

Comments from the
Humboldt County Resource Lands Working Group (HCRLWG)
Regarding

10.3 Biological Resources

UPDATED – changes to comments submitted in
December 2013 are **highlighted**

The structure for this document is as follows:

Title of the Goal, Standard, Policy, or Implementation Measure

HCRLWG RECOMMENDATION: Recommended language for that section from the Humboldt County Resource Lands Working Group in blue.

HCRLWG COMMENTS: Rationale for the changes and other comments in blue.

Any portions in green are related to changes made at the 2012 planning commission and were indicated that way in the version sent to the Board of Supervisors.

The following comment seems to no longer be necessary given the changes the 2014 Planning Commission made. The RLWG agrees with the changes that the 2014 Planning Commission made to BR-S3 & BR-S4 that address this comment.

The RLWG has previously provided a discussion of the use of “critical” and “essential” habitat in the General Plan Update. A copy of the letter with attachments is included with this document. In short, the term “critical habitat” is clearly defined and used by federal agencies and applies to federal lands or projects that use federal funds or federal permits on private lands. The term “essential habitat” is ill-defined and roughly associated with State agencies. As such, those terms should be left to the controlling agencies and the County should focus on “sensitive habitat” for County application in order to address issues they deem necessary. Appropriate changes have been made below to reflect this approach.

As stewards of the lands, resource owners and managers take very seriously the ideas represented in these sections it is in our best interest to ensure the appropriate management of the resource lands. The proposed changes do not diminish any protections provided but do clarify the appropriate responsibilities of the various agencies involved.

BR-G1. Threatened and Endangered Species.

HCRLWG Recommendation – Delete goal

~~BR-G1. Threatened and Endangered Species. Sufficient recovery of threatened and endangered species to support de-listing.~~

HCRLWG Comments

This already exists in current federal and State regulations.

BR-G2. Sensitive, Critical, and Essential Habitat.

HCRLWG Recommendation

Modify the goal as indicated

~~BR-G2. Sensitive, Critical, and Essential Habitat.~~ A mapped inventory of sensitive, ~~critical, and essential~~ habitat where biological resource protection policies apply **and where not otherwise available through trustee agencies.**

HCRLWG Comments

Please note the change to Sensitive Habitat definition in BR-S4.

The RLWG has previously provided a discussion of the use of “critical” and “essential” habitat in the General Plan Update. A copy of the letter with attachments is included with this document.

BR-G3. Benefits of Biological Resources.

HCRLWG Recommendation

The group can support the version sent forward to the Board of Supervisors from the 2012 Planning Commission.

BR-G3. Benefits of Biological Resources. Fish and wildlife habitats protected on a sustainable basis to generate long-term public, economic, and environmental benefits.

BR-P1. Compatible Land Uses

HCRLWG Recommendation

We continue to recommend deletion of this policy.

If it is retained we suggest a modified version of the policy sent forward to the Board of Supervisors from the 2012 Planning Commission

BR-P1. Compatible Land Uses. Land containing sensitive ~~and critical~~ habitats shall be planned and zoned for uses compatible with the long-term sustainability of the habitat. Discretionary land uses and building activity in proximity to sensitive ~~and critical~~ habitats shall be conditioned to prevent significant ~~habitat~~ degradation **of sensitive habitat or harm to rare, threatened, or endangered species.**

HCRLWG Comments

Does "land" apply to entire parcel even though the habitat might only be in a portion? What is the definition of "in proximity to"?

BR-P2. Critical Habitat.

HCRLWG Recommendation

The group continues to recommend changing the policy as indicated to compliment changes made to BR-S3 and definitions by the 2014 Planning Commission in Jan/Feb 2014.

3431.2. Critical Species Habitat. ~~Habitats for "critical species"~~ **Critical habitat for listed species shall be protected under provisions of NEPA and CEQA and related federal endangered species laws as directed by federal agencies. Critical habitat applies only to federal lands or where a project uses federal permits or federal funds on private lands.**

BR-P3. Essential Habitat.

HCRLWG Recommendation

The group continues to recommend deletion of this policy to compliment changes made to BR-S3 and definitions by the 2014 Planning Commission in Jan/Feb 2014

HCRLWG Comments

The RLWG has previously provided a discussion of the use of "critical" and "essential" habitat in the General Plan Update. A copy of the letter with attachments is included with this document.

BR-P5. Streamside Management Areas.

HCRLWG Recommendation

We can support the version sent to the Board of Supervisors from the 2012 Planning Commission with a modification.

BR-P5. Streamside Management Areas. To protect sensitive fish and wildlife habitats and to minimize erosion, runoff, and interference with surface water flows, the County shall maintain Streamside Management Areas, along its blue line streams ~~(as identified on the most recently published largest scale USGS topographic maps—1:24,000).~~ Streamside Management Areas shall also apply to including intermittent streams that exhibit in-channel wetland characteristics ~~and off-channel riparian vegetation.~~

HCRLWG Comments

We don't see the need for additional increased regulation on resource lands because it leaves landowners little alternative except to convert the land use from typically existing resource management uses to development or wildlife habitat which is inconsistent with planning and zoning of retaining the maximum amount of resource lands in production. This then encourages these lands to be sold to nonprofits and public agencies ultimately leading to lack of management and non-productive uses and takes them out of the tax base.

BR-P6. Development within Streamside Management Areas.

HCRLWG Recommendation

The group can support the version sent forward to the 2012 Board of Supervisors from the Planning Commission.

BR-P6. Development within Streamside Management Areas. Development within Streamside Management Areas shall only be permitted where mitigation measures (Standards BR-S8 - Required Mitigation Measures, S9 - Erosion Control, and S10 - Development Standards) have been provided to minimize any adverse environmental effects, and shall be limited to uses as described in Standard BR-S7 - Development within Streamside Management Areas.

BR-P7. Wetland Identification.

HCRLWG Recommendation

The group can support the version sent forward to the Board of Supervisors from the 2012 Planning Commission with two modifications.

BR-P7. Wetland Identification. The presence of wetlands in the vicinity of a proposed project shall be determined during the review process for discretionary projects and for ministerial building and grading permit applications, when the proposed building development activity involves new construction or expansion of existing structures or grading activities. Wetland delineation by a qualified **professional biologist** using criteria acceptable to the **California Department of Fish and Wildlife Game** may be necessary and shall be required when wetland characterization and limits cannot be easily inventoried and identified by informal site inspection.

HCRLWG Comments

Other professionals such as foresters are also qualified to make such a determination.

Department of Fish and Game has now been renamed Fish and Wildlife.

The definition of wetlands in the Glossary differs from that in BR-S11. The Glossary definition should be made consistent with BR-S11.

BP-P8. Oak Woodlands.

HCRLWG Recommendation

The group continues to support Version B as modified. Five of six 2012 Planning Commissioners supported changing the word protected to conserved or protection to conservation (depending on the version).

BR-P8. Oak Woodlands. The voluntary conservation protection of oak woodlands should be encouraged.

HCRLWG Comments

A voluntary program is consistent with the Board of Supervisors decision last year regarding the Oak Woodland Management Plan that was presented by the NCRLT and supported by Humboldt County Farm Bureau, Humboldt Cattlemen and The Buckeye among other organizations.

BR-P9. Invasive Plant Species.

HCRLWG Recommendation

The group recommends a modification to the version sent from the 2012 Planning Commission to the Board of Supervisors.

BR-P9. Invasive Plant Species. The County shall cooperate with public and private efforts to control noxious and exotic invasive plant species. The County shall cooperate with public and private efforts to control **and to minimize the introduction of** noxious and exotic invasive plant species.

HCRLWG Comments

An even more important step than controlling these plant species is to minimize the introduction of them in the first place.

BR-P10. Biological Resource Maps.

HCRLWG Recommendation

The group continues to recommend a modification to the version sent from the 2012 Planning Commission to the Board of Supervisors.

BR-P10. Biological Resource Maps. Biological resource maps shall be consulted **initially** during the ministerial and discretionary permit review process as a starting tool in order to identify habitat concerns. ~~and guide mitigations that will reduce biological resource impacts to below levels of significance.~~

HCRLWG Comments

Other public resource agencies involved, in concert with the county, will develop the mitigations necessary during the agency review.

BR-P11. Agency Review.

HCRLWG Recommendation

The group continues to recommend a modification of the version sent from the 2012 Planning Commission to the Board of Supervisors.

BR-P11. Agency Review. The County shall request the California Department of Fish and **Wildlife Game**, as well as other appropriate **trustee** agencies and organizations, to review plans for development within Sensitive Habitat areas **as identified on the ground**, ~~and~~ including Streamside Management Areas. The County shall request NOAA Fisheries or **U.S.** Fish and Wildlife Service ~~review, as well as other appropriate agencies and organizations,~~ to review plans for development within critical habitat areas **if the project includes federal permits or federal funding**. Recommended mitigation measures to reduce impacts below levels of significance shall be **considered during** ~~incorporated into~~ project approval.

HCRLWG Comments

California Department of Fish and Game has now been renamed California Department of Fish and Wildlife.

BR-Pxxx Wetlands Banking.

HCRLWG Recommendation

The group recommends deletion of this policy

~~**BR-Pxxx Wetlands Banking.** The County supports the development of a wetlands banking system. **NEW POLICY** added by the Commission on 6-16-11~~

HCRLWG Comments

The group is against the use of agricultural lands for the purposes of wetlands banking because in the past wetland mitigation has resulted in the loss/conversion of productive agricultural lands (e.g. Willits bypass had a conversion ratio of 40:1).

Where productive agricultural lands are converted they need to be mitigated per the “no net loss” policy (AG-P6).

BR-S1. Development Excluded from Sensitive Habitat Policies.

HCRLWG Recommendation

The group supports a modification of the version forwarded from the 2012 Planning Commission to the Board of Supervisors

BR-S1. Development Excluded from Sensitive Habitat Policies. Proposed development occurring within areas containing sensitive habitats shall be subject to the conditions and requirements of this chapter except for these exclusions (which do not preempt other County regulations or those of other agencies):

- A. Timber management and harvest activities **conducted** under the **California Forest Practice Act (Z'Berg-Nejedly) and Rules** ~~a timber harvesting plan or non-industrial timber management plan,~~ or activities exempt from local regulation as per California Public Resources Code 4516.5(~~fe d~~). These standards shall not be used to reduce buffers specified under the State Forest Practice ~~Rules~~**Act unless such reduction is provided for therein.**
- B. Any area proposed for development, which upon examination of the biological resource maps and field inspection is not actually within or does not contain the indicated habitat.
- ~~C. Forest management activities that are needed to improve timber productivity regulated by CAL FIRE, which are otherwise consistent with this chapter.~~
- D. **Agricultural practices which are principally permitted within the zone shall not be considered development for the purposes of this standard.**

HCRLWG Comments

We strongly support including paragraph D regarding Ag as this is consistent with the Williamson Act, Right to Farm ordinance, and several other sections of the GPU and zoning.

Regarding the corrections above, CPRC 4516.5 should be section d in its current form (these letters have changed over the past few years). Also, the reference was changed because the State Forest Practice Rules lay out the buffers (not the Act).

Bullet C seems to be covered by bullet A and is, therefore, not necessary.

If paragraph D is not included this creates conflict in several sections including S5 and S7.

BR-S2. Agency Consultation.

HCRLWG Recommendation

BR-S2. Agency Consultation. For discretionary projects with potential to impact ~~critical~~ sensitive and ~~or essential~~ habitats (**as defined in sections BR- S4 below**), the County will **refer said project for recommendations to** ~~seek specific recommendations from the California Department of Fish and Wildlife Game, NOAA Fisheries and U.S. Fish and Wildlife Service, and other agencies and organizations as applicable to the specific project location, class of development, or natural resource involved.~~

HCRLWG Comments

Suggested reference for ease of reading.

Department of Fish and Game has now been renamed California Department of Fish and Wildlife.

BR-S3. Critical and Essential Habitat Defined.

HCRLWG Recommendation

The group supports the Jan/Feb 2014 Planning Commission changes made to this Standard.

2014 PC version

BR-S3. Critical and Essential Habitat Defined. Critical habitats are habitats necessary for the protection of threatened or endangered species listed under the Federal Endangered Species Act (FESA). **Designation, mapping and enforcement of critical habitat is the responsibility of the federal agencies.** Essential habitats are habitats necessary for the protection of threatened or endangered species listed under the California Endangered Species Act.

BR-S4. Sensitive Habitat Defined.

HCRLWG Recommendation

The group supports the Jan/Feb 2014 Planning Commission changes made to this Standard.

2014 PC version

BR-S4. Sensitive Habitat Defined. Sensitive habitats are defined as a **biologically** unique, limited, or an especially valuable habitat type for a species whose habitat requirements, if significantly changed, would cause a threatening change to the species population **across its range** and may include the following:

- A. ~~Critical and essential~~ **Habitat necessary for the protection of** ~~for rare, unique, threatened and endangered species~~ **as listed under the FESA or CESA**
- B. Migratory deer winter range
- C. Roosevelt elk range
- D. Sensitive avian species rookery and nest sites (e.g osprey, great blue heron and egret)
- E. Streams and streamside areas
- F. Natural ponds, springs, vernal pools, marshes, and wet meadows exhibiting standing water all year long or riparian vegetation.
- G. ~~Protected Rare and endangered~~ **vascular plant communities as listed by the US Fish & Wildlife Service compiled by the California Native Plant Society or the California Department of Fish and Wildlife Game.**
- H. Other sensitive habitats and communities as **may be currently, correctly and accurately** listed in the **California** Department of Fish and **Wildlife Game**'s California Natural Diversity Data Base, as amended periodically.

BR-S5. Streamside Management Areas Defined.

HCRLWG Recommendation

The group recommends the following changes to the version from the 2012 planning commission to the Board of Supervisors. It is important to note that the recommended changes below retain the current applicable measures. The change DOES NOT reflect a decrease from current practice.

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 Zones ~~and outside of Urban Development and Expansion Areas~~, the outer boundaries of the SMA shall be defined as:
 - 1) ~~Consistent with the Forest Practice Rule stream buffer widths.~~
 - 2) **100** 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 ~~and inside of Urban Development and Expansion Areas~~, the outer boundaries of the SMA shall be defined as:
 - 1) ~~75- 50~~ 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.
- ~~C. The width of Streamside Management Areas shall be expanded as necessary to include significant areas of riparian vegetation adjacent to the buffer area, slides, and areas with visible evidence of slope instability, not to exceed 200 feet measured as a horizontal distance.~~
- DC.** The width of Streamside Management Areas ~~shall~~ **may** be expanded **when supported by written evidence from the requesting referral agency as:**
 - 1) ~~as if~~ necessary to include significant areas of **important** riparian vegetation adjacent to the **SMA buffer area, or**
 - 2) ~~as if necessary to include active slides, and areas with~~ visible evidence of slope instability **adjacent to perennial and intermittent streams.**
- ~~DE. Where California Forest Practice Rules designate require wider stream buffer areas, the width of the SMA shall be expanded to be consistent with those regulations when they are applicable unless exempted under other statute or regulation.~~
- ~~EF.~~ The Streamside Management Area may be reduced or eliminated where the County determines, based on specific factual findings, that the ~~USGS~~ mapping of the ~~stream as~~ ~~perennial or intermittent~~ SMA is not accurate, ~~and~~ **or** there are no in-channel wetland characteristics or off-channel riparian vegetation.
- ~~FG.~~ SMAs **and the protections embodied in this section** do not **apply to include** ~~watercourses consisting entirely of a~~ ~~man-made~~ drainage ditches, **canals, flumes**, or other man-made drainage **or irrigation** devices, construction, or systems.

HCRLWG Comments

It is important to note that the recommended changes below retain the current applicable measures. The change DOES NOT reflect a decrease from current practice.

On B1 it is not necessary to include the reference to Forest Practice Rules because the SMA widths are identified in B2 and B3. In addition those widths in B2 or B3 are not necessarily consistent with the Forest Practice Rules.

On F the county would find one or the other circumstance. Change in G to ensure that the SMA applies to natural but not man-made features such as ditches along roadways. Periodic maintenance is required to these man-made features. It is important that F includes the deletion of "and" but includes the "or" as indicated.

Agriculture needs to be exempt from this measure by including bullet D in BR-S1
This is consistent with the Humboldt County Right to Farm ordinance.

There is no need for the county to widen the SMA beyond that already determined by the state agencies which would be involved with the activity. This working group's option does not infer or apply new regulations and does not potentially create a conversion of use from resource management.

BR-S7. Development within Streamside Management Areas.

HCRLWG Recommendation

The group recommends the following changes to the version from the 2012 Planning Commission to the Board of Supervisors.

BR-S7. Development within Streamside Management Areas. Development within Streamside Management Areas may be approved where consistent with Policy BR-P6 - Development within Streamside Management Areas, and shall be limited to the following uses:

- A. Development permitted within stream channels per BR-S6 - Development within Stream Channels.
- B. Timber management and harvests not otherwise excluded by provisions of Standard BR-S1 - Development Excluded from Policies, as well as noncommercial cutting of firewood and clearing for **the maintenance of agricultural lands and uses, pasture and farm fields**, provided:
 - 1) Cottonwoods are retained **within the SMA**.
 - 2) Remaining ~~willows and alders, as well as other unmerchantable~~ hardwoods and shrubs are to be protected **within the SMA** from unreasonable damage.
 - 3) Integrity of tree canopy to be maintained **within the SMA** ~~within~~ for temperature impaired water bodies **listed under the CWA 303(d)** consistent with applicable TMDL's.
- C. Road, bridge, and trail replacement or construction, when it can be demonstrated that it would not **have a significant adverse effect on** ~~degrade~~ fish and wildlife resources or water quality, and that vegetative clearing is kept to a minimum **within the SMA**.
- D. Removal of vegetation for disease control, **fuels reduction and or fire safety** or **other** public safety purposes **within the SMA**.
- E. Setbacks **for the SMA** may be reduced when the prescribed buffer would prohibit development of the site for the principle use for which it is designated **or historical use**, provided mitigations are applied that result in the least environmentally damaging feasible project.
- F. **Normal, usual and historical agricultural practices and uses which are principally permitted within the SMA shall not be considered development for the purposes of this standard.**

HCRLWG Comments

Paragraph B The ability to maintain agricultural lands and uses, pasture and crop fields (clear for pasturage) is vital in certain areas that experience periodic intrusion. **Paragraph C** – “have a significant adverse effect” is the typical CEQA terminology. **Paragraph E** it is important to include historical uses to maintain agricultural lands and uses, pasture and agriculture lands **Bullet F** is consistent with the Humboldt County Right to Farm ordinance

If the Planning Commission version is retained the group would ask for a calculation of the amount of land removed from agricultural production as a result of application of this Standard.

BR-S8. Required Mitigation Measures.

HCRLWG Recommendation

The group continues to recommend a modification of the version sent from the 2012 Planning Commission to the Board of Supervisors.

BR-S8. Required Mitigation Measures. Mitigation measures for development within Streamside Management Areas ~~shall~~ **may**, at a minimum, include:

- A. Retaining snags unless felling is required by CAL-OSHA, by CAL FIRE forest and fire protection regulations, **fuels reduction** or for public health and safety reasons. ~~The felling must be approved by the CDS Department.~~ Felled snags shall be left on the ground if consistent with fire protection regulations **and the required treatment of slash or fuels.**
- B. Retain live trees with visible evidence of current or historical use as nesting sites by hawks, owls, eagles, osprey, herons, kites or egrets.
- C. Replanting ~~or reseeding~~ of disturbed areas **(with at least 100 square feet of exposed soils)** with riparian vegetation ~~of native species (including such species as alders, cottonwoods, willows, sitka spruce, etc.)~~ **shall may** be required prior to the completion of the development project **if written into the project by referral agencies as a mitigation.**
- D. Erosion control measures (as per Standard BR-S9- Erosion Control).
- E. Maximum feasible retention of overstory canopy in riparian corridors. ~~adjacent to Clean Water Act designated temperature impaired water bodies.~~

HCRLWG Comments

In paragraph A CAL FIRE and OSHA have the final decision making power. It is unnecessary for the County to participate. In paragraph C some areas of exposed soil were previously inhabited with only grasses so reseeding is more appropriate than replanting.

BR-S9. Erosion Control.

HCRLWG Recommendation

The group continues to recommend a modification to the version sent from the 2012 Planning Commission to the Board of Supervisors.

BR-S9. Erosion Control. Erosion control measures for development within Streamside Management Areas shall include the following:

- A. During construction, land clearing and vegetation removal will be minimized, following the provisions of the Water Resources Element and the standards listed here.
- B. Construction sites **with at least 100 square feet of exposed soil** will be **planted or seeded as appropriate per written mitigations of the lead agency** with native or naturalized vegetation and mulched with natural or chemical stabilizers to aid in erosion control and ensure revegetation.
- C. Long slopes will be minimized to increase infiltration and reduce water velocities down cut slopes by such techniques as soil roughing, serrated cuts, selective grading, shaping, benching, and berm construction.
- D. Concentrated runoff will be controlled by the construction and continued maintenance of culverts, conduits, non-erodible channels, diversion dikes, interceptor ditches, slope drains, or appropriate mechanisms. Concentrated runoff will be carried to the nearest drainage course. Energy dissipaters may be installed to prevent erosion at the point of discharge, where discharge is to natural ground or channels.
- E. Runoff shall be controlled to prevent erosion by on-site or off- site methods. On-site methods include, but are not limited to, the use of infiltration basins, percolation pits, or trenches. On-site methods are not suitable where high groundwater or slope stability problems would inhibit or be aggravated by on-site retention or where retention will provide no benefits for groundwater recharge or erosion control. Off-site methods include detention or dispersal of runoff over non-erodible vegetated surfaces where it would not contribute to downstream erosion or flooding.
- F. Disposal of silt, organic, and earthen material from sediment basins and excess material from construction will be disposed of out of the Streamside Management Area to comply with **California** Department of Fish and **Game Wildlife** and the North Coast Regional Water Quality Control Board requirements.

Winter operations (generally October 15 thru April 15) shall employ the following special considerations:

- G. Slopes will be temporarily stabilized by stage seeding and/or planting of fast germinating seeds, such as barley or rye grass, and mulched with protective coverings such as natural or chemical stabilizations.
- H. Runoff from the site will be temporarily detained or filtered by berms, vegetated filter strips, and/or catch basins to prevent the escape of sediment from the site. Drainage controls are to be maintained as long as necessary to prevent erosion throughout construction.

BR-S10. Development Standards for Wetlands and Other Wet Areas.

HCRLWG Recommendation

The group supports the Jan/Feb 2014 Planning Commission changes made to this Standard.

2014 PC version

BR-S10. Development Standards for Wetlands and Other Wet Areas. 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.

HCRLWG Comments

Construction of wells and springboxes is essential for agricultural production.

BR-IM3. Staff Training.

HCRLWG Recommendation

The group continues to recommend deletion of this Implementation Measure

~~**BR-IM3. Staff Training.** Building and Planning Division staff shall receive periodic training related to the field identification of biological resources and mitigation of impacts. The County shall maintain efficient and timely procedures for project referral to state and federal agencies for biological review and consultation.~~

HCRLWG Comments

This is one of the many IMs that should be considered prior to the implementation of the plan.

What are the costs and effectiveness associated with this measure considering the complexities of the resources involved?

BR-IMx. Natural Communities Conservation Plan and Habitat Conservation Plan.

The planning commission deleted this measure.

BR-IMx3. Oak Woodlands Conservation Program

HCRLWG Recommendation

The group continues to recommend deletion of this Implementation Measure

~~**BR-IMx3. Oak Woodlands Conservation Program.** The County shall develop an Oak Woodland Management Plan and attain eligibility for Oak Woodland Preservation Program funding (Fish and Game Code, Section 1360, Division 2, Chapter 4) to conserve and protect high value oak woodlands.~~

HCRLWG Comments

It is our understanding that with the Board of Supervisors approving the Oak Woodlands Management Plan in March 2012 that this implementation measure would not be necessary.