effort the planning department is dedicating towards amending the Local Coastal Program (LCP) to regulate development of Accessory Dwelling Units in compliance with Gov. Code Section 65852.2.

In preparation for the July 18, 2019 hearing in which the Planning Commission will review and consider a recommendation to the Board of Supervisors regarding the regulation of ADUs in the Coastal Zone, we are offering some recommendations based upon our analysis of the staff report and the draft regulation.

Please see our commentary on the following pages.

Again, we are grateful that the County is taking this forward step.

All the very best,



Amy Wynn  
Principal Planner

tj/aw

**THEMES FROM THE LCP AMENDMENT SUMMARY THAT WE WISH TO ADDRESS:**

1. ADU restrictions/limitations in AG, RL, FL, and TPZ
2. Environmentally Sensitive Habitat Areas
3. Residency Restrictions
4. Deed Restrictions

**1. ADU restrictions/limitations in AG, RL, FL, and TPZ**

**Proposed Amendments to Coastal Element Policies – local control**

*It should be noted that the Coastal Commission has indicated that the “modern precedent” for interpretations of Sections 30241 and 30242 of the Coastal Act is that any residential uses on agricultural parcels which are not “farmer-occupied” are considered an agricultural conversion and must meet be subject to a consistency analysis with agricultural conversion criteria.*

- “Modern Precedent” indicates a procedure by which the Coastal Commission reviews projects, but are not actually codified in law.
- Section 30500(c) of the California Coastal Act states:

*The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and with full public participation.*

- Therefore, the local government has the authority to determine appropriate land uses in consultation with, but not necessarily prescribed by the Coastal Commission and staff, as long as those decisions are consistent with the Coastal Act.

**Standards for ADUs and JADUs – VHRs as Ag-Tourism**

*Section 20.458.020(F) establishes restrictions on the use of ADUs and JADUs as vacation home rentals (VHRs) or for use by transient guests in order to ensure that new ADUs increase the supply of non-transient housing in the coastal zone...(2) prohibits VHRs or transient guest use on parcels zoned AG, RL, FL or TPZ and provides a mechanism for phasing out existing VHRs when properties transfer or the use is abandoned.*

- The phasing out and eventual exclusion of VHRs on AG, RL, FL or TPZ designated parcels may limit the feasibility of some landowners to have viable principle agricultural operations as VHRs subsidize income through the burgeoning eco-tourism industry.
- Research findings presented to the CA Rangeland Coalition in 2018 noted that many agricultural operators, especially ranchers, hold more than one job in order to maintain economic subsistence.
- Ag-tourism in terms of small-scale visitor accommodating services, such as VHRs and temporary events, has the opportunity to serve two purposes: 1) educating the public about various types of agriculture operating within Mendocino County, and 2) supporting bona fide operations.
- The ability to operate a VHR on AG lands is especially important because it promotes resiliency in these industries when economic events preclude the ability to sustain an operation, the VHRs may allow the operations to subsist until economic circumstances improve.

## 2. Environmentally Sensitive Habitat Areas

### Coastal Resource Protections

*All new development associated with an ADU (well, water storage, septic improvements, parking and driveways, vegetation removal for fire safety, etc.) must also be located more than 100 feet from the boundary of an Environmentally Sensitive Habitat Area.*

- Considering current policies and procedures by which a resource or plant community is considered an ESHA, this regulation will impede upon the stated goal of increasing affordable housing
  - The current application of the ESHA definition is that plant communities considered a 1-3 ranking of “sensitive” (i.e. abundance) according to California Department of Fish and Wildlife guidelines for CEQA analysis and similar environmental review procedures (a ranking of 1 being the least abundant and warranting the most protection).
  - Due to the current extent of what is considered “ESHA,” it would be difficult to permit many ADUs without a “takings analysis,” which is an expensive process and for which it still is unclear as to whether an ADU could pass
  - If ADUs can pass a takings analysis, the mere process of an applicant having to go through the steps to prove that they could pass one, would likely result in property owners to charge higher rents in order to achieve an adequate return on investment (if they choose to go through the process at all).
- Recommendation: Use more discretion during the review period, especially with species ranked S3.
  - Utilize: Section 20.496.005 (Environmentally Sensitive Habitat and Other Resource Areas)

*This Chapter shall apply to all development proposed in the Coastal Zone unless and until it can be demonstrated to the approving authority that the projects will not degrade an environmentally sensitive habitat or resource area and shall be compatible with the continuance of such areas.*

- Therefore, rather than having a prescriptive 100 ft buffer, direct staff to utilize the tool of being able to prove that the biological function of a resource or resource area will not be substantially impacted by the proposed development, thereby negating the necessity for a prescribed 100 foot buffer in every situation.
- Please clarify whether development within a buffer would be compatible with the ADU regulations
- Concurrently: ADUs should be declared as a principally permitted use (therefore a property owner’s right) so that an applicant could pass a takings analysis when applying for a CDP for ADUs

## 3. Residency Restrictions

### Section 20.458.020-General Standards for Accessory Dwelling Units and Junior Accessory Dwelling Units (F)(1)

*In the coastal zone outside of the Gualala Town Plan area, on a parcel with an ADU or JADU, use of no more than one dwelling as a vacation home rental may only be permitted if the owner resides in either the single-family dwelling or the ADU or JADU.*

- This residency requirement may limit a property owner’s ability to maintain a sufficient income for maintaining the property.

- Recommendation: Instead of requiring that the “owner resides” in either the SFR or the ADU/JADU, require that at least one structure be inhabited by a long-term resident.
  - This allows for affordable housing stock to be maintained in addition to homeowners being able to subsidize their income with two different rental types

#### 4. Deed Restrictions

*(3) Prior to obtaining a building permit for an ADU or JADU, a deed restriction approved by the County, shall be recorded with the County Recorder's office...*

- Deed restrictions are expensive and time-consuming
- Clarify where the deed restriction requirement is originating from (Coastal Commission or County) and why it is considered necessary.
  - Consider that this tool places a restriction on the property in perpetuity, even when County regulations (including LCP) change.
  - Consider that there are many existing Deed Restrictions recorded against properties that prohibit Guest Cottages from being converted to independent living units, such as ADUs. With the passage of LCP ADU regs, will these Deed Restrictions need to be rescinded? Will the approving planning permits need to be amended to revise the Deed Restrictions?
- Recommendation:
  1. If the purpose of the Deed Restriction is to raise awareness of County LCP regulations to a property owner or a potential buyer of property, consider encouraging real estate professionals to raise awareness, rather than putting a note on the property.
  2. If a deed restriction is truly necessary, then the County should develop a generic deed restriction with specific areas to be filled out by the applicant as they pertain to the individual project (e.g., case number, approval date, applicant name, etc.). The generic deed restriction should be acceptable immediately upon submittal rather than going to County Counsel for approval.