

October 7, 2007

VIA E-MAIL

Humboldt County Board of Supervisors,
Chair Rex Bohn
825 Fifth Street
Eureka, CA 95501

RE: General Plan Update: Scenic Resources

It appears that via this chapter, staff is trying to lay the groundwork for designations (or planning to plan as it were) of “scenic” areas and roadways sometime in the future as is required by the state in such matters. Per State law and SB 1467 (1963) stewardship of the State of California’s voluntary scenic route program is under CalTrans. CalTrans retains approval authority, revoking authority over the program and manages the program that includes guidelines for application.

There are many ramifications of the 'scenic roadway/highway' designation proposed in this Scenic resources element that the current staff and BOS may not be aware of that are deeply concerning to the NCHB.

There needs to be clarification as to which types of thoroughfares are being considered by the County to be included in the States voluntary scenic route program under CalTrans; is it County roadways or is it state highways? We have inquired but not had it confirmed as of yet not heard back from CalTrans as to whether both State Highways 101 and 299 are already designated as scenic highways by the State.

1. We are deeply concerned that private property rights maybe affected. Within the State Scenic Highway Guidelines there is only one sentence that pertains to private property owners or to the public during the vetting and application process. It is our position that private property owners be the first consideration of the BOS even before discussion of proposing any scenic designation. A 'scenic' designation extends outside of the county or state right of way.

The guidelines do not state whether the State or the County must purchase view easement rights from private property owners along a given proposed 'scenic' corridor. If not, such a designation could be likened to a taking or inverse condemnation/eminent domain.

Nor do the guidelines provide private property owners an opportunity to opt in or to opt out of the designation. That too, could be likened to a taking or eminent domain.

There are development constraints that go along with the designation proposed; by adding severe development constraints onto private land owners within a given proposed 'scenic' corridor through this designation in the general plan the BOS may be compromising private property rights.

2. If this designation is adopted in the GPU, an internal inconsistency would be created in the Plan. It would be inconsistent with the goals of the Land Use Element, because it is the County's stated goal to encourage development along existing roadways in the plan. It would also be inconsistent with Chapter 4.2, Growth Planning that state improved economic conditions in the County as one of its primary goals.

3. Section 320 of the California Public Utilities Code requires the undergrounding of all new or relocated electric and communication distribution facilities within 1,000 feet of any highway designated an official scenic highway and visible from that highway where feasible. ... The California Public Utilities

Commission makes final determinations regarding exceptions to undergrounding utilities. Who would pay for this requirement? How and when?

4. How would this effect the already restricted or protected status of some of the Public lands that these routes traverse over (e.g., State or Federal Parks, Native American Tribal Reservations, or other preservation or reservation areas? What about those lands already encumbered by State of California right-of-way; how would the County propose to work within CalTrans rules and regulations?

5. The Scenic Element lacks many definitions. Without definitions for key terms herein, it is impossible to understand the scope or impacts of the proposed goals, policies, standards and implementation measures. What is meant by "high value"? What is meant by "scenic forest" (other than trees) and why is that differently represented by "scenic coastal" areas (other than the ocean)?

The definition of "scenic areas" within this chapter is extremely vague. There are no concrete criteria herein for a process identifying who would make that determination, nor is there recognition of the required public hearing process or of the purchase process to be used on behalf of the County to acquire lands to "protect" using a "Scenic "designation. How would the County "protect" properties they do not own? Who would pay for it? If the County wants to purchase land, where would the money to purchase these lands come from, and just how the property owners involved would be included in the process?

6. Community Separators. There is already regulation over the all lands between communities including open space areas. There is no need for a redundant overlay zone. If one views the mapping of our adopted Community Planning Areas, one would see that those boundaries already impose regulations on these areas. Greenbelts already exist in Humboldt County naturally as a result of our topography and streams, and are already regulated as habitat, wetlands etc. through zoning and CEQA and natural resource hazard mapping (flood zones, subduction zones, tsunامي, Alquist-Priolo zones, Forest Practices Act and the Forest Practice Rules, Fish and Game, the Coastal Act for those lands within the Coastal Zone, and the Water Quality Control Board all maintain regulatory authority over these lands. **The "community separators" concept would impose a duplicate layer of regulation on private property.**

7. The Scenic Element lacks mapping called for. It is unknown if the intention of the current staff is to have this chapter rely upon the mapping within the Critical Choices report, Building Communities report, and the Natural Resources and Hazards reports. If so, those maps need to be reproduced herein for reference and used as the basis for the chapter.

It is because of the above stated reasons, respectfully, we would support the BOS eliminating the rest of the Scenic Resources chapter because it does more economic harm than good to our county. The ramifications of the chapter would be significant negative impacts to private property owners because it would encumber many of tens of thousands of acres in Humboldt County with a massive layer of redundant "new" regulations. It would also require a fiscal commitment on behalf of the County to comply with PUC requirements – and we question the prudence of that issue at this time.

Thank you for your consideration of the above.

For the NCHB

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