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June 29, 2020

Trevor Estlow  
County of Humboldt  
Planning and Building Department  
3015 H Street  
Eureka, CA 95501

**RE: North McKay Ranch Subdivision Project Draft Environmental Impact Report**

Dear Mr. Estlow,

On behalf of the Environmental Protection Information Center (EPIC), Humboldt Baykeeper, and the Coalition for Responsible Transportation Priorities (CRTP), please accept these comments on the proposed North McKay Ranch Development. We support the development of appropriately-sited and well-conceived housing that supports a diversity of housing needs, particularly low-income, affordable by design, and accessible housing. In this regard, we agree with the vision articulated for the project in the proposed project objectives. (DEIR at 2-8-2-9.) To fulfill this vision, however, this project needs work. If the County wishes to allow a new large greenfield development at this project site, additional project measures are necessary to reduce the impact of the housing on the adjacent community and on the natural environment. As outlined in the comments below, we do not believe that the project has fully complied with CEQA and more mitigation measures are required. Where possible, we have identified those things that are both necessary to comply with CEQA and would help fulfill the project objectives.

These comments reflect our good faith attempt to provide the developer and the County with our concerns and possible remedies to our concerns. We expect that these comments will be received in the same spirit. We would appreciate an opportunity to go over with the County and the developer in the near future.

**Project Description**

As relayed by the DEIR, the project includes:

The proposed project would include the subdivision of a parcel, consisting of seven assessor parcel numbers (APN), for a total of approximately 81 acres, into

mixed-use lots to develop up to 320 residential units, approximately 22,000 square feet of commercial development, an off-water storage tank on approximately 0.3 acre, located 2.5 miles to the south. In addition, an off-site sewer line would be constructed. The proposed land uses would include single-family dwellings, multi-family dwellings, and neighborhood commercial. The residential mix could include 146 single-family houses and 174 multi-family units. Two proposed commercial parcels would contain approximately 22,000 square feet of commercial space. Approximately 21.73 acres would remain as undeveloped open space that would be dedicated to the County for future trail management or conveyed in fee. The off-site water storage tank would be owned and managed by the HCSD and would support the proposed development. The proposed project is anticipated to be developed in nine phases over a period of 20 years, but a final phasing plan would be based on market conditions. (DEIR at 2-1.)

### **Environmental Impacts and Mitigation Measures**

The DEIR is incomplete as it relies upon unsupported, conclusory statements and fails to exhaust all feasible mitigation measures.

At its heart, the California Environmental Quality Act (CEQA) mandates that government decisionmakers understand the environmental ramifications of their decisions. CEQA serves “to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* 47 Cal. 3d 376, 392 (1988). If CEQA is “scrupulously followed,” the public will know the basis for the agency’s action and “being duly informed, can respond accordingly to action with which it disagrees.” *Id.* Thus, CEQA “protects not only the environment but also informed self-government.” *Id.*

Critical to this purpose is the reliability of information. CEQA demands that findings and other conclusions be supported by “substantial evidence in the record.” 14 CCR § 15064. Substantial evidence, in turn, “means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion.” 14 CCR § 15384(a). *Facts* always need to exist to underpin a fair argument, including qualitative analysis: “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” 14 CCR § 15384(b).

CEQA further strives to result in better environmental decisionmaking. Critical to that is a full understanding of the way that project impacts can be avoided, minimized, or mitigated, either through alternatives to the proposed action or project mitigation measures.

CEQA mandates that government agencies must deny approval of a project presenting significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. Pub. Resources Code 21002. Only when feasible mitigation

measures have been exhausted may an agency find that overriding considerations exist that outweigh the significant environmental effects. Pub. Resource Code 21081; *see also* CEQA Guidelines 15091(a). This mandate—to avoid, minimize and mitigate significant adverse effects where feasible—has been described as the “most important” provision of the law. *Sierra Club v. Gilroy City Council*, 222 Cal. App. 3d 30, 41, 271 Cal. Rptr. 393 (Ct. App. 1990).

To effectuate this “most important” provision, the government is tasked with investigating the potential adverse effects and all feasible alternatives and mitigation measures that decisionmakers may adopt. Pub. Resources Code 21100; CEQA Guidelines 15126. CEQA likewise requires alternatives and mitigation measures to be sufficiently detailed to “to foster informed decision-making and public participation.” *Save Round Valley Alliance v. County of Inyo*, 157 Cal.App.4th at pp. 1456, 1460 (2007).

Mitigation measures, in turn, include:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

CEQA Guidelines § 15370.

This list can also be read as a priority for decisionmakers, such that in considering mitigation, avoiding impacts is most preferred and compensating for impacts is least. *See* CEQA Guidelines § 15126.4. Upon inspection, the reasoning is obvious: avoidance produces certain results and does the least harm to the resources considered. By contrast, compensatory mitigation is less desirable because it allows for harm while providing only uncertain future benefits. For that and other reasons, compensatory mitigation is often required with a multiplier effect—that is, to use the example of the wetland, for every acre impacted, the compensatory mitigation might require the creation of five acres of wetland. In this same way, on-site mitigation is preferred over off-site mitigation. *See generally La Costa Beach Homeowners' Assn. v. California Coastal Com.*, 101 Cal. App. 4th 804 (2002) (evaluating the appropriateness of offsite mitigation under the California Coastal Act). Onsite mitigation is preferred as it compensates for the harm in the same general area where it is felt—providing a clear and constitutionally-mandated nexus. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); CEQA Guidelines § 15126.4(a)(4)(A). And the timing of mitigation matters, as mitigation *prior* to project impacts is preferred to after-the-fact mitigation. *See* CEQA Guidelines § 15126.4. Again, all of these points make intuitive

sense—we want to mitigate harms before they occur and in the area that they occur, unless there is special reason to deviate.

Feasibility, as used by CEQA and the Guidelines, is where a mitigation measure is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” Public Resources Code 21061.1; CEQA Guidelines, § 15364. “In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. While the response need not be exhaustive, it should evince good faith and a reasoned analysis.” *Los Angeles Unified School District v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1029 (1997) (internal citation omitted).

The ultimate determination of the sufficiency and feasibility of mitigation measures is the province of the action agency. These determinations must be supported by findings supported by substantial evidence. *See Federation of Hillside & Canyon Associations c. City of Los Angeles*, 83 Cal. App. 4th (2d Dist. 2000); *Concerned Citizens of South Los Angeles v. Los Angeles Unified School District*, 24 Cal. App. 4th 825 (2d Dist. 1994). Averments by project developers concerning the financial feasibility of mitigation are not dispositive of the question; rather, that is one piece of information that may be considered by the action agency.

### **The Project Fails to Adequately Consider VMT**

In a separate comment letter dated June 22, 2020, the Coalition for Responsible Transportation Priorities (CRTP) and EPIC articulated that the transportation analysis fails to adequately consider vehicle miles travelled, particularly because the choice of “threshold” was flawed and because factual conclusions were unsupported by evidence. We write again to stress our concerns.

As to the threshold, the project combines both residential and commercial elements. The analysis provided appears to only examine residential VMT. Looking at the residential analysis, we again stress that because this project would form as a de facto suburb of Eureka, the appropriate threshold is a comparison to city VMT. The project site is partly within the Eureka Community Plan Area and this area for potential residential development is explicitly addressed. DEIR at 3-13-1.

The DEIR admits that the per capita VMT is likely higher than that of Eureka. We agree. This development is on the very edge of the developed metropolitan area. While we agree, we note that this statement in the DEIR is unsupported by evidence in the administrative record. The DEIR further argues that the per capita VMT is likely less than the per capita VMT in the “region.” There are two analytical issues with this argument. First, the “region” is not defined. Second, the analysis is not supported by evidence in the record. While it appears that the DEIR completed LOS analysis, found in appendix H of the DEIR, there is seemingly no actual VMT analysis. This type of qualitative analysis fails the substantial evidence test required by CEQA.

From the available information, particularly the DEIR's admission that the development would have a greater per capita VMT than the average per capita VMT for Eureka, the County should conclude that the development will have a significant impact. And if there is a significant impact, the County has to require mitigation to reduce that impact. Additional mitigation measures could include:

- Connection of the development to the planned Bay-to-Zoo trail through on-site and off-site pedestrian and bike infrastructure improvements. Improvements could include dedicated bike lanes on Fern St.
- Provision of free bus passes to residents.
- Car-share and bike-share programs.
- Reducing the number of parking spaces provided.
- Traffic calming measures to promote safe pedestrian usage.

### **The Project Fails to Exhaust Feasible Measures to Mitigate Greenhouse Gas Emissions**

The DEIR rightly concludes that this project will result in significant direct and cumulative greenhouse gas emissions. We agree. Because the project will result in significant impacts, the County has an obligation to mitigate the impacts below a place of significant or impose all feasible mitigation measures prior to issuing a finding of overriding considerations. Unfortunately, the County jumped the gun, finding that it has exhausted all feasible mitigation measures.

Additional mitigation measures include but are not limited to:

- All electric development, replacing natural gas-based appliances and consumption.
- Reduction of emissions from transportation through reduced VMT, addressed above, and incorporation of EV charging infrastructure.
- Native planting to provide on-site sequestration of greenhouse gases.
- Removal of wood burning stoves from all residential development.

### **Densification and Mixed-Use Development**

We are encouraged that this development would provide low-income and multifamily development and would incorporate commercial space in the development. We further encourage densification of the project through incorporation of accessory dwelling units, a type of housing that is affordable by design. We further encourage greater commercial development and incorporation of commercial development in a manner than encourages walking/biking rather than driving.

### **Inadequate Mitigation Measures for Impacts to Wetlands**

We join the scoping comments submitted by the California Department of Fish and Wildlife that a 1:1 mitigation requirement for wetland impacts is insufficient as it fails to adequately mitigate

wetland loss. Compensatory mitigation at a 3:1 ratio is often required of projects because of the significant time lag for constructed wetland to provide compensatory wildlife value.

The DEIR states that there will be permanent impacts to 0.338 acre of wetlands but the NOP and Wetland report (Appendix C) both say that 0.84 acres of wetlands will be impacted. How has the Project been altered to reduce the wetland impacts by nearly 0.5 acre?

While we support MM BIO-6, which includes restoration of the remaining wetlands onsite through invasive species removal, native plant installation, removal of historic fill, and habitat connectivity using stormwater and wildlife crossing culverts, MM BIO-5 is inadequate due to the low mitigation ratio proposed. The 1:1 mitigation ratio for compensatory wetland is inadequate, given 1) the overall lack of successful wetland creation in upland areas and 2) the temporal loss of wetlands during the 5-10 years it will take to replace wetland function. A 1:1 mitigation ratio is only appropriate when mitigation is already complete and ecosystem function has been replaced before the Project-related damage is done. Furthermore, “compensatory mitigation projects seldom result in wetlands with optimal condition” (Ambrose et al. 2007).<sup>1</sup>

Monitoring criteria for compensatory wetlands should include measures of ecosystem function rather than simply survival of planted individual trees, shrubs, and herbaceous plants. Measures such as percent cover of native vs. non-native plant species and hydrology are more accurate measures of success for compensatory wetland mitigation.

### **Inadequate Mitigation Measures for Impacts to Riparian Vegetation**

Small headwater streams are important to amphibian populations, as well as providing vital ecosystem services to downstream watersheds, and Riparian habitats are of disproportionate importance for many bat species because they are insect-rich environments and provide roosting, foraging sites, and drinking water.<sup>#</sup>

We support MM BIO-7, which includes a 100-foot setback (where feasible) from the 30 percent break in slope designated as non-buildable to reduce erosion and removal of trees, and recontouring the deteriorating logging road within the northern portion of the proposed project.

However, MM BIO-8 is not adequate to mitigate impacts to riparian vegetation. The proposed mitigation does not restore any riparian vegetation; rather, it proposes to restore forest understory vegetation on a former logging road. Again, the 1:1 mitigation ratio proposed is too low, and fails to mitigate by replacing ecosystem functions that will be permanently destroyed by the Project. We suggest a mitigation measure similar to MM BIO-6, restoration of the remaining riparian vegetation onsite through invasive species removal, native plant installation, and removal of historic fill where feasible.

If compensatory riparian vegetation is used as mitigation, it should be at a much higher ratio than 1:1, and monitoring criteria should again include measures of ecosystem function rather than simply survival of planted individual trees, shrubs, and herbaceous plants. Measures such as

percent cover of native vs. non-native plant species and hydrology are more accurate measures of success for compensatory riparian vegetation mitigation.

In addition, clear span bridges are the least damaging practicable crossing alternative and should be used for stream crossings instead of the large half-round culverts proposed in MM BIO-7.

### **Night Light Pollution**

The DEIR appears to evaluate impacts of night light pollution only to humans, without consideration for wildlife as sensitive receptors. For example, the DEIR states that “The proposed water storage tank would be adjacent to an existing water tank that is surrounded by dense trees. As such, it would not create any significant new sources of light and glare and would result in a less than significant impact.”

Artificial light has the potential to introduce light pollution to adjacent wetland, marine, and riparian habitats. Adverse ecological effects of artificial night lighting on terrestrial, aquatic, and marine resources such as fish, birds, mammals, and plants are well documented (CDFW 2014).<sup>iii</sup>

### **Household Trash Control and Wildlife Impacts**

In many rural areas where housing development encroaches on or abuts wildlife habitat like the McKay Community Forest, household trash control is important for preventing unnecessary conflicts that too often lead to death for bears and other scavengers considered to be a nuisance. Trash-related conflicts with wildlife should be prevented to avoid or minimize these impacts.

### **Hydrology and Water Quality**

We are concerned about the impacts to water quality, wetlands, riparian and aquatic habitat in Ryan Creek and its tributaries. According to the California Department of Fish and Wildlife, the Coho Salmon in Ryan Creek are considered a key population to maintain or improve.<sup>iii</sup> Any increases (whether temporary or permanent) in instream sediment or turbidity, stream channel aggradation, water temperature, loss of habitat structure or estuary habitat would likely contribute to the further decline of the Coho Salmon, as well as Steelhead and Coastal Cutthroat Trout.

Increasing impervious surfaces in the Ryan Creek watershed will likely lead to increases in point source and non-point source pollution. Impervious surfaces should be minimized to the maximum extent feasible, and the best Low Impact Development (LID) methods should be used to prevent stormwater runoff from reaching Ryan Creek, its tributaries, wetlands and springs in the area. LID methods should also be incorporated to address some of the poor practices of past development if possible to mitigate unavoidable impacts of the proposed development.

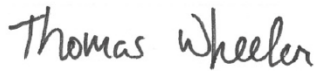
It is difficult to comment on the adequacy of proposed measures to mitigate impacts to hydrology and water quality, since they mainly consist of developing future plans and adhering to minimum permit requirements. Mitigation measures should go above and beyond the minimum requirements where impacts are considered substantial, and certainly adding many acres of impervious surface

to the Ryan Creek watershed will cause substantial impacts to Coho salmon and other aquatic species. At a bare minimum, the Project must adhere to permit requirements at the time each phase is permitted, rather than at the time the EIR is certified.

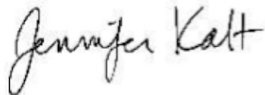
## Conclusion

We appreciate the opportunity to comment on the North McKay Ranch Subdivision DEIR. Please keep us informed at the earliest possible time to enable meaningful review and comment as the Project moves forward.

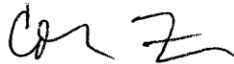
Sincerely,



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<sup>i</sup> Ambrose, R. F. et al. 2007. An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Resources Control Board, 1991-2002. Report prepared for the California State Water Resources Control Board.  
[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/mitigation\\_finalreport\\_execsum081307.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/mitigation_finalreport_execsum081307.pdf)

<sup>ii</sup> California Department of Fish and Wildlife, 2014. Technical Memorandum: Development, Land Use, and Climate Change Impacts on Wetland and Riparian Habitats – A Summary of Scientifically Supported Conservation Strategies, Mitigation Measures, and Best Management Practices.

<sup>iii</sup> California Department of Fish and Wildlife, 2004. Recovery Strategy for California Coho Salmon. Report to the California Fish and Game Commission, Sacramento, CA.