

HARRISON
TEMBLADOR
HUNGERFORD
& JOHNSON

MINING
LAND USE
NATURAL RESOURCES

COPY
RECEIVED

JUL 10 2014

*Added
Comments
7/11*

980 9TH STREET
SUITE 1400
SACRAMENTO, CA 95814
TEL 916.382.4377
FAX 916.382.4380
WWW.HTHJLAW.COM

July 9, 2014

COUNTY COUNSEL
COUNTY OF HUMBOLDT

VIA E-MAIL & USPS

Rex Bohn, Chairperson
Humboldt County Board of Supervisors
County of Humboldt
825 5th Street
Eureka, CA 95501

**RE: *Humboldt County General Plan Update, Section 10.3 Biological Resources
Comments on Revised Draft Biological Resource Element***

Honorable Chair Bohn:

On behalf of Mercer Fraser Company, Eureka Ready Mix, and other industry representatives, we thank you again for the opportunity to comment on the draft County General Plan Conservation and Open Space Elements. This correspondence provides the Board of Supervisors (the "Board") with additional specific comments regarding the draft Biological Resource Element in Section 10.3 of the general plan update.

Our comments may mirror issues addressed in our previous correspondence submitted to the Board on May 30, 2014. A copy of the previous letter is enclosed for the Board's reference. We thank the Board for its ongoing efforts to update the County's general plan, and offer additional revisions and comments to support this process so that adopted provisions are clear, practical, and defensible. Suggested revisions appear in redline format.

The comments are listed in the following order. First, we include the original text of the general plan sections. Second, where applicable, we include the Board's revisions at the June 2, 2014 meeting. Third, we offer suggested revisions to the text in redline format. Fourth, we provide our comments.

1. Section 10.3.2, Paragraph 2: Sensitive and Critical Habitats

Original Text

Sensitive, Critical and Essential Habitats

When habitat requirements for a specific species of plant or wildlife are in short supply because either the habitat is limited to a small geographical area or is threatened by rapidly changing conditions, then the habitat is designated in this Plan as sensitive. A critical or essential habitat

is a type of sensitive habitat that is presently threatened, and reduction or loss would cause the extinction of a federal or state listed threatened, rare, or endangered species.

Revised Text

Sensitive, ~~and Critical, and Essential~~ Habitats

When habitat requirements for a specific species of plant or wildlife are in short supply because either the habitat is limited to a small geographical area or is threatened by rapidly changing conditions, then the habitat is designated in this Plan as sensitive. A critical ~~or essential~~ habitat is a type of sensitive habitat that is presently threatened, and reduction or loss would cause the extinction of a federal or state listed threatened, rare, or endangered species.

Suggested Revision

Sensitive, ~~and Critical, and Essential~~ Habitats

When habitat requirements for a specific species of plant or wildlife are in short supply because either the habitat is limited to a small geographical area or is threatened by rapidly changing conditions, then the habitat is designated in this Plan as sensitive. A critical ~~or essential~~ habitat is a type of sensitive habitat that is presently threatened, and reduction or loss would cause the extinction of a federal or state listed threatened, rare, or endangered species.

Comments

We respectfully request the Board remove the paragraph on page 10-14 titled “Sensitive, Critical and Essential Habitats” because it creates new standards that do not exist in law, and contains defined terms that conflict with the Endangered Species Act (“ESA”).

On June 2, 2014 the Board amended the paragraph to remove references to “essential” habitat. The remaining language, however, still creates confusing new legal standards. For example, sensitive habitat refers to “plant or wildlife [that] are in short supply” yet “short supply” is not defined. Similarly, the paragraph also refers to habitat “limited to a small geographical area,” another undefined term. There is no context in the paragraph or remaining general plan provisions to guide interpretation of this paragraph. The standards created do not exist in existing state or federal endangered species law.

The definition of “critical habitat” in the paragraph conflicts with existing law and other definitions of “critical habitat” found in the draft Biological Resource Element. The paragraph on page 10-14 defines “Critical habitat” as “a type of sensitive habitat...” Section 1532(5)(A) of the Endangered Species Act (the “ESA”), however, defines critical habitat as follows:

The term “critical habitat” for a threatened or endangered species means—

- (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and*

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(See 16 U.S.C. § 1532(5)(A).)

Further, the definitions in the general plan regarding endangered species ultimately impact land use decisions throughout the County. Thus, the definitions of critical, essential, and sensitive habitat in the Biological Resource Element not only conflict with existing law, they also will prohibit development in the County. In contrast, under the ESA the fact that an area is critical habitat does not in fact limit development.

We therefore respectfully request the Board remove the paragraph on page 10-14 titled "Sensitive, Critical and Essential Habitats."

2. BR-G2. Mapping of Sensitive and Critical Habitat

Original Text

BR-G2. Sensitive, Critical, and Essential Habitat. A mapped inventory of sensitive, critical, and essential habitat where biological resource protection policies apply.

Revised Text

BR-G2. Sensitive, and Critical, and Essential Habitat. A mapped inventory of sensitive, and Critical, and Essential habitat where biological resource protection policies apply.

Suggested Revision

~~BR-G2. Sensitive, and Critical, and Essential Habitat. A mapped inventory of sensitive, and Critical, and Essential habitat where biological resource protection policies apply.~~

Comments

We respectfully request the County delete BR-G2 because it creates a new legal standard by requiring a mapped inventory of habitat. This requirement does not exist in either state or federal endangered species laws. BR-G2 also burdens the County significantly because, if adopted, BR-G2 binds the County to create the mapped inventory regardless of whether it has the resources, including funding, expertise, and staff, to do so.

3. BR-P1: Compatible Land Uses

Original Text

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 or harm to rare, threatened, or endangered species.

Revised Text

BR-P1. Compatible Land Uses. ~~Land Area~~ 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 or otherwise permitted to prevent significant habitat degradation of sensitive habitat, to the extent feasible consistent with Department of Fish and Game Wildlife guidelines or recovery strategies or harm to rare, threatened, or endangered species.

Suggested Revision

~~**BR-P1. Compatible Land Uses.** Land Area 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 or otherwise permitted to prevent significant habitat degradation of sensitive habitat, to the extent feasible consistent with Department of Fish and Game Wildlife guidelines or recovery strategies or harm to rare, threatened, or endangered species.~~

BR-P1. Habitat Protection. Discretionary projects should comply with existing federal and state endangered species regulations.

Comments

We respectfully request the Board remove BR-P1 in favor of revised section BR-P1, as set forth above. On June 2, 2014 the Board amended BR-P1 to require that projects be conditioned or otherwise permitted consistent with the Department of Fish and Wildlife's (the "DFW" and formerly known as the Department of Fish and Game) guidelines. BR-P1 creates a new legal standard that is not feasible to apply or enforce for the following reasons.

Binding California law consists of statutory, case law, and regulatory authority, but does not include merely advisory materials such as guidelines or strategy documents produced by agencies. Requiring conditioning or permitting of projects to comply with non-mandatory rules creates a new legal standard, and conflicts with existing state and federal endangered species law.

As written, BR-P1 creates a new and inapplicable standard. Therefore, we respectfully request the Board remove BR-P1 in favor of suggested section BR-P2.

4. BR-P2: Critical Habitat

Original Text

BR-P2. Critical Habitat. Discretionary projects that have the potential to impact critical habitat shall be conditioned to avoid significant habitat modification or destruction consistent with federally adopted Habitat Recovery Plans or interim recovery strategies.

Revised Text

BR-P2. Critical Habitat. Discretionary projects which use federal permits or federal funds on private lands that have the potential to impact critical habitat shall be conditioned to avoid significant habitat modification or destruction consistent with federally adopted Habitat Recovery Plans or interim recovery strategies.

Suggested Revision

~~BR-P2. Critical Habitat. Discretionary projects which use federal permits or federal funds on private lands that have the potential to impact critical habitat shall be conditioned to avoid significant habitat modification or destruction consistent with federally adopted Habitat Recovery Plans or interim recovery strategies.~~

BR-P1. Habitat Protection. Discretionary projects should comply with existing federal and state endangered species regulations.

Comments

We respectfully request the Board remove BR-P2 in favor of the suggested revised section BR-P1, as set forth above. As currently written, BR-P2 still creates a new legal standard that conflicts with the ESA. Therefore, we respectfully request the County adopt the suggested revision to BR-P2.

5. BR-P3: Essential Habitat

Original Text

BR-P3. Essential Habitat. Discretionary projects that have the potential to impact essential habitat designated under the California Endangered Species Act shall be conditioned to avoid significant habitat modification or destruction consistent with Department of Fish and Game guidelines or recovery strategies.

Revised Text

~~BR-P3. Essential Habitat. Discretionary projects that have the potential to impact essential habitat designated under the California Endangered Species Act shall be conditioned to avoid significant habitat modification or destruction consistent with Department of Fish and Game guidelines or recovery strategies.~~

Suggested Revision

~~BR-P3. Essential Habitat. Discretionary projects that have the potential to impact essential habitat designated under the California Endangered Species Act shall be conditioned to avoid significant habitat modification or destruction consistent with Department of Fish and Game guidelines or recovery strategies.~~

Comments

We support the Board's removal of BR-P3 at the June 2, 2014 hearing. The definition of essential habitat conflicted with existing state and federal endangered species law, and created a new legal standard. Additionally, BR-P3 erroneously states the California Endangered Species Act ("CESA") refers to "essential habitat." The term "essential habitat" does not appear anywhere in CESA. Thus, not only would BR-P3 create a new legal standard, it would contain terms that conflict with existing laws.

Although we support the removal of BR-P3, we note that further revisions to sections referencing "essential habitat" are necessary. There are also still conflicting definitions of "critical habitat" and "sensitive habitat" that remain throughout the Biological Resource Element.

6. BR-P7: Wetland Identification

Original Text

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 biologist using criteria acceptable to the Department of Fish and Game may be necessary and shall be required when wetland characterization and limits cannot be easily inventoried and identified by informal site inspection.

Revised Text

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 ~~biologist~~ professional ~~using criteria acceptable to the Department of Fish and Game may be necessary and~~ shall be required when wetland characterization and limits cannot be easily inventoried and identified by ~~informal~~ site inspection.

Suggested Revision

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 ~~biologist~~ professional ~~using criteria acceptable to the Department of Fish and Game may be necessary and~~ U.S. Army Corps of Engineers' criteria shall be required when wetland characterization and limits cannot be easily inventoried and identified by ~~informal~~ site inspection.

Comments

We support the changes made to date by the Board to BR-P7. Removal of language referring to the DFW's purported wetlands delineation authority was essential because it conflicted with longstanding federal precedent supporting the U.S. Army Corps of Engineers' (the "Corps") exclusive authority over wetlands delineation. (See U.S. Army Corps of Engineers, Wetlands Delineation Manual, Section 26 (1987).) Further, ministerial projects are already subject to federal wetland regulations and no further review by the County or another agency is necessary.

We respectfully request that BR-P7 be further amended to make it clear the Corps is the agency responsible for wetlands delineation.

7. BR-P8: Oak Woodlands

Original Text

BR-P8. Oak Woodlands. Oak woodlands shall be conserved through the review and conditioning of discretionary projects to minimize avoidable impacts to functional capacity and aesthetics

Revised Text

BR-P8. Oak Woodlands. Oak woodlands shall be conserved through the review and conditioning of discretionary projects to minimize avoidable impacts to functional capacity and aesthetics, consistent with state law.

Suggested Revision

BR-P8. Oak Woodlands. Oak woodlands, meaning woodlands consisting of native tree species in the genus Quercus consistent with Public Resources Code section 21083.4 or successor statute, shall be conserved, to the extent feasible, through the review and conditioning of discretionary projects to minimize avoidable impacts to functional capacity and aesthetics, consistent with state law.

Comments

We respectfully request the Board amend BR-P8 to be consistent with California law by defining oak woodlands and clarifying that any conservation under BR-P8 shall be feasible, consistent with CEQA. California law contains provisions relating to the definition and conservation of oak woodlands. (See Pub. Res. Code § 21083.4(a) [defining "Oak" as "[] a native tree species in the genus Quercus..."]; See also Fish & Game Code § 1361(g) [defining "oak" as "[] any species in the genus Quercus"].)

8. BR-P10: Biological Resource Maps

Original Text

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

Suggested Revision

BR-P10. Biological Resource Maps. *Biological resource maps shall be consulted during the ministerial and discretionary permit review process in order to identify habitat concerns and guide mitigations for discretionary projects that will may reduce biological resource impacts to below levels of significance to the extent feasible.*

Comments

BR-P10, and certain other provisions of the draft Biological Resource Element, as discussed below, currently contain provisions that conflict with CEQA. BR-P10 requires that both ministerial and discretionary projects be conditioned with mitigation that will reduce biological resource impacts to a level below significance. Ministerial projects, however, are not subject to CEQA and cannot be conditionally approved. (See 14 Cal. Code Regs. § 15369.)

Further, BR-P10, if implemented, would eliminate the Board's authority under CEQA to issue statements of overriding consideration acknowledging that some projects' benefits outweigh any significant unavoidable impacts. (See CEQA Guidelines, § 15093.) The County's General Plan should ensure that the County has the ability to issue a statement of overriding considerations to approve projects that may result in a significant effect on the environment but which cannot feasibly be avoided or substantially lessened.

Therefore, we respectfully request that the County revise draft Policy BR-P10 as suggested above.

9. BR-P11: Agency Review

Original Text

Agency Review. *The County shall request the California Department of Fish and Game, as well as other appropriate agencies and organizations, to review plans for development within Sensitive Habitat areas, including Streamside Management Areas. The County shall request that NOAA Fisheries or Fish and Wildlife Service review plans for development within critical habitat areas. Recommended mitigation measures to reduce impacts below levels of significance shall be incorporated into project approval.*

Suggested Revision

~~**BR-P11. Agency Review.** *The County shall request the California Department of Fish and Game, as well as other appropriate agencies and organizations, to review plans for development*~~

~~within Sensitive Habitat areas, including Streamside Management Areas. The County shall request that NOAA Fisheries or Fish and Wildlife Service review plans for development within critical habitat areas. Recommended mitigation measures to reduce impacts below levels of significance shall be incorporated into project approval.~~

Comments

We respectfully request that the County delete draft Policy BR-P11 as set forth above. If implemented, BR-P11 would eliminate the Board's authority under CEQA to issue statements of overriding consideration acknowledging that some projects' benefits outweigh any significant unavoidable impacts. (See CEQA Guidelines, § 15093.) The Board's ability to issue statements of overriding considerations is fundamental to ensuring that development is not ultimately prohibited in the County. BR-P11 is also problematic because it imposes obligations for consultation with agencies beyond the existing statutory structure. The law in this area is already complex. Creating a new body of law will only lead to lead agency and industry confusion, and increases the risk of litigation over these provisions.

10. Section 10.3.4 Standards: Sensitive and Critical Habitats

Original Text

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 under a timber harvesting plan or non-industrial timber management plan, or activities exempt from local regulation as per California Public Resources Code 4516.5(f). These standards shall not be used to reduce buffers specified under the State Forest Practice Act.

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.

BR-S2. Agency Consultation. *For discretionary projects with potential to impact critical, sensitive or essential habitats, the County will seek specific recommendations from the California Department of Fish and Game, NOAA Fisheries and Fish and Wildlife Service, as applicable to the specific project location, class of development, or natural resource involved.*

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. 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. Sensitive habitats are defined as a 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 and may include the following:

- A. Critical and essential habitat for rare, unique, threatened and endangered species
- 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. Rare and endangered vascular plant communities as compiled by the California Native Plant Society or the Department of Fish and Game.
- H. Other sensitive habitats and communities as listed in the Department of Fish and Game's California Natural Diversity Data Base, as amended periodically.

Suggested Revision

~~**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 under a timber harvesting plan or non-industrial timber management plan, or activities exempt from local regulation as per California Public Resources Code 4516.5(f). These standards shall not be used to reduce buffers specified under the State Forest Practice Act.~~

~~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.~~

~~**BR-S2. Agency Consultation.** For discretionary projects with potential to impact critical, sensitive or essential habitats, the County will seek specific recommendations from the California Department of Fish and Game, NOAA Fisheries and Fish and Wildlife Service, as applicable to the specific project location, class of development, or natural resource involved.~~

~~**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. 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.** Sensitive habitats are defined as a 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 and may include the following:~~

~~A. Critical and essential habitat for rare, unique, threatened and endangered species~~

~~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. Rare and endangered vascular plant communities as compiled by the California Native Plant Society or the Department of Fish and Game.~~

~~H. Other sensitive habitats and communities as listed in the Department of Fish and Game's California Natural Diversity Data Base, as amended periodically.~~

We respectfully suggest the County adopt revised section BR-S2 as follows:

BR-S2. Agency Consultation. For discretionary projects, the County will seek agency consultation as required by existing law.

Comments

Each of the provisions under, Section 10.3.4 Standards, creates new legal standards that conflict with existing state and federal laws and regulatory schemes. For example, BR-S2 creates a new obligation for the County to consult with agencies such as DFW, NOAA Fisheries, and the U.S. Fish and Wildlife Service. These agencies have limited and specific jurisdiction over matters as defined in their respective statutory and regulatory sources. Obligating the County to consult with these agencies creates new standards for discretionary projects and conflicts with existing law.

BR-S3 defines "Critical Habitat" and that definition conflicts with the earlier definition found on page 10-14, and also the ESA's definition. (See 16 U.S.C. § 1532(5)(A) [ESA defining "Critical Habitat"].) Similarly, BR-S4's definition of "Sensitive Habitat" also creates a new legal standard by defining a wide and ambiguous set of habitats that impact land use provisions

under the General Plan. Furthermore, BR-S4 uses phrases that are ambiguous and open to dispute, such as “cause threatening change” that have no definition or context, and no basis in state or federal law for guidance. Finally, BR-S4(H)’s reference to “other sensitive habitats and communities as listed in the Department of Fish and Game’s California Natural Diversity Data Base.” DFW’s database is part of a voluntary “natural heritage program” and serves as reference material only. (See www.dfg.ca.gov/biogeodata/cnddb/cnddb_info.asp [“[W]e cannot and do not portray the CNDDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide.”].)

As discussed, the County should avoid reference to undefined terms and should avoid creating new and potentially conflicting standards. We respectfully request that the County delete draft Policies BR-S1, BR-S2, BR-S3, and BR-S4 in favor of the new draft Policy BR-S2.

11. BR-S11, Subsection C. Development Standards for Wetlands

Original Text

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

C. Replanting or reseedling of disturbed areas with riparian vegetation of native species shall be required prior to the completion of the development project.

Suggested Revision

BR-S8. Required Mitigation Measures. Mitigation measures for development within Streamside Management Areas shall ~~at a minimum~~, include to the extent feasible:

C. Replanting or reseedling of disturbed areas with riparian vegetation of native species shall be required prior to the completion of the development project. “Development Project” means any project undertaken for the purpose of development. “Development” shall be defined consistently with the Humboldt County Code.

Comments

Draft policy BR-S8 provides required mitigation measures for development within Streamside Management Areas. Subdivision C requires that “[r]eplanting or reseedling of disturbed areas with riparian vegetation of native species shall be required prior to the completion of the development project.” The General Plan update, however, never defines “development project”.

The County Code, however, defines “Development.” (See Title III, Division 1, Chapter 3, Section C: Index of Definitions of Language and Legal Terms.) We respectfully propose that the County use the definition of “development” provided in Humboldt County Code for consistency, and therefore request that the County revise BR-S8 as set forth above.

12. BR-S10. Development Standards

Original Text

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 and developed in consultation with the appropriate referral agency, or by variance, on a project specific basis.

Suggested Revision

BR-S10. Development Standards for Wetlands and Other Wet Areas. Development standards for wetlands as defined by the U.S. Army Corps of Engineers, including setbacks and buffers, except for wells and spring boxes, shall be consistent with state and federal requirements and developed in consultation with the appropriate referral agency, or by variance, on a project specific basis.

Comments

Draft policy BR-S10 provides for development standards for certain wet areas and for "wetlands" as defined in the California Fish and Game Code section 2785. As previously discussed, however, the Corps' definition of wetlands is the current accepted definition in California. (See U.S. Army Corps of Engineers, Wetlands Delineation Manual, Section 26 (1987).) Furthermore, CEQA's Appendix G Environmental Checklist form, commonly used as criteria for an Initial Study, uses the Corps' definition of wetlands. (See CEQA Appendix G, § IV(c).) Changing the definition of "wetlands" will only cause confusion without providing further wetlands protection.

Further, the proposed buffer setbacks for wetlands and other wet areas are unnecessarily large. Typical wetland buffer setbacks are approximately 25 feet, unless specific information dictates larger setbacks. We therefore respectfully request that the County remove any reference to defining "wetlands" pursuant to the Fish & Game Code, and revise Standard BR-S10 as set forth above.

13. BR-S11. Wetlands Defined

Original Text

BR-S11. Wetlands Defined. The County shall follow the identification and classification policies of the Department of Fish and Game which considers wetlands as lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports hydrophytes, (2) the substrate is predominantly undrained hydric soil, and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year.

Suggested Revision

BR-S11. Wetlands Defined. The County shall follow the identification and classification policies of the Department of Fish and Game U.S. Army Corps of Engineers, which considers wetlands as lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must have one or more of the following three attributes: (1) at least periodically, the land supports hydrophytes, (2) the substrate is predominantly undrained hydric soil, and (3) the substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year. Except in certain situations defined in the U.S. Army Corps of Engineers' Wetlands Delineation Manual, evidence of a minimum of one positive wetland indicator from each parameter (hydrology, soil, and vegetation) must be found in order to make a positive wetland determination.

Comments

Draft Standard BR-S11 provides that the County shall follow the Department of Fish and Game's identification and classification policies for wetlands. As previously discussed, the Corps' definition of wetlands is the current accepted definition in California and is used by CEQA's Appendix G. Changing the definition of "wetlands" will cause unnecessary confusion. We respectfully request that the County revise Standard BR-S11 as described above.


CONCLUSION

Thank you again for the opportunity to comment on the Biological Resources Element. We appreciate the Board's ongoing effort to revise the general plan, and trust that our above comments will be helpful in its review at the upcoming hearings. We look forward to continuing to participate in this ongoing process. Please do not hesitate to contact me if you have any questions.

Very truly yours,

HARRISON, TEMBLADOR,
HUNGERFORD & JOHNSON LLP

By


Mark D. Harrison

cc: Justin Zabel, Mercer Fraser Company
Eureka Ready Mix
Humboldt County Board of Supervisors