



## FRIENDS OF THE EEL RIVER

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

Friday, September 7, 2012

Humboldt County Supervisors  
Kathy Hayes, Clerk of the Board  
County of Humboldt  
825 Fifth Street, Room 111  
Eureka, CA 95501

### **Re: What's at stake in the development of TPZ lands and the General Plan Update**

Dear Supervisors:

Friends of the Eel River advocates for the protection and restoration of the Eel River watershed, its fisheries and communities. As we have noted in previous comments on the General Plan Update to the Planning Commission and to your Board, Friends of the Eel River are keenly concerned by the significant, effectively irreversible impacts of unplanned and unmitigated development in the Eel River watershed.

The county has legal and moral responsibilities to protect resources which we hold in trust for future generations, including not only our slowly recovering world-class fisheries but also the habitat and water quality necessary to support fish populations.

The county's continuing failure to effectively address the impacts of development leads to continuing harms to the natural resources that are central to the county's future. It creates uncertainty and unfairness for responsible landowners who seek to use their land sustainably but are impacted by those who do not respect natural or legal limits. Not least, the county's failure to act leads to significant downstream liabilities for both the county itself and for landowners.

The historically abundant fisheries of the Eel River watershed included chinook and coho salmon and steelhead trout, as well as several other kinds of salmon, green sturgeon, and the lamprey ("eel") that gave the river its name. Unfortunately, to the extent they persist, all of these species are now at very real risk of extinction in the Eel and across the region. The designation of coho, chinook, and steelhead as Threatened (ie, likely to become at risk of

---

#### **ARCATA OFFICE**

Scott Greacen, Executive Director • scott@eelriver.org  
PO Box 4945, Arcata, CA 95518 • 707.822.3342

#### **PETALUMA OFFICE**

David Keller, Bay Area Director • dkeller@eelriver.org  
1327 I Street, Petaluma, CA 94952 • 707.763.9336

extinction in the next century) under both the state and federal Endangered Species Acts understates the threats they face. **The Eel should be a stronghold for salmonids that can help restore regional populations, but if current trends continue, we will lose these species in the Eel and across the region in our children's lifetimes.**

It may seem hard to square this reality with the general celebration of increased salmon returns to North Coast offshore waters and rivers this summer and fall. However, by far the majority of those fish are chinook salmon returning to hatcheries on the Klamath, Trinity, and Sacramento rivers – hatcheries which are themselves the focus of long-overdue reforms necessary to reduce impacts on wild runs. Even in the Eel, where wild-spawned chinook returns appear to be surging to levels not seen in generations, we're still only talking about numbers that amount to about five percent of what the Eel produced during similarly productive years before human impacts nearly destroyed the runs.

Salmon, in general, are harmed by increased sediment loads, increased water temperatures, and lower flows. All of these factors dramatically increased in our watersheds due to the logging and roadbuilding boom of the 20<sup>th</sup> century. Those impacts led to the designation of nearly all North Coast rivers, including the Eel and its tributaries, as impaired and threatened under Section 303(d) of the federal Clean Water Act. **While these legacy impacts have begun to heal, their persistence means we must take great care to limit today's and tomorrow's impacts if we are to successfully restore our watersheds and the fisheries that depend upon them.**

An example may help bring into sharper focus the questions that face your Board in the General Plan Update, specifically in how residential development will be permitted on TPZ lands. Over the last several years, some 18,000 acres of timber lands in Southern Humboldt county were broken up by an ownership seeking to maximize the short-term market value of those lands. These owners have long enjoyed the substantial tax benefits of TPZ designation.

About 7,000 of those acres make up most of the upper Sprowel Creek drainage. A few human generations ago, in the 1940s, annual returns of adult coho salmon to the entire Southern Humboldt and Northern Mendocino portion of the South Fork Eel (ie the Benbow Reach) ranged from 10,000 to 25,000 fish. These days, the *entire* South Fork population of coho probably numbers about 2000 adults in a good year. This population is the strongest south of the Oregon border, and has been identified by the National Marine Fisheries Service as critical to maintaining and restoring coho populations across the region. What happens over the next decade in Humboldt County's Sprowel Creek and Redwood Creek watersheds will be among the most important factors in whether the South Fork Eel's coho population continues to decline or turns the corner to real recovery.

**In its present, mostly undeveloped condition, the Sprowel Creek watershed now sees as many as 25 adult coho return in some years.** Stream flows and other key conditions in Sprowel Creek and its tributaries are already dangerously poor in the dry season. (Unlike chinook and steelhead, coho must survive a summer in their natal creeks before migrating to the ocean.) In the absence of effective mechanisms to ensure watershed impacts are mitigated and reduced, further development in the watershed is likely to substantially reduce the potential for coho recovery not only in the Sprowel Creek watershed but for the South Fork coho population as a whole. That both the county and developers might become liable for prohibited “take” of listed species is just one of the serious consequences likely to result.

What, then, should the county do to protect public trust resources in such circumstances, particularly with respect to the development of residential uses on TPZ lands and similar resource lands? The county must act to ensure that such development occurs only with enforceable provisions governing the key factors that drive the most significant impacts.

We would respectfully suggest these include:

**1) Minimum parcel sizes.**

Parcel size is arguably the single most important driver of the interrelated impacts of development. While it is certainly possible to manage smaller parcels in sustainable ways, or to manage larger parcels unsustainably, it is now well understood that maintaining relatively large holdings of resource lands is a central factor in maintaining natural productivity and water quality. Put another way, the smaller the minimum parcel size, the greater the overall number of impacts associated with denser rural development will inevitably be. As well, managing for forest-related benefits, including timber production, becomes much less economically feasible as parcel sizes are reduced.

A critical subset of this problem has to do with the abuse of the certificate of compliance process to evade the requirements of the Subdivision Map Act with respect to parcel subdivision, development planning, and resource impacts. Humboldt County has long had a Merger Ordinance on the books, but has failed consistently to enforce its provisions. We can no longer afford to avoid this issue. The Merger Ordinance must be enforced for larger ownerships.

**2) Water supply and storage.**

Low summer flows have always been an aspect of the North Coast’s Mediterranean climate and rain-fed river systems and a limit on fishery productivity. However, we share the widespread concern that increased dry-season diversions from surface waters, associated with residential development and marijuana production, appear

to be driving even lower flows during the dry season. Under these circumstances, further residential development should only be permitted where enforceable requirements for adequate water storage preclude additional dry-season diversions.

**3) Road system design, construction, and maintenance.**

Minimizing the impact of roads means reducing their overall extent, siting them appropriately, designing and constructing them so as to minimize unnecessary impacts, and ensuring they are maintained to the appropriate standard during all seasons of use. Humboldt County has made important progress on these issues with respect to the county road system, but must continue to make improvements wherever possible. What largely remains to be done is ensuring that the county's extensive private road systems – at a minimum, new construction – meet or exceed the best practices that have been established by the Five Counties program and similar efforts.

**4) Oversight of grading impacts.**

While Humboldt County at least has a grading ordinance requiring appropriate engineering of substantial earth-disturbing activities, it is clear both that current standards need to be raised and that additional efforts must be made to insure that developments actually reflect those standards in practice.

**5) Cumulative effects analysis and mitigation.**

To effectively mitigate the combined weight of legacy impacts and existing development, and to ensure future development will not lead to impermissible levels of impact on public trust resources, thorough, **credible cumulative impacts analyses must be completed prior to permitting of additional developments.** Only through such real-world study can we determine either that existing rules are adequate to protect public trust resources or that further development can be allowed to go forward without great concern.

Thank you very much for your careful consideration of these important issues. Please don't hesitate to contact me if I can be of any further assistance.

Sincerely,



Scott Greacen  
Executive Director  
California Bar # 277346

**Hayes, Kathy**

---

**From:** Scott Greacen [scott@eelriver.org]  
**Sent:** Friday, September 07, 2012 4:33 PM  
**To:** Hayes, Kathy; Clendenen, Clif; Bohn, Rex; Bass, Virginia; Sundberg, Ryan; Lovelace, Mark  
**Subject:** Friends of the Eel River letter re TPZ & related development impacts  
**Attachments:** FOER comments HumCo TPZ GPU hearing.pdf

Dear Supervisors,

Please find attached our letter in pdf format (I've pasted it below for your convenience as well).

Thanks very much for your consideration of these important issues.

Sincerely,

Scott

Scott Greacen  
Executive Director  
Friends of the Eel River

PO Box 4945  
Arcata CA 95518

[scott@eelriver.org](mailto:scott@eelriver.org)  
707-502-4555

-----

Friday, September 7, 2012

Humboldt County Supervisors

Kathy Hayes, Clerk of the Board

County of Humboldt  
825 Fifth Street, Room 111

Eureka, CA 95501

9/10/2012

**Re: What's at stake in the development of TPZ lands and the General Plan Update**

Dear Supervisors:

Friends of the Eel River advocates for the protection and restoration of the Eel River watershed, its fisheries and communities. As we have noted in previous comments on the General Plan Update to the Planning Commission and to your Board, Friends of the Eel River are keenly concerned by the significant, effectively irreversible impacts of unplanned and unmitigated development in the Eel River watershed.

The county has legal and moral responsibilities to protect resources which we hold in trust for future generations, including not only our slowly recovering world-class fisheries but also the habitat and water quality necessary to support fish populations.

The county's continuing failure to effectively address the impacts of development leads to continuing harms to the natural resources that are central to the county's future. It creates uncertainty and unfairness for responsible landowners who seek to use their land sustainably but are impacted by those who do not respect natural or legal limits. Not least, the county's failure to act leads to significant downstream liabilities for both the county itself and for landowners.

The historically abundant fisheries of the Eel River watershed included chinook and coho salmon and steelhead trout, as well as several other kinds of salmon, green sturgeon, and the lamprey ("eel") that gave the river its name. Unfortunately, to the extent they persist, all of these species are now at very real risk of extinction in the Eel and across the region. The designation of coho, chinook, and steelhead as Threatened (ie, likely to become at risk of extinction in the next century) under both the state and federal Endangered Species Acts understates the threats they face. **The Eel should be a stronghold for salmonids that can help restore regional populations, but if current trends continue, we will lose these species in the Eel and across the region in our children's lifetimes.**

It may seem hard to square this reality with the general celebration of increased salmon returns to North Coast offshore waters and rivers this summer and fall. However, by far the majority of those fish are chinook salmon returning to hatcheries on the Klamath, Trinity, and Sacramento rivers – hatcheries which are themselves the focus of long-overdue reforms necessary to reduce

9/10/2012

impacts on wild runs. Even in the Eel, where wild-spawned chinook returns appear to be surging to levels not seen in generations, we're still only talking about numbers that amount to about five percent of what the Eel produced during similarly productive years before human impacts nearly destroyed the runs.

Salmon, in general, are harmed by increased sediment loads, increased water temperatures, and lower flows. All of these factors dramatically increased in our watersheds due to the logging and roadbuilding boom of the 20<sup>th</sup> century. Those impacts led to the designation of nearly all North Coast rivers, including the Eel and its tributaries, as impaired and threatened under Section 303 (d) of the federal Clean Water Act. **While these legacy impacts have begun to heal, their persistence means we must take great care to limit today's and tomorrow's impacts if we are to successfully restore our watersheds and the fisheries that depend upon them.**

An example may help bring into sharper focus the questions that face your Board in the General Plan Update, specifically in how residential development will be permitted on TPZ lands. Over the last several years, some 18,000 acres of timber lands in Southern Humboldt county were broken up by an ownership seeking to maximize the short-term market value of those lands. These owners have long enjoyed the substantial tax benefits of TPZ designation.

About 7,000 of those acres make up most of the upper Sprowel Creek drainage. A few human generations ago, in the 1940s, annual returns of adult coho salmon to the entire Southern Humboldt and Northern Mendocino portion of the South Fork Eel (ie the Benbow Reach) ranged from 10,000 to 25,000 fish. These days, the *entire* South Fork population of coho probably numbers about 2000 adults in a good year. This population is the strongest south of the Oregon border, and has been identified by the National Marine Fisheries Service as critical to maintaining and restoring coho populations across the region. What happens over the next decade in Humboldt County's Sprowel Creek and Redwood Creek watersheds will be among the most important factors in whether the South Fork Eel's coho population continues to decline or turns the corner to real recovery.

**In its present, mostly undeveloped condition, the Sprowel Creek watershed now sees as many as 25 adult coho return in some years.** Stream flows and other key conditions in Sprowel Creek and its tributaries are already dangerously poor in the dry season. (Unlike chinook and steelhead, coho must survive a summer in their natal creeks before migrating to the ocean.) In the absence of effective mechanisms to ensure watershed impacts are mitigated and reduced, further development in the watershed is likely to substantially reduce the potential for coho recovery not only in the Sprowel Creek watershed but for the South Fork coho population as a whole. That both the county and developers might become liable for prohibited "take" of listed species is just one of the serious consequences likely to result.

What, then, should the county do to protect public trust resources in such circumstances, particularly with respect to the development of residential uses on TPZ lands and similar resource lands? The county must act to ensure that such development occurs only with enforceable provisions governing the key factors that drive the most significant impacts.

We would respectfully suggest these include:

**1) Minimum parcel sizes.**

Parcel size is arguably the single most important driver of the interrelated impacts of development. While it is certainly possible to manage smaller parcels in sustainable ways, or to manage larger parcels unsustainably, it is now well understood that maintaining relatively large holdings of resource lands is a central factor in maintaining natural productivity and water quality. Put another way, the smaller the minimum parcel size, the greater the overall number of impacts associated with denser rural development will inevitably be. As well, managing for forest-related benefits, including timber production, becomes much less economically feasible as parcel sizes are reduced.

A critical subset of this problem has to do with the abuse of the certificate of compliance process to evade the requirements of the Subdivision Map Act with respect to parcel subdivision, development planning, and resource impacts. Humboldt County has long had a Merger Ordinance on the books, but has failed consistently to enforce its provisions. We can no longer afford to avoid this issue. The Merger Ordinance must be enforced for larger ownerships.

**2) Water supply and storage.**

Low summer flows have always been an aspect of the North Coast's Mediterranean climate and rain-fed river systems and a limit on fishery productivity. However, we share the widespread concern that increased dry-season diversions from surface waters, associated with residential development and marijuana production, appear to be driving even lower flows during the dry season. Under these circumstances, further residential development should only be permitted where enforceable requirements for adequate water storage preclude additional dry-season diversions.

**3) Road system design, construction, and maintenance.**

Minimizing the impact of roads means reducing their overall extent, siting them appropriately, designing and constructing them so as to minimize unnecessary impacts, and ensuring they are maintained to the appropriate standard during all seasons of use.



Humboldt County has made important progress on these issues with respect to the county road system, but must continue to make improvements wherever possible. What largely remains to be done is ensuring that the county's extensive private road systems – at a minimum, new construction – meet or exceed the best practices that have been established by the Five Counties program and similar efforts.

**4) Oversight of grading impacts.**

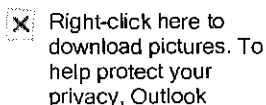
While Humboldt County at least has a grading ordinance requiring appropriate engineering of substantial earth-disturbing activities, it is clear both that current standards need to be raised and that additional efforts must be made to insure that developments actually reflect those standards in practice.

**5) Cumulative effects analysis and mitigation.**

To effectively mitigate the combined weight of legacy impacts and existing development, and to ensure future development will not lead to impermissible levels of impact on public trust resources, thorough, **credible cumulative impacts analyses must be completed prior to permitting of additional developments.** Only through such real-world study can we determine either that existing rules are adequate to protect public trust resources or that further development can be allowed to go forward without great concern.

Thank you very much for your careful consideration of these important issues. Please don't hesitate to contact me if I can be of any further assistance.

Sincerely,

Right-click here to download pictures. To help protect your privacy, Outlook

Scott Greacen

Executive Director

California Bar # 277346