

## Hayes, Kathy

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**From:** Mark Harrison <mharrison@hthjlaw.com>  
**Sent:** Monday, August 18, 2014 9:24 AM  
**To:** Bohn, Rex  
**Cc:** Hayes, Kathy  
**Subject:** Specific Comments Regarding Sensitive Habitat and Development Standards  
**Attachments:** 08-18-14 Letter to RBohn re Mapping-GIS of Sensitive Habitat (General Plan Update, Pre-8-18-14 Hearing) (00363135xC24FB).pdf

Honorable Chair Bohn:

Although we are unable to attend today's Board hearing in person, please find enclosed our comments regarding Sensitive Habitat and Development Standards for the Board's consideration. We thank the Board for the opportunity to comment and look forward to continuing to participate in this ongoing process.

Should you have any questions, please do not hesitate to contact me.

Thank you,

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August 18, 2014

**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  
Specific Comments on Sensitive Habitat and Development Standards***

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 General Plan. This correspondence provides additional specific comments regarding the County's maps and GIS data for draft standard BR-S4 "sensitive habitat," and the development standards referred to in the Conservation and Open Space Element.

**SPECIFIC COMMENTS**

The County stated it will take a map based approach to determine whether or not property in the County is located within "sensitive habitat" created by draft standard BR-S4. The maps and GIS data will then be used by the County to implement development standards under the general plan.

The Board and County staff assured the public at the July 14, 2014 hearing that such maps and GIS data is readily available to the public such that a diligent landowner could research whether their property is within a habitat designation or not. To that end, the Board encouraged us to examine the County's available maps and GIS data, and to report back at the following hearing regarding our findings.

Our findings are as follows:

- (1) The County does not have adequate maps or GIS data for "sensitive habitat;" *and*
- (2) There are no development standards in the draft general plan, which renders the effect of habitat designation on land use, if any, unknown.

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These findings are described below, beginning with the County's maps and GIS data.

**I. THE COUNTY DOES NOT HAVE ADEQUATE MAPS OR GIS DATA FOR  
"SENSITIVE HABITAT" CREATED UNDER DRAFT STANDARD BR-S4.**

The draft general plan creates a new habitat definition, "sensitive habitat," in draft standard BR-S4, which reads in its entirety as follows:

***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 Habitat necessary for the protection of rare, 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. Wetlands*
- G. Protected vascular plant communities as listed by the US Fish & Wildlife Service or the California Department of Fish and Wildlife.*
- H. Other sensitive habitats and communities as may be currently, correctly and accurately listed in the California Department of Fish and Wildlife's California Natural Diversity Data Base, as amended periodically.*

We analyzed the County's available maps and GIS data for all eight examples of habitat listed by draft standard BR-S4. Each example is discussed in turn below.

**a. "Critical Habitat necessary for the protection of rare, threatened and endangered species as listed under the FESA or CESA"**

The County does not have any maps or GIS data for critical habitat.

**b. "Migratory deer winter range"**

The County does not have adequate maps or any GIS data for migratory deer winter range.

There is no GIS data or layer for the migratory deer winter range. The Biological Resource Maps include migratory deer winter range. The maps, however, are only available at a scale of 1:240,000 where one inch equals five miles. No additional detail is available.

Additionally, all three maps were made in 2008, and disclaim the use of the maps for precise measurement:

*This map is intended for planning purposes only and should not be used for precise measurement or legal boundary delineation.*

**c. “Roosevelt elk range”**

The County does not have adequate maps or any GIS data for Roosevelt elk range.

There is no GIS data or layer for the Roosevelt elk range. Although the Biological Resource Maps include the Roosevelt elk range, the 1:240,000 scale is inadequate for determining the precise location of the habitat, as the map disclaimers confirm.

**d. “Sensitive avian species rookery and nest sites”**

The County does not have any maps or GIS data for sensitive avian species rookery and nest sites.

**e. “Streams and streamside areas”**

The County does not have adequate maps or GIS data of streams and streamside areas.

The County’s biological resource maps include blue meandering lines that are presumably streams. The features, however, are not labeled. Additionally, the 1:240,000 scale is inadequate, and the maps expressly disclaim the use of the maps for precise measurement.

Furthermore, although the County does have GIS data available showing the specific locations of streams, the County expressly disclaims the GIS data’s accuracy as follows:

*Humboldt County Community Development Services (HCCDS) makes no guarantee of the accuracy or completeness of this data. It has not been fully reviewed for accuracy and is intended to be used for planning purposes only. HCCDS assumes no liability or responsibility in the use, or misuse, of this data. While every effort has been made to assure the accuracy of this information, it should be understood that it does not have the force and effect of law, rule, or regulation. Should any difference or error occur, the law will take precedence.*

*Please note the accuracy of GIS map data varies from location to location in the County. This GIS system is useful for planning purposes but should not be solely relied upon to determine property, zoning or general plan designation boundaries or be used in any way for project design. All GIS data should be verified before it is materially relied upon for property or project planning.*

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***f. “Wetlands”***

The County does not have adequate maps or GIS data for wetlands.

The County’s GIS does not include a layer for wetlands. The Biological Resource Maps legend lists “wetlands” under “C[a]ostal Resource Protection” but the 1:240,000 scale is inadequate for determining the precise location of the habitat, and the map disclaimers confirm this point.

***g. “Protected vascular plant communities as listed by the US Fish & Wildlife Service or the California Department of Fish and Wildlife”***

The County does not have any maps or GIS data for protected vascular plant communities.

***h. Other sensitive habitats and communities as may be currently, correctly and accurately listed in the California Department of Fish and Wildlife’s California Natural Diversity Data Base, as amended periodically.***

The County does not have any maps or GIS data for this habitat.

Additionally, the County’s reliance on the California Natural Diversity Database (“CNDDDB”) is inappropriate because the CNDDDB is an open-source database with express limitations. The information compiled in the CNDDDB can be provided by *any* person, regardless of whether that person has any expertise or training in species identification or not. The data reported by an experienced biologist is given the same weight as that reported by a lay observer without field experience or species identification skills. The risk of inaccurate data in the CNDDDB is therefore extremely high.

The California Department of Fish and Wildlife (“DFW”) expressly acknowledges the CNDDDB’s limited application and accuracy in a number of comprehensive disclaimers and use restrictions, noting that they:

*cannot and do not portray the CNDDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide.*

(See Disclaimer at [https://www.dfg.ca.gov/biogeodata/cnddb/cnddb\\_info.asp](https://www.dfg.ca.gov/biogeodata/cnddb/cnddb_info.asp).)

DFW further describes the CNDDDB’s limitations as follows:

*The only appropriate use for the point GIS dataset is to show basic distribution on a statewide, or near statewide, map. Zoomed in much closer than that, the points grossly misrepresent the true Element Occurrence distribution and/or spatial error of the data. Analysis done using the point layer will almost always result in erroneous results, for instance tallying what species occurs in a specific geographic area.*

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Additionally, the CNDDDB Data Use Guidelines note that detailed analysis is not possible:

*The CNDDDB GIS dataset is a balance of including enough of the key information to be useful, but holding back from including so much information that the file size would be overly large. The downside of this is that if you are trying to do detailed occurrence-level analysis, the GIS dataset does not contain all of the information that could be helpful.*

Finally, the CNDDDB's Data Use Guidelines expressly prohibit the County from making the open-source data available to the public on a map scale larger than 1:350,000:

*This is because at scales larger than 1:350,000, there is enough detail for a user to fairly easily determine exactly where a species is located and that is what we are trying to prevent.*

(See CNDDDB Data Use Guidelines, p. 9.)

**Example of Map and GIS Data for a Sample Parcel**

Following our comprehensive review of the County's available maps and GIS data for "sensitive habitat," we examined the available maps and GIS data for a sample parcel located adjacent to the Eel River near Fortuna. Since no "sensitive habitat" was shown on the maps or GIS layers, we contacted County staff to obtain any additional information on "sensitive habitat" located on the parcel.

County staff provided us with a map of "sensitive habitat" which, according to County staff, showed the parcel contained habitat for the "Coast Cutthroat Trout." The map is enclosed as Exhibit A. We searched both the federal Fish and Wildlife Service and state DFW databases for all "cutthroat trout" species. The Coastal Cutthroat Trout (*Oncorhynchus clarkii clarkii*) was delisted from the ESA on April 26, 2000, and is not listed under CESA. A search of the parcel on FWS's Critical Habitat Mapper confirmed there is no critical habitat currently located on the parcel.

**Finding**

The County does not have adequate maps or GIS data for "sensitive habitat" under draft policy BR-S4.

**II. THE DRAFT GENERAL PLAN DOES NOT HAVE DEVELOPMENT STANDARDS**

Section 10.3.1 of the Biological Resources element states that development standards exist in the Land Use Element. There are no development standards, however, for "sensitive habitat" anywhere in the Land Use Element or other elements of the draft general plan. It is therefore impossible to determine the effect, if any, habitat designation will have on land use for property within the County.

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We are therefore unable to provide specific substantive comments because the draft general plan is silent on development standards.


**CONCLUSION**

Thank you again for the opportunity to comment on the draft Biological Resources Element. We appreciate the Board and County staff's ongoing effort to revise the general plan, and trust that our above comments will be helpful in 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  for

Mark D. Harrison

Encl.

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

Exhibit A

GIS Data Showing Critical and Sensitive Habitat for Sample Parcel. According to County staff, the red area is Coast Cutthroat Trout habitat.

