



FRIENDS OF THE EEL RIVER

Working for the recovery of our Wild & Scenic River, its fisheries and communities.

eelriver.org

Friday, June 15, 2012

John Miller
County of Humboldt
Department of Community Development Services
3015 H Street
Eureka, CA 95501

Re: Comments on General Plan Update Draft Environmental Impact Report

Dear Planning Staff,

The following comments on the Humboldt County General Plan Update (GPU) Draft Environmental Impact Report (DEIR) are respectfully submitted on behalf of Friends of the Eel River (FOER). Friends of the Eel River works to protect and restore the Eel River watershed and its fisheries.

The General Plan Update is, as many have noted, well overdue. It is important because Humboldt County's world-class natural resources have suffered, and continue to suffer, serious and significant harms from a range of human impacts that Humboldt County has both authority and responsibility to address.

Humboldt County's natural environment is a key asset, not only for tourism and extractive industries like logging and mining, but also because clean water, healthy soil, and fully functional ecosystems are critical to supporting sustainable human and natural communities.

Overall Comments

Although the General Plan Update is urgently necessary and overdue, and though the Planning Commission draft represents a significant improvement over the standards now in place with respect to several key resource issues, review of the draft GPU and the DEIR strongly suggest that protections for critical natural resources would remain inadequate under the current draft.

Humboldt County is an indispensable part of a unique region that, despite the tremendous cumulative impacts of the last century of industrial extraction, still retains viable habitats, rare species, and populations of species that have been extirpated elsewhere. This region,

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by virtue of its proximity to the Pacific and its complex geography as well as its relatively intact ecosystems, represents one of the places most likely to be able to shelter imperiled species and functional ecosystems as climate change makes it even harder than it already is for species to persist in the rest of California.

As the GPU and DEIR acknowledge, the tributaries of the Eel River in Humboldt County, including the Van Duzen, Lower Eel, Middle Main Eel, and South Fork Eel, are among the many water bodies listed as impaired under § 303(d) of the federal Clean Water Act, generally for sediment and temperature impacts that impair beneficial uses of these rivers, including fisheries and recreation.

Not much more than a century ago, the Eel River watershed produced numbers of wild fish that made the river California's second-greatest source of steelhead and third most productive salmon river. Humboldt County's human and natural communities would benefit tremendously if those fisheries were restored to harvestable abundance, and would suffer irreversible harms if they were to fail to recover.

While the GPU and DEIR reference substantial declines in these populations, the documents may actually underplay how seriously these stocks are threatened and the difficulty of preventing and correcting some of the most significant impacts to watershed and fisheries health. Taken together with what appear to be overly optimistic projections of the efficacy of proposed new and existing standards, enforcement mechanisms, and mitigations, the GPU and DEIR fall short of the mark in specifying enforceable measures to protect and restore these fisheries.

The draft GPU does make important progress toward recognizing the importance of maintaining biological functions, but it continues to subordinate environmental protection to economic growth. This is backwards, and is likely to prove ineffective in maintaining either the quality of Humboldt County's environment or a viable, sustainable local economy. The GPU would serve Humboldt County better if it more clearly expressed the fact that our collective impacts on landscape and watersheds must be limited if we are to pass on to future generations a county with the productivity and natural diversity so many Humboldt citizens treasure.

The challenge facing Humboldt County is to express the noble goals of the GPU in an effective set of policies. While innovation, education, and incentives will be critical, so too will be effective enforcement. If the County lacks the capacity or the will to actually implement its policies, policies will remain irrelevant. Building enforcement capacity will require rebuilding public trust in local government as competent and legitimate with an investment of time and resources to turn what is now a vicious cycle into a virtuous one.

It is one of the tragedies of our time that the present federal legal environment precludes effective regulation of the marijuana industry at the county level. Elements of the underground industry generate significant impacts on the environment, which appear to be increasing substantially as the state moves toward decriminalization. The federal government's refusal to reconsider the failed War on (some) Drugs approach to the marijuana industry makes it very difficult for the county to implement a number of

innovative proposals for addressing these impacts. The county must revisit these issues in the future.

Specific comments

Please consider the following comments on the DEIR to produce a more accurate and meaningful FEIR and on the draft GPU itself.

Chapter 3.10 Hydrology and Water Quality

(p. 3.10-5, 6)

South Fork Eel. This section appears to refer to the entire Eel River as well as to the South Fork itself, and then is made the reference for the Lower Eel section as well. These river segments are of course closely related, but issues can be quite distinct between segments. Please consider inserting additional sections to clarify the circumstances applicable to each element of the watershed. For example, the reference to “one of the largest coastal Chinook populations in California” could be clarified by noting that wild (as opposed to hatchery-produced) Chinook salmon have historically been found in many parts of the Eel watershed, including the Van Duzen and South Fork as well as the mainstem, and that current Chinook returns remain approximately two orders of magnitude lower than historic levels.

This section also includes an apparently misplaced reference to the Klamath River; it is true that the Eel River and its primary tributaries are designated “fully appropriated.” The Van Duzen section should be grouped with the other Eel River segments.

(p. 3.10-8)

First line of the second paragraph should read ‘four *principal* groundwater basins.’ First line of last paragraph suggests that the Mad River Valley Basin is fed by the Eel River. This is not correct.

(p. 3.10-14)

Stormwater Flooding. The discussion of flood risks and impacts fails to address the very significant contribution of poor land-use practices, including the legacy impacts of past practices, to increasing flood risks. A more serious consideration of those relationships would support additional resource protections.

(p. 3.10-18)

The discussion of timber harvest regulations is seriously deficient. On the whole, it tends to suggest that existing regulations have been and are adequate to protect resource values, especially watershed resources, when the history of the last three decades clearly shows that is not the case. Even the latest version of CalFire’s fisheries rules, the so-called Anadromous Salmonid Protections, fall short of the best available science and well-established protection measures applied in similar areas on federal public lands, and failed entirely to address impaired watersheds. This discussion should inform the oversimplified and unrealistic Policy FR-P3, which lines the county up behind the timber industry’s longstanding goal of decreasing regulation.

(p. 3.10-19 et seq.)

Analysis... We have been unable to locate any meaningful discussion of the barriers to effective enforcement. Even well-crafted rules and effective mitigations can fail for lack of enforcement, and often do. The discussion here should reflect the fact that, because compliance with proposed rules is almost certain to be less than perfect, impacts are likely to be greater than otherwise projected.

This tends to underscore the conclusion of the DEIR (p. 3.10-22) that *“development allowed under the General Plan Update could result in significant impacts to threatened and endangered species and further degrade impaired water bodies.”*

(p. 3.10-20)

The discussion of salmonid fisheries impacts should include, at a minimum, Chinook salmon as well as coho and steelhead. Other once-abundant but now-imperiled fisheries resources like Pacific lamprey and green sturgeon should also be addressed in analyses of cumulative effects.

(p. 3.10-23)

Mitigations

The DEIR fails to analyze and disclose the efficacy of the proposed mitigation measures. On review, it is not clear that the proposed measures are certain to be implemented and enforced; nor is it clear how effective the proposed measures would be even if fully implemented. There does not appear to be any evidence or analysis provided to support the assertion that “(a)doption and implementation of these mitigations would reduce impact (sic) to a **less than significant level**” (emphasis in original).

Chapter 3.11 Biological Resources

(p. 3.11-2 et seq.) This section fails to reflect the present biological status of Humboldt County fisheries. The section should be revised to reflect the best available scientific information on the status of these fish populations, not just the formal designations by state and federal wildlife agencies, which generally are lagging indicators of species status. (The politically sensitive wildlife agencies, both state and federal, generally must be sued repeatedly before they will confer even limited protection on imperiled species.)

For example, Katz et al. (2012) assess the status of the Southern Oregon – Northern California Coho (SONCC) salmon as ‘endangered,’ while both the California Department of Fish and Game and the National Marine Fisheries Service list the population as ‘threatened’ under the state and federal Endangered Species Acts. This is a matter of no small consequence, because the sub-populations of coho salmon in Humboldt County watersheds, including the South Fork Eel and various Humboldt Bay tributaries, are likely to be subject to additional impacts under the policies of the draft GPU. These impacts may be cumulatively catastrophic to coho recovery.

Table 3.11-2 should be revised to reflect the actual listing status of various runs. For example, Humboldt County’s coho populations are considered part of the SONCC, but the

table lists them as part of the Central California Coast population. While FOER strongly agrees that the Eel River's unique summer-run steelhead should be considered a separate population, they are not presently so listed by the NMFS or DFG. Similarly, NMFS does not recognize Spring-run Chinook as a separate population in any river in the region, to the dismay of many fish conservationists. In addition to these corrections, we suggest adding columns to the table to show each species and or population's status under California and federal law, the date of listing, a reference to the listing document, and most important of all, a summary of the kinds of impacts that led to the listing.

(p. 3-11-5) The 'federally endangered northern spotted owl' is in fact listed as Threatened by the US Fish and Wildlife Service. See 55 FR 26114-26194. While the distinction may seem pedantic, Incidental Take Permits may not be issued for species listed as Endangered under the federal ESA.

(p. 3-11-8) The draft GPU proposes buffers for fish-bearing streams of 150 feet for perennial and 50 feet for intermittent streams. While FOER strongly supports the protection of Streamside Management Areas (SMAs), the DEIR should note that stream buffers established under the Northwest Forest Plan for the US Forest Service and Bureau of Land Management are significantly greater – generally, the equivalent of one site-potential tree height.

We would also note that the distinction between perennial and intermittent streams appears overdrawn, especially with respect to fish-bearing streams. Buffers are no less important to protect water quality and stream integrity in intermittent fish-bearing streams. Neither the GPU nor the DEIR appears to provide a reasoned basis for significantly lesser protection for intermittent streams.

(p. 3-11-10, 11) FOER strongly supports the proposed Policy WR-Px1, requiring new developments proposed in flow impaired watersheds to install water storage tanks and enter into forbearance agreements eliminating water withdrawal during low-flow periods. However, we are concerned that the Department of Fish and Game's recommended water storage volume may not be adequate to meet all the demands that may be placed on those water sources. We would encourage the Board to modify WR-Px1 to include a requirement to store at least DFG's recommended volume, **or more** as reasonably foreseeable to meet agricultural and fire-protection needs. Similarly, storage requirements should be extended not only to flow-impaired watersheds, but to all watersheds designated as 'fully allocated.'

As the DEIR notes, *"existing parcelization of outlying areas and the potential creation of new parcels with residential or other development at buildout could result in significant adverse effects on the County's important biological resources."*

However, the DEIR suggests that existing resource protections are far more effective than history and experience demonstrate, claiming *"... state and federal laws, as well as the General Plan Update, contain comprehensive measures to avoid and minimize adverse impacts on special status species to the maximum extent practicable...."* Humboldt County can and should go above and beyond the regulatory levels established by state and federal agencies where necessary to protect water quality, quantity, and beneficial uses. The DEIR

does not appear to provide any evidence that “*state and federal laws,*” let alone the GPU, “*contain comprehensive measures to avoid and minimize adverse impacts on special status species to the maximum extent practicable.*” There are any number of stronger protections that could practicably be adopted; that present measures are inadequate to avoid and minimize adverse impacts is the only logical conclusion to be drawn from the fact that most special status species continue either to decline or are not recovering.

Perhaps the greatest failure of the proposed GPU is its refusal to require environmental analysis and compliance for residential construction on TPZ lands. Given that the DEIR recognizes that conversion of forest lands to residential development is one of several significant unavoidable impacts of the proposed GPU on timberlands (see p. 3.2-39), and given that residential development can reasonably be anticipated to entail serious impacts on water resources and biological resources, the DEIR’s admission (p. 3.11-12) that “future growth allowed under the General Plan Update could result in the substantial alteration or loss of critical biological resources” seems to underestimate those impacts.

The mitigation measures proposed to reduce these impacts are, simply put, entirely inadequate. Measure 3.11.3.1.a outlines a process to review and possibly expand (or contract) Streamside Management Areas. If this process comes after development has been approved or completed, how can it mitigate those impacts? Measure 3.11.3.1.b proposes to develop Habitat Conservation Plans under federal law and Natural Communities Conservation Plans under state law “to further protect habitat for special status species.” However, even if those plans were certain to be developed and implemented, the development of HCPs and NCCPs does not necessarily mean that impacts on biological resources, including imperiled species and wetlands, would be reduced to a level that is less than significant, as CEQA requires. The same logic would seem to apply to the third proposed mitigation, Measure 3.11.3.1.c. On the whole, the DEIR fails to provide the reasoned analysis and data necessary to substantiate its claim that adoption of these mitigation measures would reduce these impacts to a “less than significant” level.

Conclusion

While the proposed GPU is necessary and overdue, it is not sufficient to protect the natural resources that are central to Humboldt County’s identity and future well-being. We urge the Board of Supervisors to strengthen the protections of the GPU to the greatest extent presently practicable, then to commit the County to revisiting the General Plan in the relatively near term to ensure that resource protection measures are adequate.

Thank you for your consideration of these comments.

Sincerely,
/s/
Scott Greacen
Executive Director

Attachment: Katz et al, *Impending extinction of salmon, steelhead, and trout (Salmonidae) in California*, Environ Biol Fish, Jan 31 2012