



June 14, 2012

Mrs. Virginia Bass, Chair
Board of Supervisors
Humboldt County
825 Fifth Street
Eureka, California 95501

Subject: General Plan Update DEIR

Dear Chair Bass and Members of the Board:

Thus far HELP has submitted four (4) letters to the Planning Commission and three (3) letters to your Board regarding the General Plan Update DEIR. Those letters have been sent to Planner Mr. John Miller to assure they will be included in the final EIR along with the County’s responses to each issue identified.

In addition to those issues, we point to the following concerns in terms of:

- 1 Alternatives 1, 2, 3 & 4 / A, B, C & D
- 2 FRC Recommendations
- 3 Moving Goods – Critical Choices Report
- 4 Consistency

Alternatives

Initially, Alternatives 1, 2, and 3 were drafted by staff and presented to the Supervisors and the public for review and comment. 1, 2, and 3 were still valid and on the County’s website as of June 2004, for comment. (They can still be viewed there.) After several years, there was so much opposition to Alternatives 1, 2 & 3, Planning Director Girard changed the alternatives and their definitions and renamed them: “Alternatives A, B, and C”. The only alternatives which did not change were Alternative 4 and Alternative D – both referring to the existing framework General Plan.

Over the past two years during the Planning Commission’s discussion of the Alternatives, the definition of A, B, and C have morphed further into such a hybrid of each other, it is impossible to reconcile the differences. This negates any environmental analysis due to the definition of each of those alternatives continually changed until there is no longer a track-able trail.

FRC (Forestry Review Committee)

The Board of Supervisors appointed several volunteer Registered Professional Foresters to serve on the FRC (Forestry Review Committee) years ago. Their recommendations were never allowed to be presented to the Planning Commission by the Committee members.

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Director Girard told the Commissioners at one point, that the FRC members should not be allowed to testify before the Commission because they were appointed by the Supervisors and thus should only provide their input directly to the Supervisors.

At one of the FRC meetings we attended, one of the Committee members suggested a recommendation to the other committee members. The Planner attending the meeting interrupted the members' discussion and stated: **"I don't believe the boss (meaning Kirk Girard) would tolerate that."**

Finally, staff's summary of the FRC recommendations was presented to the Planning Commission.

Moving Goods – Critical Choices Report

The foundation of the General Plan update was built on the Critical Choices Report, issued March 2001. (it can be viewed at: <http://co.humboldt.ca.us/gpu/docs/reports/ccrpt.pdf>) Critical Choices Report, Goods Movement section, starting on page 19 states:

"Inventory potential opportunities for re-establishing rail service and potential benefits to the community." We find no evidence in the General Plan or the DEIR that any such inventory or analysis has been prepared. It is important that such an evaluation of those potential opportunities be performed before the GPU / DEIR proceeds further.

Consistency

The State of California considers "consistency" a very important aspect of developing General Plans. In the State's General Plan Guidelines found at (http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf) they devote several sections to the subject:

- Internal Consistency
- Equal Status Among Elements
- Consistency Between Elements
- Consistency Within Elements
- Area Plan Consistency
- Text and Diagram Consistency

We have included these sections of the State Guidelines as **Attachment "A"** hereto. There are so many inconsistencies in the General Plan Update and DEIR, they are too numerous to delineate here. However, just a few consistency / inconsistency issues for your consideration include, but are not limited to:

Housing Element

Staff would have you believe the Housing Element is a “stand-alone document” as they call it. Nothing could be further from the truth. The only difference in the Housing Element and the other Elements, is that it is required by the State to be updated every five years, and there are more specific laws which govern the Housing Element.

The State Guidelines say: **“Also, housing element law requires local agencies to adopt housing element programs that achieve the goals and implement the policies of the housing element. Such programs must identify the means by which consistency will be achieved with other general plan elements (§65583(c)).”** (Emphasis added) See Attachment “A” hereto.

The State of California HCD (Housing and Community Development Department) has refused to certify the County’s Housing Element because it, including the Land Inventory, does not comply with State laws.

Actually, the County has no existing Land Inventory that we have been able to find. A legitimate Land Inventory must be developed prior to the GPU and DEIR can move forward because it is a common theme which intertwines with, and impacts every other Element of the General Plan.

Area Plan Consistency

The State Guidelines states: **“All principles, goals, objectives, policies, and plan proposals set forth in an area or community plan must be consistent with the overall general plan.”** (See Attachment “A”) (Emphasis added)

County Planners consider the Eureka Community Plan and the McKinleyville Community Plan to be stand-alone documents. Either both of these Community Plans, as well as all other Community Plans within the County, must be updated and be made consistent with the remaining policies and programs of the General Plan and Maps, or the proposed General Plan and Maps must be revised to conform with the existing Community Plans. This must be accomplished now, in order to comply with the “Area Plan Consistency” State Guidelines.

We urge you to read **Attachment A** hereto and instruct planners to comply with these Consistency sections of the State General Plan Guidelines.

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Conclusion

For the most part, our input to the GPU and DEIR has been ignored from day one. We plead with you not to continue this trend by restricting our comments to only those issues staff would like us to address, i.e., "The Short List". This is not acceptable and further thwarts the public's right to say what they want to say without being muzzled, silenced, gagged, shut up, stifled, and suppressed. We've had twelve (12) years of this. We want to be heard, now.

Thank you for all the hard work you are devoting to this very important matter.

Respectfully,

Kay Backer

Kay Backer, representing
Humboldt Economic & Land Plan

cc: Planning Commissioners
Phillip Smith-Hanes, County Administration Officer
Wendy Chaitin, County Counsel
Carolyn Ruth, Assistant County Counsel
Martha Spencer, Interim Planning Director
Tom Hofweber, Supervising Planner
John Miller, Senior Planner
Michael Richardson, Senior Planner
Kathy Hayes, Clerk of the Board
Norma Lorenzo, Planning Commission Clerk

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ATTACHMENT “A”

State of California General Plan Guidelines

Starting on page 12:

INTERNAL CONSISTENCY

The concept of internal consistency holds that no policy conflicts can exist, either textual or diagrammatic, between the components of an otherwise complete and adequate general plan. Different policies must be balanced and reconciled within the plan. The internal consistency requirement has five dimensions, described below.

Equal Status Among Elements

All elements of the general plan have equal legal status. For example, the land use element policies are not superior to the policies of the open-space element. A case in point: in *Sierra Club v. Board of Supervisors of Kern County (1981) 126 Cal.App.3d 698*, two of Kern County’s general plan elements, land use and open space, designated conflicting land uses for the same property. A provision in the general plan text reconciled this and other map inconsistencies by stating that “if in any instance there is a conflict between the land use element and the open-space element, the land use element controls.” The court of appeal struck down this clause because it violated the internal consistency requirement under §65300.5. No element is legally subordinate to another; the gen-
“*In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.*” (§65300.5)

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General plan must resolve potential conflicts among the elements through clear language and policy consistency.

Consistency Between Elements

All elements of a general plan, whether mandatory or optional, must be consistent with one another. The court decision in *Concerned Citizens of Calaveras County v. Board of Supervisors (1985) 166 Cal.App.3d 90* illustrates this point. In that case, the county land use element contained proposals expected to result in increased population. The circulation element, however, failed to provide feasible remedies for the predicted traffic congestion that would follow. The county simply stated that it would lobby for funds to solve the future traffic problems. The court held that this vague response was insufficient to reconcile the conflicts. **Also, housing element law**

requires local agencies to adopt housing element programs that achieve the goals and implement the policies of the housing element.

Such programs must identify the means by which consistency will be achieved with other general plan elements (§65583(c)).

A city or county may incorporate by reference into its general plan all or a portion of another jurisdiction’s plan. When doing so, the city or county should make sure that any materials incorporated by reference are consistent with the rest of its general plan. (Emphasis added)

Consistency Within Elements

Each element's data, analyses, goals, policies, and implementation programs must be consistent with and complement one another. Established goals, data, and analysis form the foundation for any ensuing policies. For example, if one portion of a circulation element indicates that county roads are sufficient to accommodate the projected level of traffic while another section of the same element describes a worsening traffic situation aggravated by continued subdivision activity, the element is not internally consistent (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90).

Area Plan Consistency

All principles, goals, objectives, policies, and plan proposals set forth in an area or **community plan must be consistent with the overall general plan.**

The general plan should explicitly discuss the role of area plans if they are to be used. Similarly, each area plan should discuss its specific relationship to the general plan. In 1986, the Court of Appeal ruled on an area plan that was alleged to be inconsistent with the larger general plan. The court upheld both the area plan and the general plan when it found that the general plan's "nonurban/rural" designation, by the plan's own description, was not intended to be interpreted literally or precisely, especially with regard to small areas. The court noted that the area plan's more specific "urban residential" designation was pertinent and that there was no inconsistency between the countywide general plan and the area plan (*Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300). However, the court also noted that in this particular case the geographic area of alleged inconsistency was quite small. (Emphasis added)

Text and Diagram Consistency

The general plan's text and its accompanying diagrams are integral parts of the plan. They must be in agreement. For example, if a general plan's land use element diagram designates low-density residential development in an area where the text describes the presence of prime agricultural land and further contains written policies to preserve agricultural land or open space, a conflict exists. The plan's text and diagrams must be reconciled, because "internal consistency requires that general plan diagrams of land use, circulation systems, open-space and natural resources areas reflect written policies and programs in the text for each element." (*Curtin's California Land-Use and Planning Law*, 1998 edition, p. 18)

Without consistency in all five of these areas, the general plan cannot effectively serve as a clear guide to future development. Decision-makers will face conflicting directives; citizens will be confused about the policies and standards the community has selected; findings of consistency of subordinate land use decisions such as rezonings and subdivisions will be difficult to make; and land owners, business, and industry will be unable to rely on the general plan's stated priorities and standards for their own individual decision-making. Beyond this, inconsistencies in the general plan can expose the jurisdiction to expensive and lengthy litigation.