

Mendocino County Tomorrow Ballot Initiative Election Code 9111 Study



**Prepared under the direction
of the County Administrative Office**

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REPORT TO THE MENDOCINO COUNTY BOARD OF SUPERVISORS REGARDING THE EFFECT OF THE PROPOSED "MENDOCINO COUNTY TOMORROW" BALLOT INITIATIVE PURSUANT TO ELECTIONS CODE § 9111.

INTRODUCTION

On March 18, 2009, a local citizens group by the name of "Mendocino County Tomorrow" submitted a Notice of Intention to Circulate Petition for a ballot initiative to amend the Mendocino County General Plan and Inland Zoning Code and to enact the "Mendocino Crossings Mixed-Use Masonite Specific Plan".

The former Masonite site is located in unincorporated Mendocino County and consists of approximately seventy-six (76) acres. The site is bounded on the west by North State Street, on the south by State Highway 101, on the east by the Northwest Pacific Railroad tracks, and on the north by Masonite Road. In the current General Plan, the site is designated as Industrial and it is zoned as I-1 (Limited Industrial) and I-2 (General Industrial) for industrial use.

The proposed Initiative would modify the existing land use designation of the site from Industrial to "Mixed-Use Specific Plan". This Mixed-Use Specific Plan designation will allow for development of up to 800,000 square feet of building area, 150 residential units and a variety of uses including light industrial, retail, commercial, residential, office, hotel, entertainment, educational, public facilities, utility installations, parking lots and structures, and open space.

The proposed Specific Plan contains a conceptual land use plan, development standards, design and landscape guidelines, circulation and infrastructure plan, and project mitigation measures to mitigate potential impacts to the community and the environment. The actual development of the site is subject to change based on market and regional demands.

It is well established in case law that the normal procedural requirements relative to noticing, hearings or findings for the adoption of general plan amendments, mixed use specific plans and zoning ordinances do not apply if the same measures are enacted by initiative. In addition, the requirement for review under the California Environmental Quality Act (CEQA) does not apply to voter-sponsored initiatives.

Pursuant to Elections Code § 9111, the County Board of Supervisors may request a report regarding issues relating to the initiative. Specifically, the Board can request information regarding the fiscal impact to the community; the effect on the internal consistency of the County's general and specific plans, including the housing element; the consistency between planning and zoning; the effect on the use of land; the impact on the availability and location of housing and the ability of the County to meet its regional housing needs; the impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks; and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses. The report can address the impact on the community's ability to attract and retain business and employment; the impact on the uses of vacant parcels of land; the impact on agricultural lands, open space, traffic congestion, existing business districts,

and developed areas designated for revitalization; and, finally, any other matters the Board of Supervisors requests to be in the report.

Although the purpose of the study is to inform both the legislative body and public as to the potential impacts of the proposed initiative measure, the measure is required to be submitted to the voters as presently drafted by the sponsors. The proposed measure cannot be modified based on any conclusions reached in the study requested by the Board.

On April 22, 2009 and again on April 28th, May 12th and 18th, the Board of Supervisors considered the need for a § 9111 study and items to be included in the proposed study. On May 18th, the Board directed staff to prepare responses to twenty (20) specific questions regarding the impact and effect of the proposed initiative and present the report to the Board on June 16, 2009. The Board further directed County staff to consult with a number of outside agencies to assist in the preparation of this report. The following is a list of the questions and responses. In addition to this report, the proposed initiative along with the exhibits including the "Mendocino Crossings Mixed Use Masonite Specific Plan" can be found on the Mendocino County Executive Office Website.

QUESTIONS AND RESPONSES

QUESTION 1

Can Millview Water District serve the project and what would be the impacts to existing and pending Millview customers?

Please refer to responses and information included in Attachments 1 to 6.

QUESTION 2

What is the status of Well #6 and what are the impacts to ground water resources from the proposed use of that well?

Please refer to responses and information included in Attachments 1 to 4.

QUESTION 3

How impacting will this project be on sewer capacity?

Please refer to the response included in Attachment 7.

QUESTION 4

What are the traffic impacts to congestion along North State St. from the project and proposed mitigation? Does this project allow for the extension of Orchard Avenue. Are there traffic impacts beyond the immediate area?

Please refer to the responses and information included in Attachments 8 to 11.

QUESTION 5

Does the mitigation meet their relative share of road improvements as identified in the AB1600 Traffic Impact Fee study?

Please refer to the response and information included in Attachment 9.

QUESTION 6

Are there any road capacity issues on Ford Road during periods when the fairground is holding a large-scale event? What impacts would occur to the Mendocino Redwood Company if the Masonite Truck Road is converted to a public road.

Please refer to the responses and information included in Attachments 8 to 11 for generalities about these issues. No information or responses were received from the private landowners referenced in the question.

QUESTION 7

How will the project affect the emergency responders' ability to serve existing areas and new developments?

Please refer to the responses and information included in Attachments 12 and 13.

QUESTION 8

What is the status of the site in regards to toxins?

There is insufficient information to review this aspect of the proposed Mendocino Crossings Specific Plan. An inquiry (Attachment 14) was made by the Mendocino County Water Agency to the North Coast Regional Water Quality Review Board with no response received to date. Staff did receive information on aerial toxin emissions during the period of time when the factory still operated, which is included as Attachment 15.

QUESTION 9

What are the Air Quality implications of this project?

Please refer to the response and information included in Attachment 16.

QUESTION 10

How will the project affect the County's ability to meet AB32 Green House Gas (GHG) targets?

California Assembly Bill 32 is otherwise known as the California Global Warming Solutions Act of 2006. This law primarily creates a statewide Greenhouse Gas (GHG) emissions cap for 2020 based on the 1990 emissions established January 1, 2008. AB32 requires the adoption of reporting rules for significant sources of emissions.

Mendocino County Planning Staff created a GHG inventory of the Ukiah Valley in 2008 and estimated that annual emissions from a wide range of mobile and stationary sources valley-wide was around 353,177 tons per year of CO₂-equivalent gasses (CO₂e). The model used to create this inventory has limited capabilities to analyze site-specific emission potential so the URBEMIS 2007 9.2.4 air quality model to determine CO₂e emissions was used. This model generated an estimated 39,552 tons of CO₂e per year, which would decrease to 19,128 if mitigation measures were taken. This represents an increase of 11.1% and 5.4% respectively.

AB32 requires a reduction to 10% below 1990 levels by 2020. Either level of increase in GHG from levels identified above would make achievement of these state mandated targets difficult in the future. The State has identified a number of policy steps and actions that could be taken now to reduce emission impacts before more stringent rules go into effect.

The Specific Plan does not discuss GHG directly but addresses the subject with proposed measures to reduce transportation and building energy related usage, which would in-turn reduce emissions. These measures however are only conceptual and include no enforcement mechanisms to ensure reductions. Although the AQMD identified a mitigated scenario for GHG emissions, without formal local or state regulations on GHG in place, this project will make future reductions in CO₂e-emissions and compliance with AB32 more difficult.

For more detailed CO₂ emission data, please refer to Attachment 16

QUESTION 11

What revenue might be generated? How would other revenue sources be affected? How would any additional revenues be distributed? Will there be tax revenues be lost/reallocated to any current tax recipient. What is the overall impact to the county? What shortfalls/benefits would result from this project on the overall county budget?

With the current absence of specific project information, any attempts at revenue projections, tax revenue reallocation projections, or overall impacts on the County budget are purely hypothetical and impossible to address in an accurate manner.

As with any new development or retail outlet, a certain amount of sales will be re-allocated from existing businesses within the community. However, a regional retail center of this scale can be expected to draw additional shoppers to the County, resulting in a net sales tax increase. The sales tax received by the County is distributed according to the chart on Figure "A" of Attachment 17. It must be noted that the State has temporarily increased the sales tax by 1%, to a total of 8.25%. This increase will expire July 1, 2011, at which point the rate is expected to return to 7.25%.

As the project is situated within the County's Redevelopment Area, any additional property tax revenues would be distributed as tax-increment according to the chart on Figure "B" on Attachment 17. Tax-increment, or increased property taxes within a redevelopment area, is distributed as follows: 60% for general redevelopment activities within the jurisdiction, 20% for affordable housing within the jurisdiction, and 20% to "Special Districts". Appendix "B" on Attachment 17 also contains a list of the specific entities that would benefit from any increased tax-increment as "Special Districts", and the rate of distribution.

QUESTION 12

How much could the Redevelopment Agency bond for as a result of the proposed project? Are there any related fiscal impacts to the rest of the county if revenues remain within the district?

In the absence of specific project information, it is not possible to accurately estimate any increases to the County Redevelopment Agency's bonding capacity as a result of this project's higher property tax valuation. Assuming a critical amount of tax increment is already at the Agency's disposal, it can be roughly stated that there is a direct, percentage-based relationship between the amount of tax-increment received by the Agency and its bonding capacity.

Figure "C" on Attachment 17 provides a visual representation of the property tax distribution within the county (outside of a redevelopment project area). This appendix also contains a list of the entities that receive funding, along with the rate of distribution. Comparing the distribution of increased property tax revenue between Figure "B" and Figure "C" on Attachment X can assist in the determination of local fiscal impact related to development within or without a redevelopment project area.

QUESTION 13

How consistent is the proposed land use change with all existing and proposed planning documents?

Attachment 18 discusses the consistency between the Mendocino Crossings Mixed Use Masonite Specific Plan and existing and proposed Mendocino County planning documents. Chapter 9, Plan Consistency of the Specific Plan contains statements made by the author of the Specific Plan on the consistency between the Specific Plan and existing and proposed County planning documents, including the Mendocino County 1981 General Plan, Mendocino County February 2009 Draft General Plan¹, and August 2007 Draft Ukiah Valley Plan. The applicant also evaluated the 2003 Draft Ukiah Valley Plan, however this plan was not included in Attachment 18 as this document was never adopted by the County and was superseded by the 2007 version, which contained many of the same elements.

The evaluation completed by the County looked at each goal, policy or implementation measure referenced in the Chapter 9 of the Specific Plan to determine consistency between the Specific Plan and the existing and proposed planning documents. Where insufficient information was available to make a determination, a statement that "a determination of consistency could not be made" was often used. This statement does not imply that all policy statements in this category are ultimately consistent or inconsistent; rather that such a conclusion could not be made with the available information or due to the conceptual nature of the plan.

The County also conducted an evaluation of plan consistency with other goals, policies and implementation measures in the County's planning documents not included in the analysis in Chapter 9 of the Specific Plan. Mendocino County's supplemental evaluation follows the review of the applicant's comments of plan consistency on each of the three plans. Unlike the review of statements made on Chapter 9 of the Specific Plan, only items determined to be inconsistent were included. All other goals, policies and implementation measures not included by the County in Attachment 18 were consistent, not applicable or had insufficient information to make a determination of consistency.

All County goals, policies and implementation measures which the Specific Plan was found to be inconsistent are listed on page 9.

¹ The version of the Draft General Plan cited by DDR and evaluated by the County has not been updated to reflect the most recent changes made by the Planning Commission.

Transportation Policies

Existing General Plan

- Circulation Element Goal 1
- Circulation Policy 3

Draft General Plan 2009

- Transportation DE-130
- Transportation DE-132
- Pedestrian and Bicycle Systems Policy DE-162
- Road System Policy DE-153

Draft 2007 Ukiah Valley Area Plan

- Policy CT1.1
- Policy CT1.2
- Goal CT5
- Policy CT5.2
- CT5.2a
- CT 5.2c Trans

Infrastructure Policies

Draft General Plan 2009

- Infrastructure Policy DE-125 trans

Draft 2007 Ukiah Valley Area Plan

- LU 5.1b Infrastructure

Water Policies

Draft 2007 Ukiah Valley Area Plan

- Policy OC3.2 proof of water

Energy Policies

Draft General Plan 2009

- Energy Resources Policy RM-54

Land Use Policies

Draft General Plan 2009

- Land Use Policy DE-43

Draft Ukiah Valley Area Plan 2007

- Goal LU2 Land use
- Policy LU2.1 Land use

Industrial Policies

Existing General Plan

- Industrial Policy 1g

Draft General Plan 2009

- Industrial Development Policy DE-53
- Industrial Development Policy DE-54
- Industrial Development Policy DE-68

QUESTION 14

What percentage of industrial land in the Ukiah Valley is converted as a result of this project? What percentage of all vacant and underutilized land does this area represent?

The former Masonite Site (west of the railroad) is approximately 76 acres in size and represents around 6% of the 1,269 acres of industrial lands² in the Ukiah Valley. The site represents approximately 12% of the 658 acres of vacant nonresidential zoned properties within the Ukiah Valley.

² Limited Industrial (I-1), General Industrial (I-2,) and Pinoleville Industrial (P-I) in the unincorporated area and the Manufacturing (M) zone within the City of Ukiah.

QUESTION 15

Are there other vacant industrial areas that are available for use? How do they compare in terms of size, surrounding land uses, and transportation access, utility infrastructure and environmental constraints?

Of the 1269 acres of industrial lands in the Ukiah Valley, approximately 473 are vacant, including the former Masonite site. Countywide³, there are around 2927 acres of industrial lands, of which 915 acres are vacant. Another 162 acres are idle due to the economic downturn but have not been permanently shut down. Upon completion of the General Plan Update process 77 acres of industrial lands will be converted to Rural Residential 10-acre minimums (RR-10). The figures represent a gross calculation of all industrial land categories within GIS records, aerials and Google's StreetView function. Actual parcel sizes are smaller with the largest single block of land under common ownership is around 160 acres.

A qualitative review of industrial zoned properties within the County of Mendocino identified nine other potential areas for future industrial development. Three sites fit most key characteristics of the former Masonite site: Mendocino Forest Products Site⁴, west of Willits industrial area and the Brush Street Triangle. These locations have good road transportation access, are located along a rail line, and have water, sewer, electricity and natural gas service. All are located in industrialized areas with limited land use incompatibility issues and close to a labor force. None are located environmentally constrained areas and most appear to have not been developed or have minor redevelopment requirements. A fourth, the eastern portion of the former Masonite site also meets many of these criteria but is located within the flood zone as determined by FEMA and is less accessible to the road network. A full analysis of all nine sites is located in Attachment 19.

QUESTION 16

What other areas in the Ukiah Valley are viable alternatives for commercial/retail use at the same size as the proposed project? Are there viable alternatives for individual components of the project if no single alternative was found to be available.

The only site within the UVAP that could accommodate all uses as proposed in the Mendocino Crossings Specific Plan is the Brush Street Triangle. The vacant 66-acre area portion of the larger 90+ acre area, is sufficiently large to accommodate 800,000 square feet of built space and 150 multifamily residential units. If the surrounding parcels were developed or redeveloped, improved road connections to the north and south made and a potential new interchange at US 101 and/or slip ramps constructed, this site would be more accessible to both Ukiah residents and visitors from the surrounding areas. The development would fill in the last major undeveloped area adjacent to the

³ Including the former Georgia Pacific Mill in Fort Bragg and the manufacturing (M) zone in the City of Ukiah. No data available for lands within the City of Willits.

⁴ The Mendocino Forest Product Site is composed of two parts, one 25-acre zoned industrial parcel and a larger 40-acre Agricultural (AG40) parcel, which would require a General Plan Amendment to I-1 or I-2

City of Ukiah that could be annexed⁵ into the City. Due to the shape of the area and noise constraints at the northern end, the mix of uses proposed as part of Neighborhood 3 of the Mendocino Crossings Specific Plan may prove infeasible in this area. A more conventional separation of residential, small-sized commercial, large scale retail may result. Although this area is currently zoned industrial, future industrial options are more limited due to potentially incompatible neighboring land uses. This fact is reflected in the property's Limited Industrial (I-1) Zoning classification.

The only other area that would be large enough to accommodate the entire project is the eastern half of the former Masonite site. Flood plain, utility infrastructure and extremely limited road access make this option infeasible.

Other areas could handle portions of the proposed project. Within the City of Ukiah, the Airport Business Park could contain all major and minor retail components depicted in the site plan, including the two largest retailers. Other non-retail uses, such as offices and hotel/motel sites could be accommodated in the undeveloped parcels along S. Orchard Avenue between Perkins and Gobbi. New mixed use residential-commercial development could occur as part of the City of Ukiah's proposed Form-Based Zoning Code in the downtown area. Aside from the downtown area, all areas are correctly zoned for this type of development, with all utilities available for new connections.

In the unincorporated area, large scale commercial opportunities are more limited. A portion of the large scale retail could be located in the 25-acre Mendocino Forest Product Company property, although the area is currently under a new connection moratorium which may preclude large scale commercial development at this time. Additional commercial and mixed use development could be accommodated south of town from SR 253 to the proposed Garden's Gate residential subdivision project. Any commercial development on the Forest Product property would require a General Plan Amendment, while development south of the City of Ukiah area will require a mix of rezoning and General Plan Amendments. A portion of the area is already correctly zoned and the entire vicinity is served by all utilities and easy access to surface streets and highways.

Outside of the referenced areas, there are no other properties available that could serve as a viable alternative to the proposed project.

QUESTION 17

What zoning and building ordinances would this project still be subject to?

If the initiative passes, a new zoning category, Mixed Use Specific Plan, would be established and applied to the parcels listed on page A-2 of the Mendocino Crossing Mixed Use Masonite Specific Plan. Should this zoning change take effect, the project would no longer be subject to the Mendocino Zoning Code but would follow the codes set out in Chapter Five, Development Standards of the Specific Plan (p. B-87 to B-126). Future development would need to adhere to those codes and any minor or major modification from that code would need planning department review and approval.

⁵ Annexation would most likely be required to receive water service as the City is the only provider in that area and borders the properties on the south and west.

(Amendments to the overall plan area scope or usage allowances would require approval by Mendocino County voters). Additionally, the California Uniform Building Code as well as the building permit process established by the County, which require the developer to obtain grading, building, plumbing, electrical, and mechanical permits would still apply.

QUESTION 18

Are there limitations on any future signage that the developer may erect?

Chapter Five of the Specific Plan addresses development standards, with Section 5.7 devoted to an extensive discussion of signage. Section 5.7.1 (pg. B-118) refers to a sign review process established in Chapter 8, Section 8.3.3, that gives oversight for consistency with the Specific Plan Sign guidelines to the County Department of Planning and Building Services.

The development standards and sign review process stated in Chapter Five delineates a number of limitations placed on signage. These requirements vary by type and location of sign, suggested materials, and overall allowable size. There are maximum allowable sign sizes based on the size of retail tenant store frontage for retail buildings, ranging from 100 square feet to 500 square feet for major and minor retail buildings (pg. B-120). Chapter Five also outlines requirements for freeway pylon signs, monument signs, center identity signs, as well as specific enumeration of prohibited signage types (pg. B-124-126). Some requirements in Chapter 5 do not indicate an enforceable mandate and have qualifying language such as "...should comply..." rather than "shall comply".

Chapter 8, Section 8.3.3 states that site plans and signage shall be reviewed by the Mendocino County Planning department to determine their conformance with the development standards from Chapter 5. The Planning Department will either provide statements of non-compliance with Chapter 5 or approve the plans within 30 days (pg. B-224).

The existing Mendocino County Zoning Code places limitations on overall signage, though these limitations would not apply to development at the Mendocino Crossings site but are included here for comparison:

Sign Area - Maximum. Except as permitted in [Section 20.184.045](#), the total square footage of all signs on a lot may not exceed one hundred twenty-eight (128) square feet; provided, however, in the absence of both freestanding signs and roof signs the maximum total sign area allowed may be increased to one hundred sixty (160) square feet.

This regulation was not designed to address the needs of major commercial centers and limits maximum signage on a site to 168 square feet per site. All recently approved larger commercial/industrial sites (Thruston Toyota and Honda sites, both Rose Industrial Parks, and the Raley's Shopping Center) have received variances to the existing signage requirements.

QUESTION 19

How does the initiative process compare to the standard planning process? Provide a comparison of the CEQA vs. non-CEQA process. Can PBS review the project and make recommendations/conditions. Do other state requirements such as AB610 apply? What are the financial impacts to the Department of Planning and Building Services?

Comparison to CEQA

The initiative process would supersede the "standard planning process". Typically, a land use or zoning change would require "discretion" on the part of the local agency (the County), would require analysis under the California Environmental Quality Act (CEQA), and involve public participation. Via a CEQA analysis, potential environmental impacts of the project could be identified, discussed, and mitigations proposed proportional to the project's impacts. Obvious impacts such as traffic, water, wastewater, and visual assessment could be evaluated and the County could have a public discussion about how to best address the issues. Should, at the conclusion of the process, the County determine that the project had merit, even impacts that could not ultimately be mitigated, the project could be approved with the adoption of a "statement of overriding considerations." Further, the County would have the discretion to deny the project if it was determined that the required project findings could not be supported.

In the case of using the ballot box initiative process to create land use changes, the "standard planning process" would not be required and the results of the vote of the general electorate would determine if the project could be developed. Procedural requirements (i.e. notice, hearing and findings) necessary for adoption of a specific plan, adoption of a general plan or amendment of the zoning code do not apply if the same measure is adopted by initiative so there is no public input except by the yes or no ballot vote. There would be no required mitigation other than that identified within the text of the initiative. Planning and Building Services would not have an opportunity to make recommendations unless we were solicited by the developer for such input. SB 610, which requires an assessment of the water supply available for large projects, e.g. 500 residential units or more than 500,000 square feet of shopping center or business establishment, would not be required. The ability of the water district to serve the project would be negotiated by the developer as a distinct and separate issue directly with the water provider and any other agency of regulatory oversight. The developer would have authority to proceed upon their satisfaction of service availability.

Land use regulations adopted by initiative are more difficult to amend, as you have to generate sufficient voter interest in updating or repealing a measure to conform to changed circumstances, or if regulations appropriate for a particular period in development may impede orderly development later. The initiative permits very little balancing of interests or compromises, that would be available during the normal planning process.

Financial Implications to Planning and Building Services

The Department of Planning and Building Services (PBS), in the standard planning process, would be charging the developer of any property fees for processing a land use and zoning change. Further, as there would likely have been required an Environmental Impact Report, the department charges a 15% of EIR contract cost as an administrative fee. Application fees would have been approximately \$5700.00 for the applications plus

15% of whatever the selected bid for the EIR would charge (which staff would estimate at a minimum of \$200,000, and likely much more).

Future fees that may still result, should the project proceed, would be subdivision fees (originally the DDR project discussed in mid 2008 which proposed separate parcels for each of the phases), plus any potential division of the proposed residential component. Further, staff estimates building permit fees would be approximately \$800,000 for the ultimate build out of the development scenario described. This fee should be considered very tentative as dependant on many variables such as ultimate occupancies of the various structures, whether full build out is to be achieved, and the total number of dwellings to be developed.

QUESTION 20

If the initiative passes, what would the developer still be required to do or gain approval for? (i.e. building permits, fire district clearances, etc.)

If the initiative passes, the developer would still be subject to some requirements established by the County, including Planning and Building Services (PBS), Department of Transportation (MCDOT), Air Quality Management District (AQMD), and Health Department as well as other agencies:

Permits that would need to be obtained from PBS include grading, building, plumbing, electrical, and mechanical.

MCDOT would require the developer to obtain an encroachment permit.

The developer would be subject to requirements established by the AQMD.

Additionally, any establishment that handles food would also still be subject to Mendocino County Health Department regulations.

The developer would need to gain approval for annexation into Millview County Water District and gain clearance to hookup to their water system.

The developer would also need to pay impact fees to the fire, school, and college districts as required.

CONCLUSION

Pursuant to Elections Code § 9116 once the report is presented to the Board of Supervisors the board shall either adopt the proposed ordinance within 10 days or order the election.