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May 15, 2014

Humboldt County Board of Supervisors
825 Fifth Street, Room 111
Eureka, CA 95501

Subject: Humboldt County General Plan Update Stream and Wetland Protections

This letter concerns aquatic species, riparian and wetland habitat conservation, and the use and implementation of Streamside Management Areas (SMAs) and development standards in the Humboldt County General Plan Update (Update). The California Department of Fish and Wildlife (CDFW) has been working with the Humboldt County Planning Commission and Planning and Building Department staff since at least 2007, to ensure the Update effectively protects the State's public trust resources.

As a trustee for the State's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, the Department administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife resources. The Department offers the following comments and recommendations on the Update in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA), California Public Resource Code §21000 et seq. As you may be aware, CDFW has no direct regulatory authority over land use decisions, such as wetland and riparian development setbacks or development within a floodplain. Those land use decisions rest with local lead agencies, such as Humboldt County.

Humboldt County's rivers and streams, lagoons and wetlands, provide vital habitat for a number of species, such as salmon, which have important cultural, commercial and recreational values. Though, many of the County's larger and most iconic water bodies, such as Humboldt Bay, Freshwater, Jacoby, and Redwood creeks, and the Eel, Elk, Klamath, Mad, Mattole, Trinity, and Van Duzen rivers are currently designated by the US Environmental Protection Agency as sediment-impaired pursuant to the Clean Water Act §303(d) or are otherwise impaired by high water temperatures, water diversions, loss of riparian habitat, or barriers to fish passage.

CDFW staff has provided testimony at numerous Planning Commission meetings and workshops regarding protection of the County's rivers, streams, wetlands, and the fish and wildlife populations they support. CDFW has also submitted to the County a number of letters with specific comments and recommendations, including the following:

- Update Environmental Impact Report, notice of preparation, July 17, 2007
- Timberland Production Zone Revisions, January 18, 2008
- Update Water Resources Element, May 11, 2009
- Supplemental Housing Element, August 11, 2009
- Draft Environmental Impact Report, June 11, 2012

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Streamside Management Areas (SMA)

The following is excerpted text from the SMA measures included in the most recent version of the Update, which is currently before you for review:

“BR-S5. Streamside Management Areas Defined. Streamside Management Areas (SMA) are identified and modified as follows:

A. Areas specifically mapped as SMA and Wetland (WR) Combining Zones, subject to verification and adjustment pursuant to site-specific biological reporting and review procedures.

B. For areas along fish-bearing streams not specifically mapped as SMA and Wetland (WR) Combining, the outer boundaries of the SMA shall be defined as:

- 1) Forest Practice Rule stream buffer widths.*
- 2) 150 feet, measured as the horizontal distance from the stream transition line on either side of perennial streams.*
- 3) 50 feet, measured as the horizontal distance from the stream transition line on either side of intermittent streams.*

C. For areas along non fish-bearing streams not specifically mapped as SMA and Wetland (WR) Combining Zones, the outer boundaries of the SMA shall be defined as:

- 1) 75 feet, measured as the horizontal distance from the stream transition line on either side of perennial streams.*
- 2) 25 feet, measured as the horizontal distance from the, stream transition line on either side of intermittent streams.”*

The Department believes the SMA measures above will not effectively protect Humboldt County's rivers and streams from the impacts of adjacent development. Thus the SMA development setback buffers will not serve as an adequate mitigation in the Update. CDFW has three main concerns with the SMA measure described above: 1) unclear and incompatible reference to the Forest Practice Rules, 2) intermittent streams receiving narrower setback widths, and 3) starting the development setback buffer at the “stream transition line.”

Forest Practice Rules

The Forest Practice Rules (FPRs) apply to timber harvesting and related activities (habitat modification) under the purview of the California Department of Forestry and Fire Protection and the Forest Practices Act. The FPRs would be inappropriately applied as a mitigation or regulatory process for determining setback distances for development adjacent to streams (habitat conversion). CDFW recommends the Update's SMA measures eliminate reference to the FPRs.

Perennial versus Intermittent Streams

Distinguishing between perennial and intermittent streams in the Update is problematic for many reasons: 1) Many streams in Humboldt County have diminished stream flows or are being dewatered due to surface water diversions and wells, for domestic use, marijuana

cultivation, or other agricultural uses. Given this, and current severe drought conditions, many Humboldt County streams that might otherwise be perennial could be deemed intermittent and thus receive a narrower setback buffer. 2) Surface water flows on even some major rivers, such as the Van Duzen River, can go subsurface (intermittent) in certain reaches in some years. Because these watercourses go intermittent does not diminish their biological value and should not necessitate narrower development setbacks. 3) Over-winter rearing habitat, including floodplains, oxbows, side channels, and intermittent streams are vital habitat for the State and federally-listed coho salmon (*Oncorhynchus kisutch*). These habitats often only have flowing or standing water in the winter months and can be completely dry in summer. Given the demonstrated importance of intermittent stream habitat to coho salmon, there is no relevant biological reason for the Update to provide different setback buffers for perennial versus intermittent streams.

CDFW recommends the Update SMA measures not distinguish between perennial and intermittent streams. Since Humboldt County's salmon and trout habitat is relatively well-mapped by CDFW and others (and freely available to the public), CDFW supports basing SMA setbacks on fish versus non-fish bearing streams. If used as a minimum distance, CDFW would support SMA setback distances of 150 feet for fish-bearing streams and 75 feet for non-fish-bearing streams.

Where to begin the SMA Buffer?

The current SMA measures stipulate the SMA setback buffer starts at the "Stream Transition Line." The stream transition line is defined as the "line closest to a stream where riparian vegetation is permanently established" (see Humboldt County General Plan, Volume 1, Framework Plan, adopted December 10, 1984, Amended February 9, 1998). CDFW's concern with the stream transition line definition is that the development setback starts at the first rooted tree outside of the wetted channel, which places the majority of protection emphasis on the wetted channel, and potentially allows development to abut riparian vegetation. Development adjacent to riparian vegetation has many direct and indirect impacts on wildlife species, aquatic and riparian habitat, and water quality, and leaves little opportunity for restoration, management, or placement of fire-safe buffers outside of riparian corridors. CDFW recommends the Update start the SMA setback buffer at the "top of bank, or edge of riparian vegetation, whichever is greater" and eliminates the use of the stream transition line.

Since 1994, when CDFW first provided written setback buffer guidance on development projects, we have consistently found that starting setbacks from the top of bank, or edge of riparian vegetation, whichever is greater, to be a much more biologically sound and easily understood starting point than the stream transition line. Starting the SMA setback at this location recognizes the importance of riparian vegetation and flood plain protection, whether as habitat for riparian-dependent species, or as a critical buffer for water quality protection and enhancement. SMA setbacks starting at the top of bank, or edge of riparian vegetation, whichever is greater, also allows for restoration opportunities, more effective wildlife management, better fire-safe buffers, more options for flood control and management, and reduced risk to public health and safety and property damage from flooding.

CDFW notes a June 15, 2012, National Marine Fisheries Service (NMFS) comment letter on the Update to the County also addresses this issue. This NMFS letter states the SMA stream buffers do not provide protection of ecological functions such as floodplain habitat and, "the County should include floodplain habitat in their sensitive habitat areas." Our

recommendation to start the SMA setback at the top of bank, or edge of riparian vegetation, whichever is greater, helps provide feasible protection of the ecological functions of riparian and floodplain habitat. As always, CDFW is available to work with the County and project applicants to adjust SMA setbacks, as needed, on a site-specific basis.

Wetland Protections

The following is the 2014 Revised Planning Commission Version of the Update's wetland development standards.

“BR-S10 Development standards for wetlands, including setbacks and buffers except for wells and spring boxes, shall be consistent with state and federal requirements for protection of wetlands, and developed in consultation with the appropriate referral agency or by variance on a project specific basis.”

This development standard provides no regulatory certainty or guidance to land owners, project proponents, or the public as to what an appropriate development setback might be for a given project or wetland. CDFW finds that clear unambiguous regulatory process best serves both the public and efforts to conserve fish and wildlife habitats. It is unclear what “consistent with state and federal requirements for protection of wetlands” means. CDFW is unaware of any State or federal requirement for a specific development setback from wetlands. It is unclear who the appropriate referral agencies are; what would occur if there were divergent recommendations among the referral agencies or if the referral agencies could not consult on a project in a timely fashion. It is also unclear if the County has any obligation to implement referral agency recommendations, or if the County's only obligation is consultation with referral agencies, and then the County Planning Commission could implement whatever development setback it determines. Given the development standards for wetlands is vague and absent any performance standards, CDFW, the County, nor the public would be able to determine if this standard effectively protects wetlands from development impacts.

CEQA Section 15126.4(a)(1)(B) states: “Formulation of mitigation measures should not be deferred until some future time.” CEQA Section 15126.4(a)(2) states: “Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” CDFW is concerned that the Update's draft wetland development standards are a deferral of mitigation until some future time and that they are not fully enforceable.

For the above reasons, CDFW recommends the Update include a minimum development setback on wetlands of at least 100 feet. If the setback buffer distance is not feasible, then the setback buffer could be reduced or even eliminated, if warranted by site-specific conditions. For certain wetlands with greater ecological values or sensitivity, a wider development setback could be appropriate. As always, CDFW staff is available to consult on the appropriate development setback for a given project.

Adopting these recommendations will feasibly minimize potentially significant impacts on rivers, streams and wetlands from the future development and land use changes anticipated in the Update. Furthermore, by making these changes, CDFW believes the County will likely avoid the take of State and federally listed species and will assist with their recovery and eventual down-listing.

If you have questions or comments regarding this matter, please contact Senior Environmental Scientist (Supervisor) Gordon Leppig at (707) 441-2061, or Environmental Scientist Michael van Hattem at (707) 445-5368, or at 619 Second Street, Eureka, California, 95501.

Sincerely,



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