

August 4, 2009

Chairman Smith
Humboldt County Supervisors
Attn: Martha Spencer
3015 H Street
Eureka, CA 95501

Re: Recirculated Housing Element DEIR

Dear Chairman Smith and Members of the Board,

Thank you for the opportunity to comment on the re-circulated Draft Environmental Impact Report of the 2009 Housing Element. Healthy Humboldt is a coalition of public interest organizations working for a County General Plan Update that provides healthy transportation and housing choices while protecting resource lands and watersheds by focusing future growth in existing communities.

Greenhouse Gas Emissions

We are encouraged that this re-circulated draft attempts to address greenhouse gas (GHG) emissions impacts. According to the California Attorney General's office:

“The lead agency must disclose and analyze the full extent of the development allowed by the proposed amended general plan, including associated greenhouse gas emissions.”

This will be a challenging impact to address and one that is fundamentally different from other pollutants. The fundamental difference stems from the problem that minimizing or even preventing increases in emissions is not an effective strategy for preventing impacts. Impacts can only be prevented or minimized through substantial reductions in emissions.ⁱ

Emissions Reductions Required to Prevent Impacts Not Addressed

In attachment 3, the re-circulated DEIR mentions emissions targets set by Executive Order S-3-05, which includes a 2050 target of 80% below 1990 levels. The Global Warming Solutions Act of 2006 (AB32) expresses the intent that “the statewide greenhouse gas emissions limit continue in existence and be used to maintain and continue reductions in emissions of greenhouse gases beyond 2020.”ⁱⁱ The Intergovernmental Panel on Climate Change (IPCC) identified 2°C as the increase in global temperature beyond which risks of runaway climate change are probable. According to a 2007 report from the IPCC, to limit the temperature increase to 2°C above pre-industrial levels, developed countries would need to reduce emissions in 2020 by 10–40% below 1990 levels and in 2050 by approximately 40–95%.ⁱⁱⁱ

However, Greenhouse Gas Emissions Inventory and Global Climate Change Analysis (Attachment 3 of the re-circulated DEIR) implies that meeting AB32's 2020 targets is sufficient:

Conclusion with respect to AB32 compliance: The review of the State goals for reducing GHG emissions indicate that the project would not conflict with the goals identified in AB32 and therefore the proposed project would not make a cumulatively considerable contribution to GHG emissions. This impact would be less-than-significant.

According to the analysis, Humboldt County GHG emissions are ½ million metric tons below 1990 levels, however, this reduction is almost entirely due to decline of the timber industry and other components of Humboldt's industrial economy.

Transportation and Land Use Are Critical to Future Emissions Reductions

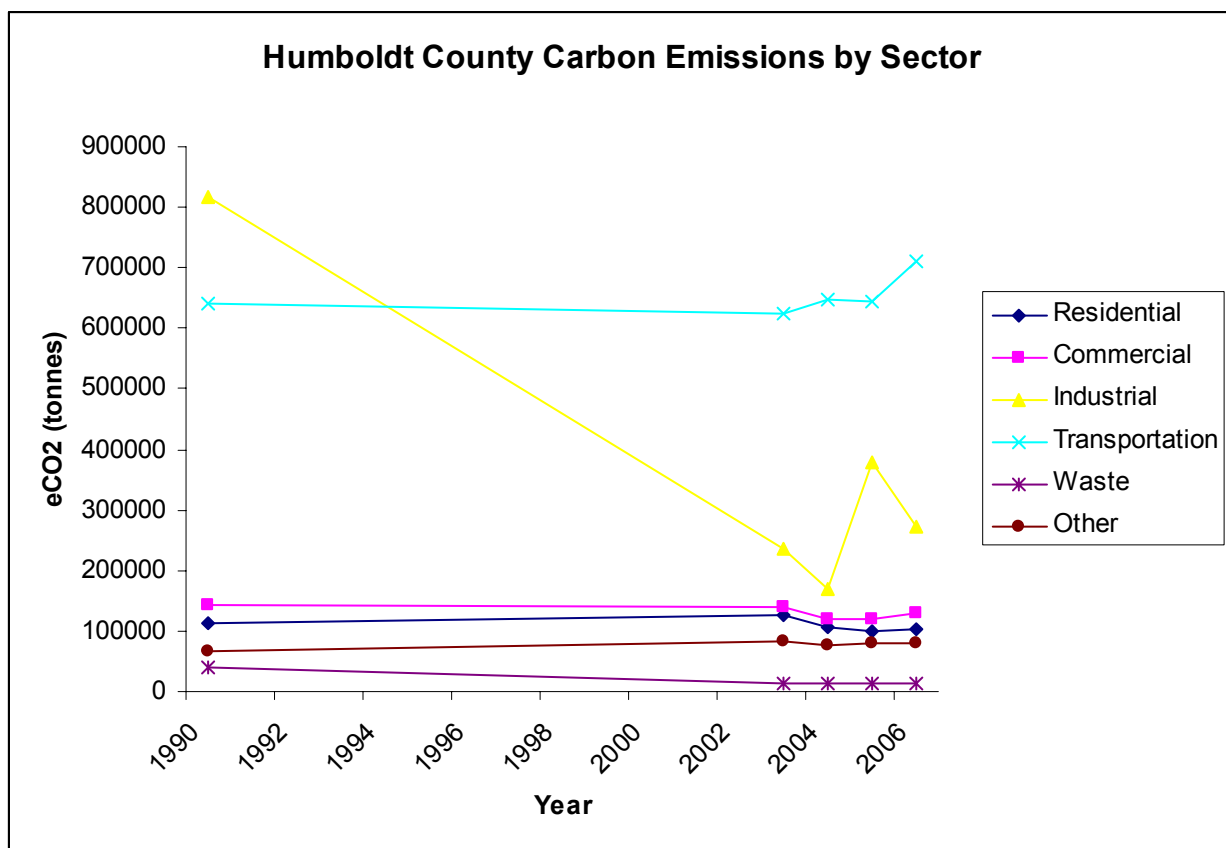


Figure 1. Humboldt County carbon emissions by sector between 1990 and 2006. Source: Greenhouse Gas Emissions Inventory and Global Climate Change Analysis (attachment 3 of the 2009 Housing Element re-circulated DEIR)

Transportation now accounts for well over half the emissions in Humboldt County, and emissions from this sector are increasing (Figure 1). Therefore, substantial continued emissions reductions beyond 2020 can not be achieved without addressing emissions in other sectors, particularly transportation.

Land use policy has a substantial effect on transportation. When a resident can access his or her daily needs by traveling a short distance, she can walk, bike and ride transit more and drive less.

When she does drive, distances are shorter, reducing emissions compared with a situation where someone must drive further. By applying a suite of strategies, including high density development, neighborhood design can reduce per-capita vehicle travel by 10-20% while regional accessibility factors can reduce automobile travel by 20-40%.^{iv}

The way in which housing needs are met in the 2009 Housing Element will have a substantial impact on future emissions. If housing is developed in such a way as to enhance transit ridership or support existing commercial centers with additional workers and shoppers, we could see lower emissions associated with existing housing, and a reduction in emissions for nearby housing that benefits from the boost in transit service and other available services. Building housing at lower densities further from commercial centers will increase emissions. Since most of the housing built during this Housing Element cycle will remain in place beyond 2050, it will have a substantial impact on future emissions and on our ability to meet future reduction targets.

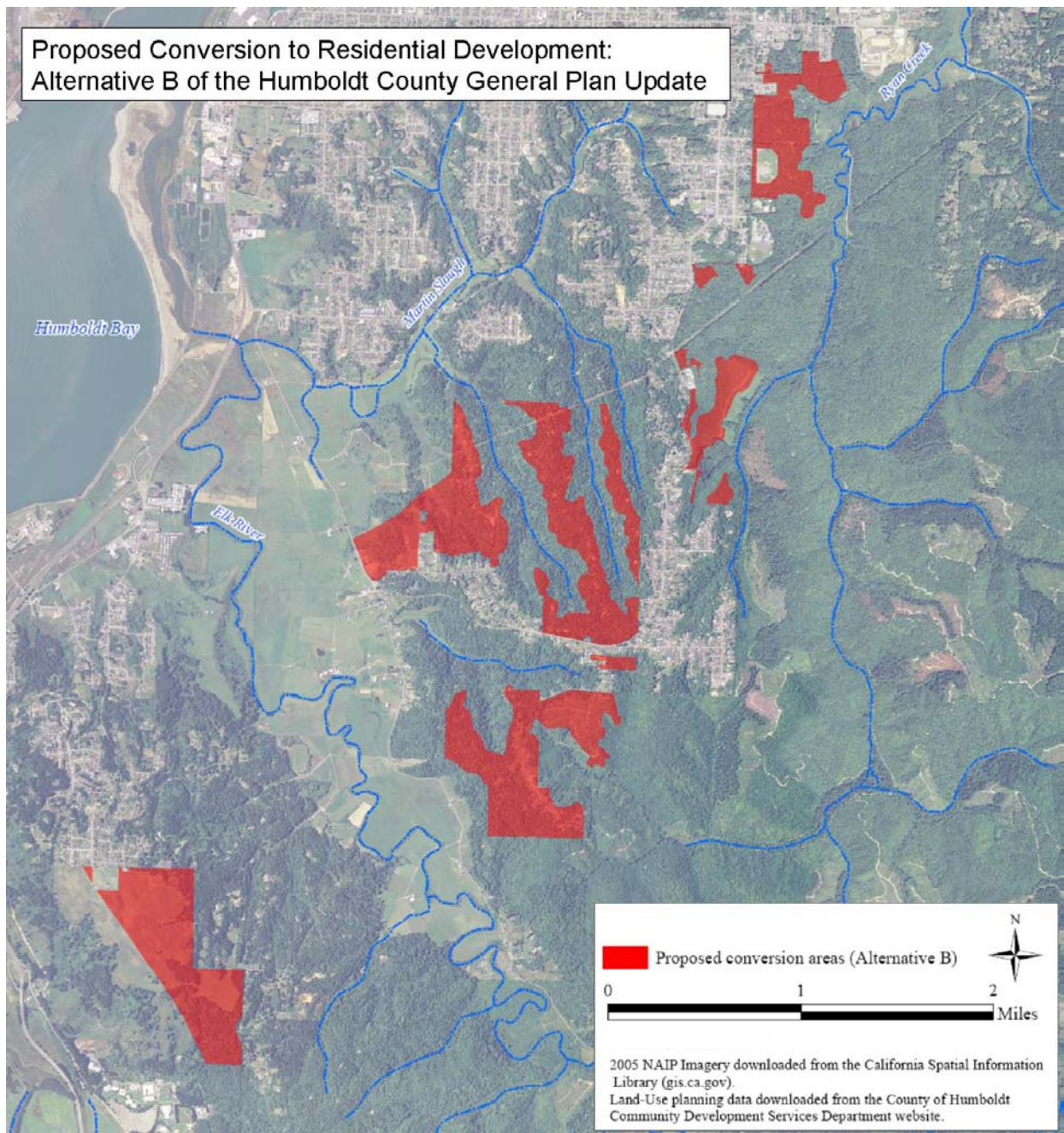


Figure 2. The proposed Land Use Element will substantially expand the urban footprint in the Eureka Community Planning Area.

The proposed Land Use Element, which accommodates the Land Inventory, would zone large tracts of forestland for residential development, especially in the Eureka Community Planning Area (Figure 2). This planned resource land conversion is based on the Eureka Community Plan (ECP) adopted in 1995. Since adoption of the ECP, the Global Warming Solutions Act (AB32) has become state law, the Freshwater and Elk River Watersheds have been listed as Threatened and Impaired under Section 303(d) of the Clean Water Act, Coho Salmon which occur in both watersheds have been federally listed as Threatened, new planning tools and approaches have been developed, and we have gained new knowledge of the impact of urban planning on public

health and safety. This makes it prudent to ensure that the land inventory for this Housing Element not force us to accept a Land Use Element based on an outdated plan that was adopted more than 10 years ago under different environmental and regulatory conditions. The Housing Element should not preclude any options with regard to our Land Use Element.

A Reasonable Alternative Land Inventory

Under CEQA, an EIR must analyze a reasonable range of alternatives to the project that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project's significant impacts. Furthermore, a public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

An alternative Land Inventory which would have relied only on subdivision within areas served by existing water and sewer was rejected in this re-circulated draft because: "the allowed densities would need to be increased by an average of 70% on those [infill] parcels. This alternative was rejected because with this Element, the County is unlikely to achieve the higher densities necessary to retain the same development potential in the infill areas as the proposed project. The alternative would thus encourage a more distributed development pattern, with effects on the environment similar to Alternative C – the Expanded Growth Alternative described in §4.5."

This argument is not reasonable. The County's primary challenge in the land inventory has been to meet the housing needs of low and very-low income populations. The California Housing and Community Development Department generally requires that these needs be met by zoning adequate land for multi-family residential development. Increasing densities of infill parcels would help to fill that need.

The suggestion that such an alternative would encourage a more distributed development pattern is not supported. If subdivision is limited in the rural areas, and allowable densities are increased in urban areas, how will those rural areas develop more as a result? In any case, such an assertion would be better supported or rejected by full analysis. This could be accomplished by including this reasonable alternative in the EIR.

Biological Resources

The recommended measures to mitigate the impacts of the Project on biological resources, including Candidate, Sensitive and Special Status Species, Riparian Habitat or Other Sensitive Community, Wetlands, Animal Movement, and Conflict With Biological Resource Protection Policies will not reduce such impacts to less than significant levels. These impacts are considered significant and unavoidable [DEIR at 79 and 173].

The recommended new mitigation has three parts [DEIR at 79]:

- 1) to refer all building permit applications for new homes to the Department of Fish and Game (DFG) for recommendations and appropriate mitigation, and 2) also refer to DFG for recommendations and appropriate mitigation all applications for ministerial permits that

would result in the withdrawal of water from perennial streams or rivers, or from wells within 100' of a perennial stream or river, or from springs within 100' of a perennial stream or river. This second part of the mitigation measure is already being implemented by the County, but it is not adopted County policy.

Third, insert into the development standards for new housing units not served by public water that, upon recommendations from DFG, water storage tanks capable of providing 100% of the domestic and outdoor water needs during low-flow summer months shall be required for each unit.

Additional biological resource mitigation measures being recommended in the GPU could be inserted into the Housing Element. This EIR is not recommending that action as the GPU is being reviewed concurrent with the Project, and it will have a separate EIR where such mitigation is more appropriately discussed, to avoid duplication with the Project EIR.

It is unlikely that the Department of Fish and Game (DFG) has the staff resources to review and make recommendations on every building permit application in the County, yet the DEIR relies upon DFG review and recommendations. The potential for significant impacts to occur due to inadequate staffing levels at DFG to process all applications can hardly be considered avoidable, and indeed appears to be deferred mitigation. The County should develop policies to avoid such impacts rather than referring all permit applications to DFG.

Furthermore, recommendations from DFG are nothing more than recommendations; they do not require specific action to be taken, and can be accepted or not, and therefore merely soliciting recommendations from a trustee agency cannot be used as mitigation.

Deferred Mitigation

According to 14 CCR §15126.4, Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects,

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

The DEIR should discuss why the third mitigation measure (referring all building permit applications to DFG) was chosen rather than the other alternatives described on page 79 (either requiring submittal of biological studies or hire a County biologist to review sites and recommend mitigation). Either of these two alternative mitigation measures are likely to lessen the dignificant impacts, and the DEIR should include a full discussion of the decisionmaking process that led to choosing to refer all applications to DFG and why it was considered the superior alternative.

While the County cannot be required to identify the specific mitigation measures that will be undertaken on each individual project, the county can and must commit itself to specific mitigation criteria within the EIR and cannot defer their identification and formulation to an as yet unidentified future time. /Gentry v. City of Murrieta/, 36 Cal.App.4th 1359, 1394 (4th Dist. 1995).

The County cannot require as mitigation the compliance with a report or other document that has yet to be prepared. /Gentry/, Id. at 1396.

Hydrology and Drainage

The Hydrology and Drainage section of the recirculated DEIR contains some improvements over the originally released section. In particular, the proper identification of CWA 303(d) listed waterbodies is appropriate for the review of environmental impacts from the County's proposed Housing Element.

We support Staff's recommendation to not include policies, standards, and implementation measures which would allow higher population density in areas not served by public sewer. As the DEIR correctly notes many local waterbodies are currently listed as impaired by indicator bacteria, a condition that is indicative of failing septic systems, among other things. DEIR at 99. Although the final decision to allow such construction does not lie solely with the Planning Department or the Board of Supervisors, it is still within their purview to set reasonable standards within their power. Thus, although the County's Environmental Health Department or the Regional Board might make suggestions or recommendations as to whether a specific system meets their requirements, the County has an independent responsibility to ensure that water quality is not adversely impacted by adoption of the Housing Element.

We would also like to strongly support adoption of Staff's final recommendations to include LID policies into the Water Resources Section of the GPU; however, we believe that these policies must be included in the Housing Element Section as well. Incorporation of mitigation measures from an as yet unapproved policy document cannot be used as mitigation of the potential impacts of the project that is currently under consideration.

Cumulative Impacts

According to 14 CCR §15130 (b) (1) (A) of the CEQA Guidelines, an adequate discussion of significant cumulative impacts includes a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency.

Cumulative impacts of the Housing Element are not adequately addressed in the DEIR. In particular, cumulative impacts to water resources, biological resources, air quality, and other resources are not addressed [DEIR at 174].

In particular, Impact 5.17-A is of great concern due to the cumulative impacts to aquatic species that may be adversely impacted by water withdrawals for domestic or outdoor use in streams or rivers with low flows and high temperatures during the summer months. Some of the affected species include rare and endangered species. The reduced amount of water in the stream or river can cause temperatures in the water body to increase because there is less water volume. Also, reduced flows can isolate pools, trapping fish, such as endangered Coho salmon, and increasing their predation. As there are a number of rare or endangered fish species in streams and rivers with low flows in the summer months, this impact may be potentially significant according to the above criteria. This potentially significant impact was not addressed in the previous EIR [DEIR at 173].

Conclusion

We request that the EIR analyze an alternative land inventory that relies on infill development of the areas already served by water and sewer, not on subdivision and conversion of undeveloped lands. Please include this in your range of alternatives so you can make a fully informed decision.

Sincerely



Chris Rall – Policy Director
Healthy Humboldt Coalition

CC

Paul McDougall, California Housing and Community Development Department

ⁱ Climate Change, CEQA, and General Plans. FAQs. March 6, 2009. Edmund G. Brown Jr. California Attorney General, Sacramento, CA.

ⁱⁱ Gov Code 38551(b), available at: http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf

ⁱⁱⁱ Intergovernmental Panel on Climate Change. 2007. Climate Change 2007: Mitigation of Climate Change. Available at:

http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg3_report_mitigation_of_climate_change.htm

^{iv} Victoria Transport policy Institute. 2008. Land Use Impacts on Transport: How Land Use Patterns Affect Travel Behavior. Available at: <http://www.vtpi.org/tm/tm20.htm>.