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Tuesday, March 29, 2011

Humboldt County Planning Commission and
Community Development Services
3015 H Street
Eureka, California 95501-4484

Subject: Humboldt County General Plan Update, Biological Resources

Dear Commissioners and Staff,

This letter is submitted on behalf of the Environmental Protection Information Center (EPIC). EPIC is a non-profit organization that actively works for the protection and restoration of the forests, watersheds, and native species of northwestern California.

We submit the following comments to assist Humboldt County's efforts to update the General Plan in order to comply with relevant laws and policies and to protect the beneficial uses and public trust values provided by streams, rivers, wetlands, other sensitive habitats, and Humboldt Bay. We do want to note our appreciation for the fact that the current draft reflects some of the suggestions made in EPIC's 2008 comment letter.

The issues at stake in the Biological Resources component of the General Plan go to the heart of what makes this area a truly world-class center of biological richness and beauty. Protecting Humboldt County's biological legacies is among the most important and challenging responsibilities addressed in the General Plan Update.

Recently, there have been suggestions that the General Plan Update should be halted while an alternative process is put in place, or even that there is no need for an update to the existing General Plan. What must be understood to evaluate those ideas is the burden of liability the County now carries because of its inadequate, out-of-date General Plan.

Under the existing 1984 General Plan, nearly all of Humboldt County's watercourses—including Humboldt Bay, the Eel, Elk, Klamath, Mad, Mattole, Trinity, and Van Duzen rivers, and Freshwater, Jacoby, and Redwood creeks—have been listed as 'impaired' by the State Water Board and the U.S. EPA, usually for a combination of pollutants including sediment, temperature, low oxygen levels, and other factors which harm fish and aquatic life.

Also since 1984, what remain of the North Coast's native salmonids have been listed under the state and federal Endangered Species Acts (ESA), including coho and chinook salmon, as well as steelhead trout, while other aquatic species have been designated as species of special concern. The impacts routinely allowed under the current plan have led to serious harms to our rivers and fish. It is clear that Humboldt County must update its General Plan as soon as possible, and we must get it right this time.

Our environmental laws, including the Endangered Species Act and Clean Water Act among others, are very clear that where a government adopts policies which allow impacts to listed species and listed waterbodies that are not consistent with the requirements of those laws – by, for example, allowing actions which could cause ‘take’ of listed species or their habitat, or by contributing to the further degradation of listed waterbodies – that government is as liable as would be a permittee for those illegal acts.

From the perspective of a watchdog, it makes a great deal more sense to address a flawed policy, and hold accountable a single public body, than it would to try to address the potential impacts of dozens of individual projects prepared under such a policy. Thus, if the County allows such impacts to continue, either by failing to finalize the pending update to its General Plan, or by adopting inadequate policies for the protection of water bodies and wildlife, it is setting itself up to defend indefensible policies whose failure is a matter of long-standing public record.

This is why both the Department of Fish and Game and the Fish and Wildlife Service have clearly stated to the Planning Commission that it is essential to adopt the most environmentally protective policies in the biological resources chapter of the General Plan to avoid further impacts to listed species. In fact, the policies proposed in Alternative A may not all be strong enough to prevent take of listed species.

It is essential that the County adopt policies which provide protection for listed species at least as strong as those recommended by the wildlife agencies, so that projects approved under these policies will be consistent with state and federal laws, including the state’s requirement that significant impacts be avoided or mitigated.

We implore you, however, to go a step further than providing the minimum possible protections: truly conserving Humboldt County’s battered biological legacy requires protective measures broad enough to provide for real recovery of the county’s greatest wealth.

Our comments on specific issues in the plan alternatives for the Biological Resources section of the Conservation and Open Space Element are as follows:

BR-S5, Streamside Management Areas Defined: Plan Alternative B basically carries forward the existing General Plan’s distinction between ‘urban’ and ‘rural’ streams, providing much smaller buffers along ‘urban’ streams than ‘rural’ (See BR-S5 at page 10.3-10). This makes no sense at all. This method of classification ignores the real differences between stream types, and actually leads to greater impacts on biologically and ecologically more important large, low-gradient streams which happen to have had towns and cities built around them. Humboldt Bay and its tributaries, as well as the lower Eel, Mad, and Van Duzen Rivers, are of particular concern since these areas are most likely to be impacted by future development that will be governed by the GPU.

Alternative A gets the classification method right, by defining Streamside Management Areas on the basis of whether they are ‘fish bearing’ or not. As well, Alternative A dispenses

with the idea that USGS maps of 'blue line' streams are an effective guide to the status of perennial and intermittent streams. We have entered the era when overdrawn watercourses can run dry; to maintain effective protections for our watersheds and fish, it's critical that the people making these classification decisions know what they're looking at. That's why **Alternative A's provisions for a 'qualified biologist' (in BR-IM3 at 10.3-22) and for staff training in field identification and impact mitigation are so important.**

Unfortunately, it's by no means clear that even Alternative A provides adequate buffers to protect our streams and rivers. Along fish-bearing streams, Alternative A provides for stream buffers that are no greater than the Forest Practice Rules provide, 150 feet for perennial streams and 50 feet for intermittent streams. It's worth noting that, in fact, both Regional Water Board staff and the National Marine Fisheries Service have clearly indicated that the latest Forest Practice rules remain inadequate to protect beneficial uses of water and listed salmonids and steelhead, particularly with regards to sediment and temperature impacts. For comparison, riparian areas on our national forests are defined as being about twice that width (one site capacity tree height), under the best available science from 1994.

As the DFG has pointed out, the stream protection frameworks in Alternatives B and C would perpetuate the current structure of stream protections. Headwater areas which are most likely to remain in a forested condition would have the widest buffers. Meanwhile, development projects likely to have the greatest impacts on streams and fish – because they entail permanent conversion of vegetated open space to a hard-surface urban setting of buildings, roads, and other infrastructure – are afforded only the narrowest buffers, measures which are clearly inadequate to protect streams and fish.

Finally, we urge adoption of the proposed language at **BR-IMx4, providing for ongoing review and revision of Streamside Management Areas and wetland buffers.** While we are concerned that this provision might present a temptation to punt hard decisions about stream protections downfield for later review, it is essential to have some mechanism in the Plan by which protections can be reassessed if they are not working.

We appreciate the opportunity to comment on these critical policies in the County's General Plan Update. Please include these comments in the administrative record, and keep us informed of future opportunities to comment.

Sincerely,

/s/
Scott Greacen
Executive Director

cc: Humboldt County Supervisors Virginia Bass, Clif Clendenen, Mark Lovelace, Jimmy Smith, and Ryan Sundberg.