

September 1, 2010

Humboldt County Planning Department  
Community Development Services  
Attn: Martha Spencer  
3015 H Street  
Eureka, CA 95501

**Subject: Housing on TPZ as pertaining to the General Plan Update**

Dear Planning Commissioners,

Thank you for the opportunity to comment on the Forest Resources chapter of the County's draft General Plan Update's Land Use Element. These comments are submitted on behalf of Healthy Humboldt and our member organizations (hereinafter "HHC"). Healthy Humboldt is a coalition of public interest groups—Northcoast Environmental Center, Humboldt Watershed Council, Sierra Club, Humboldt Baykeeper, and Green Wheels—working for a County General Plan that provides healthy transportation and housing choices while protecting resource lands and watersheds.

**Residential development on TPZ – Past, Present and Future**

In recent years there has been a great deal of debate on whether a property owner should be entitled to the "fundamental" right to build a residence on TPZ land regardless of whether the land is maintained for growing and harvesting of timber.

Much of the debate was focused on the Pacific Lumber Company's proposal, put forth in 2007, to parcelize and sell off 20,000 acres of TPZ as large-lot residential estates. In reaction to this, the Board of Supervisors enacted a temporary emergency moratorium on building permits on TPZ lands as the only means available to prevent the proposed erosion of the County's timberland base. The moratorium has since expired and, currently, there is no mechanism to prevent such parcelization and further conversion of timberlands to residential and other non-timber uses.

HHC believes that Humboldt County's current TPZ ordinance, which principally permits residential development on TPZ lands, undermines the economic viability of those lands for timber production and harvest. HHC also believes there exists an unfair tax advantage for TPZ land given that allowed residential uses on TPZ lands are comparable to other rural timbered properties which do not derive a tax benefit.

HHC believes that, especially when considering the increasing trends of parcelization of, and residential development on, Industrial Timber lands such as Barnum Timber Company and Eel River Sawmills holdings, the County's recognition of a residential economic use of TPZ significantly detracts from the use of the property for the growing and harvesting of timber. Such action constitutes a violation of the laws of this state and threatens Humboldt County's natural resource base.

As to the future regulatory framework, HHC has substantial concerns over certain General Plan Update recommendations put forward by some members of the planning commission with regard to residential development on TPZ lands. The Draft EIR must address direct, indirect, and cumulative environmental impacts of full build-out allowed under the General Plan as well as impacts to the timber economy. It is abundantly clear that, pursuant to state law and common sense, the General Plan must address the issue of residential development on TPZ and contain safeguards for this County's productive forestlands into the long-term future.

### **Land Use Classification – Distinguishing between TPZ, Timberland and Rural Residential**

As a matter of clarification, the distinction must be made between Timber Production Zone (TPZ) lands and other forested lands which fall under the broader category of "timberlands". TPZ means an area which has been zoned pursuant to Sections 51112 and 51113 of California's Government Code and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses. [Cal. Govt. Code § 51104(g)]

TPZ land is a particular subgroup of timberlands for which the state has created a tax break as an incentive for timber production. The majority of landowners in this county do not realize this substantial tax break. Properties zoned under the broader category of "timberlands" do not hold the same tax status and, under the current General Plan, a house is principally permitted. The proposed General Plan Update does not change this nor does it prevent people from choosing to live on other rural-residential zoned properties.

### **Legislative Intent**

When enacted almost thirty years ago, the Legislature recognized the pressures of development with regard to California's forestlands. In approving the California Timberland Productivity Act (CTPA) of 1982, the legislators made the following finding:

"The state's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to urban and other uses and through pressures to restrict or prohibit timber operations when viewed as being in conflict with non-timberland uses."  
[Cal. Govt. Code § 51101(b)]

The CTPA explicitly seeks to "discourage premature or unnecessary conversion of timberland to urban and other uses; discourage expansion of urban services into timberland; and encourage investment in timberlands based on reasonable expectation of harvest." [Cal. Govt. Code § 51102(a)]

### **Land Use and Valuation**

Pursuant to established case law (including the case cited by Mr. Barnum at the April 13<sup>th</sup>, 2010 Planning Commission hearing: Lucas v. South Carolina Coastal Council, 505 U.S. 1003 [1992]) a property owner has a right to a reasonable economic use of their property. For example, if the property is residential, the owner is entitled to a residential economic use. In the instance of TPZ, the property's intended primary use is the growing and harvesting of timber and, as such, the owner has a right to timber production as the principal economic use.

Market forces dictate that property be valued according to the "highest and best use". The real estate value of a property is directly related to the use of that property. From a Real Estate

appraiser's perspective, the highest and best use of a property is the *reasonably probable use* that produces the highest property value. A reasonably probable use is one that is legally allowable, physically possible, financially feasible and maximally economically productive.

Currently, the County's TPZ regulations contain no procedural mechanism that addresses the problem of a residence and/or residential valuation detracting from the use of a property for the growing and harvesting of timber. Nor is there a mechanism to determine whether a residence is necessary for the management of timberland. From our understanding of State Law, a TPZ parcel may be valued for existing, compatible, nonexclusive uses. However, when that use detracts from the primary use for growing and harvesting timber such a use should no longer be recognized as compatible.

Should Humboldt County continue down the track of unequivocally allowing residential development on all TPZ parcels, and given the current and projected future market trends, California's timberlands will continue to be valued for their residential economic use, further eclipsing the timber value and making it infeasible for investment in such lands for timber production. State law dictates that the "highest and best use" of TPZ is for the growing and harvesting of timber. It must be valued and maintained for this use.

### **Taxation and Enforceable Restrictions**

As noted above, TPZ properties recognize a substantial tax benefit for the continued use of the land for the growing and harvesting of timber. TPZ land must be enforceably restricted (e.g. subject to a zoning consistency determination) in a manner that justifies the tax deferral, so as not to constitute an unfair tax advantage. HHC believes that there exists an unfair tax advantage for TPZ land because residential uses on TPZ lands are comparable to other rural timbered properties which do not derive a tax incentive.

State Law describes the powers and duties of local government in protecting timberlands:

"Land zoned as timberland production under this chapter shall be enforceably restricted within the meaning of Section 3(j) of Article XIII of the Constitution and the restriction shall be enforced and administered by the city or county in a manner to accomplish the purposes of that section and this chapter." [Cal. Govt. Code § 51118]

Section 3(j) of Article XIII of the Constitution states that a "system or systems of taxing or exempting forest trees or timber... shall provide for exemption of unharvested immature trees, shall encourage the continued use of timberlands for the production of trees for timber products, and ***shall provide for restricting the use of timberland to the production of timber products and compatible uses with provisions for taxation of timberland based on the restrictions.***" (*emphasis added*)

### **Residences: A Compatible Use?**

California Government Code Section 51104 defines compatible use as follows (*emphasis added*):

"Compatible use" is any use which does not significantly detract from the use of the property for, or inhibit, growing and harvesting timber, and shall include, but not be limited to, any of the following, ***unless in a specific instance such a use would be contrary to the preceding definition of compatible use:***

- (1) Management for watershed.

- (2) Management for fish and wildlife habitat or hunting and fishing.
- (3) A use integrally related to the growing, harvesting and processing of forest products, including but not limited to roads, log landings, and log storage areas.
- (4) The erection, construction, alteration, or maintenance of gas, electric, water, or communication transmission facilities.
- (5) Grazing.
- (6) A residence or other structure necessary for the management of land zoned as timberland production.

For the past thirty years or so, the County has allowed the construction of a residence with a ministerial permit on TPZ parcels. When the CTPA was enacted in 1982, a residence may well have been a compatible use on TPZ. However, over the past decade we have witnessed a trend throughout the Pacific Northwest where residential land values have eclipsed the value of land for timber production.

A residence on a TPZ parcel *could* be a compatible use so long as it does not diminish the use of property for growing and harvesting timber. For this reason, Healthy Humboldt Coalition believes that a conditional use permit should be required for a residence on TPZ to ensure that such a use does not interfere with the primary use of the land for growing and harvesting timber.

Please include this letter in the administrative record for the General Plan Update's DEIR. Thank you for your work and for your careful consideration of these comments.

Sincerely,



Dan Ehresman – Policy Analyst  
Healthy Humboldt Coalition

CC:  
Humboldt County Board of Supervisors  
Humboldt County Planning Staff