January 30, 2009

City of Eureka
Community Development Department
Attn: Sidnie L. Olson, AICP Principal Planner
531 K Street
Eureka, CA 95501

Re: Marina Center Mixed Use Development Project Draft Environmental Impact Report

Ms. Olson:

On behalf of the board and staff of Humboldt Baykeeper the following comments are submitted regarding the Marina Center Mixed Use Development Project Draft Environmental Impact Report ("DEIR"). Humboldt Baykeeper has many concerns regarding the analysis that was conducted in the DEIR. One of CEQA's main purposes is to ensure that the public and decision-makers are fully informed about the potential, significant environmental effects of a proposed project. Based upon our review of the DEIR we do not believe that this basic requirement is being met.[1]

Our specific comments are outlined below.

I. Humboldt Baykeeper's Involvement with Project Site

In February of 2006 Humboldt Baykeeper served Union Pacific Railroad Company, the former owner of the Balloon Track, with a Notice of Intent to Sue ("NOI") under the federal Clean Water Act, the federal Resources Conservation and Recovery Act, and the California Hazardous Waste Control Act. Our NOI was based upon the long term contaminated state of the property and for the illegal discharges of pollutants to waters of the United States in violation of federal law. In April of 2006 we filed suit in federal court against Union Pacific for these claims. In October of 2006, after their purchase of the property, Humboldt Baykeeper similarly served CUE VI with an NOI as the current

[1] Cal. Pub. Res. § 15002(a).

owners of the property, and in June of 2007 filed an amended complaint in federal court naming them in the suit. Despite the fact that the site had been under Regional Board oversight for over 15 years, the contaminated conditions on the property were, and continue, to pose a serious problem to Humboldt Bay and the surrounding community and environment. No cleanup actions have occurred on the property since our suit was filed.

Humboldt Baykeeper's consultants have conducted three site inspections: two of which involved the investigation of site conditions and the third to conduct a dye tracer study to determine the discharge location of a pipe found on the southern boundary of the property. At the outset with these site investigations CUE VI objected strongly – including filing motions with the federal court, which were denied - to Humboldt Baykeeper's ability to share the information gained through our site inspections with others, including other regulatory agencies involved or potentially involved with the site.

During these site investigations Humboldt Baykeeper collected numerous soil and sediment samples, conducted fish counts and collected fish samples for dioxin analysis, as well as conducting visual observations. Based upon the information gathered during these inspections and upon the previous sampling conducted at the site, Humboldt Baykeeper's expert consultants prepared a number of reports describing and assessing site conditions. These reports are attached to this comment letter.

In May of 2008 Humboldt Baykeeper presented a large quantity of this information to the City of Eureka. We were contacted by Sidnie Olson requesting additional information that we might have regarding the project site and learned that the City was in possession of little of the information that was available. We provided the city with a full copy of: the file maintained by the North Coast Regional Water Quality Control Board ("Regional Board"); copies of the documents produced to us by Union Pacific and CUE VI regarding the site; the DEIR prepared for the property by WESCO; copies of two wetland delineations conducted by the Huffman Broadway Group; and copies of sampling results from Humboldt Baykeeper's site inspections.[2] Although all of the documents we provided to the City were in the possession of the project proponent, as well as results of split sample analyses conducted of soil, sediment, and fish samples, they were apparently not provided to the City for their use in the EIR preparation process. None of these documents, for example, are cited as references in the DEIR.

[2] A copy of the letter provided to the City along with the documents is attached as exhibits 1, 2, and 3. When these documents were provided to the City, Ms. Olson assured me that all materials provided to them would be considered part of the administrative record. Based upon these assurances, Humboldt Baykeeper is not now re-producing copies of the materials already provided and considers them to be part of the record for the CEQA process.

II. Section IV. Environmental Setting, Impacts, and Mitigation Measures

a. Section IV.A: Aesthetics

As currently written, the DEIR presumes that the development of a mixed use project would create a more favorable aesthetic environment than the current open space vista that is presented by the site. The DEIR states that "[a]lthough some views of the bay and peninsula would be lost as a result of the project, the Marina Center project would, overall, augment public coastal viewing opportunities by providing improvements and amenities." DEIR at IV.A-5. "The project would, however, improve the visual quality of the area by redeveloping the mostly vacant brownfield site, introducing public amenities…, restoring a wetland area, and implementing a streetscape program…" DEIR at IV.A-16. Based upon this statement, the DEIR finds that "The potential impact of the Marina Center project on the visual character or quality of the site and its surroundings would be less than significant." Id. (emphasis omitted).

Aesthetic considerations are, as recognized by the DEIR, largely subjective. With this in mind, the DEIR needs to include greater discussion of the value of open space views. The Balloon Track is currently the only open space within the project vicinity that allows a view of the bay from motorists along the 101 corridor. Additionally, from the Bay and from the trail along the Bay near the Wharfinger it allows a view up into the City and the mountain skyline behind it. These views would be largely obstructed by the construction of the project, especially considering the intent to construct four and five story buildings as part of the project. *See* DEIR at IV.A-6 to IV.A-16.

The DEIR should incorporate an analysis that gives greater weight to the positive visual character allowed by having open space between the major thoroughfare through Eureka and Humboldt Bay. It should additionally incorporate an analysis of the benefit of having an open space view within the vicinity of the project.

b. Section IV.C Air Quality

Although the DEIR does contain an analysis of air quality impacts from the proposed project, and does recognize that the project would have a significant impact due to the conflict with achieving attainment status for emissions of PM10, it does not incorporate sufficient mitigation measures to reduce that impact below the level of significance. The mitigation measures included in the DEIR appear to be the minimum that could be required of the project applicant. *See e.g.* DEIR at IV.C-12 - IV.C-15 Additional mitigation measures that could reasonably be included in order to help reach attainment of PM10 standards in the air basin would include requiring installation of alternative energy generation sources such as solar electric panels and solar water heating.

The Air Quality section does not appear to assess the impacts on air quality from additional energy usage from the project itself. The analysis includes daily motor vehicle trips, on-site stationary sources, and area sources. DEIR at IV.C-13 - IV.C-14. Greenhouse gasses that are assessed are based upon motor vehicle trips, natural gas usage, and landscape maintenance. DEIR at IV.C-20. This does not include an analysis of the air quality impacts or green house gas emissions from the electricity used to light the structures on site, or to provide electricity for other likely or necessary uses. Furthermore, the analysis does not include the air quality impacts or green house gas emissions from bringing products into and out of the project site. These are significant potential sources of green house gas emissions and must be analyzed in the DEIR.

In addition to the concerns discussed above, there are concerns regarding cumulative impacts on air quality that are not analyzed in the DEIR. The Humboldt Bay Harbor, Recreation and Conservation Districts Adopted Business Plan for the Redwood Marine Terminal estimates that in the first year of operation, the container terminal would generate up to 4 unit trains per weekly vessel port call (2 southbound and 2 northbound). At full capacity, the terminal would generate up to 12 unit trains per week (6 southbound and 6 northbound) or up to 2 trains per day. A standard intermodal unit train has capacity for approximately 500 TEU (20 TEU per 5-well railcar with 25 railcars per train). This indicates the Humboldt Bay District estimates that at full capacity the Redwood Marine Terminal will be receiving two container ships per day. The District also estimates 30-40 port calls per year from cruise ships. According to the US Environmental Protection Agency, "marine diesel engines used on a variety of different types of vessels ranging in size and application from small recreational runabouts to large ocean-going vessels are significant contributors to air pollution in many of our nation's cities and coastal areas. Marine diesel engines produced today must meet emissions requirements, but the current standards are relatively modest and these engines continue to emit significant amounts of nitrogen oxides (NOX) and particulate matter (PM), both of which contribute to serious public health problems." (http://www.epa.gov/OMS/marine.htm).

Of course, similar emissions and public health issues exist for diesel exhaust from trains.

The DEIR fails to address the cumulative environmental and health effects from these anticipated sources. Because firm estimates exist of the numbers of ships likely to be present on Humboldt Bay upwind of the proposed project, and trains along the rail line immediately adjacent to the project, the cumulative impacts analysis should include emissions, exposures and health risk assessments of these combined sources.

c. Section IV. D: Biological Resources

Biological resources that could be impacted by the proposed project deserve special review due to the complete change that will be occurring at the project site. If the Marina Center Project is approved as proposed approximately 43 acres will be transformed from open space, wetlands, and tidally influenced slough into 313,500

square feet of retail space, 104,000 square feet of office space, 72,000 square feet of multi-family residential, 70,000 square feet of light industrial, 14,000 square feet of restaurant, 12,500 square feet of museum with approximately 1,600 square feet of parking spaces.[3] Although the project does additionally include the creation of an 11.89 acre wetland preserve, the net loss of various habitats is considerable.[4] Attached to these comments is a Biotic Characterization of Clark Slough and "Balloon Tract" prepared by H.T. Harvey and Associates on behalf of Humboldt Baykeeper and Ecological Rights Foundation. This document contains an additional assessment of the biological resources found, or potentially found, at the project site.

Although the DEIR presents a reasonable overview of conditions found onsite, there are a number of omissions of note. The DEIR states that no mammals have been observed on the site, in fact a striped skunk and the remains of a Virginia Opossum were observed on the site in January of 2008. [5] Additionally, the DEIR gives little consideration to the habitat value provided by Clark Slough itself. There is no discussion of invertebrate species found in the Slough, nor was there an assessment of what fishes currently, or potentially, reside there. On July 31, 2007 a fish survey of Clark Slough was conducted. This fish survey found a variety of species to be using the slough, most notable being the large number of juvenile Dungeness crab – there were 243 juvenile Dungeness crab found within the stretch of Clark Slough that extends from the tide gate to the box culvert on the property under the gravel road that runs roughly parallel to Waterfront Drive.[6] Although Dungeness crab is not an endangered, threatened, or special concern species, its commercial and recreational value within the Humboldt Bay and surrounding communities is exceptional.

The DEIR characterizes the wetlands found onsite as being limited in "value" and "function".[7] Though these wetlands may not provide optimum habitat, their value as foraging areas and freshwater sources for a variety of avian species, as well as habitat (in the case of Clark Slough) for fishes and crustaceans[8] should not be minimized purely to support their conversion into retail space for the human residents of this area. The proper ecological assessment of the wetland functions present onsite has not even been conducted. According to the California Coastal Commission, in order to determine the function of a wetland an assessment should be made that determine the chemical, biological and physical functions of the specific wetland. Assessment of the biological functions of a wetland, for example, "would include identifying the species of fish that occur in the wetland, identifying their life stages (e.g., young-of-the-year, juvenile, or

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[3] DEIR at III-2.
[4] DEIR at III-2.
[5] DEIR at IV.D-4; H.T. Harvey at 3, attached as Exhibit 4.
[6] Exhibit 4 at 8.
[7] DEIR at IV.D-12.
[8] *See* Exhibit 4 at 2-4.

adult), and determining the abundances of those species."[9] Proper assessments of wetland values must be completed to determine the true impacts of the proposed project and for assessing the sufficiency of proposed mitigation measures.

In Impact D-2, the DEIR asks whether the project would have a substantial adverse effect on any riparian habitat or other sensitive natural community and then goes on to explain why the site does not contain environmentally sensitive habitat areas ("ESHA") and discounts the value of the riparian habitat found onsite.[10] Though the discussion provided here regarding the definition of an ESHA under the California Coastal Act is accurate, it ignores the definition for such areas under the City of Eureka's own certified Local Coastal Plan ("LCP"). Under Eureka's LCP:

> "The City declares the following to be environmentally sensitive habitat areas:
>
> a. Rivers, creeks, sloughs, gulches, and associated riparian habitats, including but not limited to…
> b. Wetlands and estuaries…riparian areas…
>
> …"[11]

When the City's definition of an ESHA is applied to the site, it is clear that the wetlands found onsite, including the wetlands and riparian areas found along the southern portion of the property, and Clark Slough fall within the definitional scope. Thus, contrary to what is stated in the DEIR, these areas must be assessed giving them their proper value as ESHAs. This section goes on to state that the "project's effects on riparian habitat or other natural communities would be beneficial rather than adverse."[12] Further, the DEIR improperly identifies only Clark Slough as a riparian area, though the wetlands found along the southern boundary of the site clearly fall within such a definition. Without giving proper weight to the beneficial values already found within these areas an assessment of the projects potential effects on these areas cannot be made.

Impact D-3 asks whether the project would have a substantial adverse effect on federally protected wetlands protected by Section 404 of the Clean Water Act, it then goes on to discuss how the wetland restoration plan would mitigate the effects of the project to a level resulting in an impact that is less than significant.[13] This section of the DEIR recognizes that the project will permanently fill approximately 5.54 acres of wetlands.[14] This fill is claimed to be mitigated for through the creation of an 8.98 acre wetland reserve along with 2.91 acres of associated buffers.[15] It is not entirely clear from

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[9] California Coastal Commission, *Procedural Guidance For Evaluating Wetland Mitigation Projects In California's Coastal Zone*, section 4.2.1.2, available at http://www.coastal.ca.gov/weteval/we4.html.
[10] DEIR at IV.D-20.
[11] City of Eureka Policy Document at 6.A.6.
[12] DEIR at IV.D-21.
[13] DEIR at IV.D-21- IV.D-30.
[14] DEIR at IV.D-22.
[15] DEIR at IV.D-22.

the description provided where the wetlands that will be filled are and where the wetlands that will be created will occur on the project site. It can be inferred from the information provided that this wetland preserve will surround or border Clark Slough, and thus the acreage included in the wetland preserve would include Clark Slough within its total acreage.

The mitigation ratio provided in the DEIR is 1:1, meaning that approximately one acre of wetland will be created for each acre that is destroyed. According to the California Coastal Commission, the mitigation ratio calculation should be based upon more than just numbers – i.e. 1:1, and instead should factor in function and value information that relies upon information gained from the ecological assessment.[16] Having not conducted a complete ecological assessment, all of the conclusions that follow in the DEIR regarding the benefits of the proposed wetland preserve are unsubstantiated.

Specific portions of the proposed mitigation are also inadequate. The proposed buffer area of 50 feet (mitigation measure D-3c) is considerably smaller than that required by the California Coastal Commission and required by the City of Eureka LCP.[17] Both require a buffer with a minimum width of 100'.[18] Mitigation measure D-3b provides for the preparation of a detailed Restoration Plan and includes some of the minimum requirements of that restoration plan. The DEIR does not, however, contain a completed restoration plan that would allow public review and concurrence on its sufficiency in mitigating the fill of wetlands currently found onsite.

An additional issue not discussed in any detail in this section of the DEIR is the fact that the wetland mitigation plan would involve the construction of wetlands in known contaminated soils.[19] This fact deserves careful attention as the mitigation ratio is based upon the idea that the "new" wetlands will be far superior to the wetlands that currently exist on the site. As will be discussed in more detail below, the site is known to be contaminated with petroleum hydrocarbons, metals, and dioxins and furans. The DEIR does not even discuss the fact that it is in these contaminated soils that the wetland will be created, nor does it discuss in this section the fact or the extent of the contamination. This information is crucial to assessing the benefit of the proposed wetland restoration plan. Tissue sampling of fish collected in Clark Slough indicate that dioxins, furans, and arsenic are bioaccumulating in the food chain at the proposed project site. Expanding the intertidal habitat into areas that are contaminated from past industrial

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[16] California Coastal Commission, *Procedural Guidance For Evaluating Wetland Mitigation Projects In California's Coastal Zone* at 4.2.3.3
[17] *See* DEIR at III-14.
[18] City of Eureka Policy Document at 6.A.19; California Coastal Commission, *Procedural Guidance For Evaluating Wetland Mitigation Projects In California's Coastal Zone* at Ch. 1, § V, *available at* http://www.coastal.ca.gov/wetrev/wetch1.html.
[19] DEIR at IV.D-24.

use could further exacerbate this situation, causing additional risk to human health and the Bay's ecology.

d. Section IV.G: Hazards and Hazardous Materials

Humboldt Baykeeper is particularly concerned with the assessment provided for the potential impacts related to hazards and hazardous materials at the proposed Marina Center project site. The Balloon Tract property is well known to be contaminated with a variety of toxic substances from its former use as a railroad switching and maintenance yard by its prior owner Union Pacific, and its predecessors in interest. Though the DEIR does an adequate job of laying out this previous use and some of the resulting contamination issues from this use, remediation of the property is defined as part of the project itself, there are substantial problems with this section that must be addressed prior to certification of the document.[20]

The first issue that arises in the DEIR is its complete failure to present for public and agency review the actual levels of contaminants still found on the property. The DEIR lists out many of the contaminants found onsite, including petroleum hydrocarbons, arsenic, copper, lead, dioxins, furans and PCBs, but does not state what level these contaminants are found at.[21] "(T)he EIR should set forth specific data, as needed to meaningfully assess whether the proposed activities would result in significant impacts."[22] Without having this information a meaningful review of the site conditions cannot be made.

The DEIR also fails to discuss the dioxins and furans found onsite.[23] The DEIR's only reference to dioxins and furans is found in one line of the document: "Recent sediment samples have found dioxins, furans, and PCBs in onsite samples and Clark Slough."[24] In fact recent sampling conducted by Humboldt Baykeeper, split samples of which were taken and analyzed by the project proponent and presumably not shared with the preparers of this DEIR, found elevated levels of dioxins and furans in all of the seven samples that were analyzed for it, as well as in fish tissue samples collected from Clark Slough.[25] This sampling data was provided to the City of Eureka prior to preparation of this DEIR.[26]

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[20] *See e.g.* DEIR at I-1, III-2, and III-16.
[21] *See* DEIR at IV.G-4- IV.G-11.
[22] *Californians for Alternatives to Toxics v. Department of Food and Agriculture*, (2005) 136 Cal.App.4th 1, at 13 (citing *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1381-1382, 111 Cal.Rptr.2d 598.)
[23] "Dioxins and furans" as used in this letter refers to the full range of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-p furans and their congeners.
[24] DEIR at IV.G-6.
[25] *See* Expert Reports of James Rogers, attached as Exhibits 5 and 6.
[26] Provided to Sidnie Olson on May 13, 2008 by Michelle Smith of Humboldt Baykeeper. *See* letter attached as Exhibit 2. The documents provided at that time included the entire Regional Board file, all documents provided from Union Pacific and CUE VI to Humboldt Baykeeper through discovery, a DEIR

An additional problem found within this section of the DEIR is its reliance upon one Health Risk Assessment ("HRA") and an Addendum to that HRA prepared for the property on behalf of its former owner Union Pacific. These documents were prepared in 1996 and 2000.[27] This HRA and the HRA Addendum were prepared based upon the known contaminants found at the site at that time, the uses of the property at that time, and upon the hazard levels established for those contaminants in 1996 and 2000. The HRA's did not assess the hazards posed by dioxins, furans and PCBs, as no sampling had been conducted for those substances. It additionally assessed the property based upon its status as a vacant lot – it looked at the hazard posed to current youth trespassers, future onsite construction workers, and offsite receptors, for example.[28] What those HRAs did not evaluate was the hazard posed to the proposed uses of the property found within the project – it did not look at the hazard posed to residential uses, or use of the property as a Discovery Museum for children, for example.[29] This flaw is considerable and undermines the ability to rely upon the studies for virtually any purpose in this DEIR. The HRAs are additionally based upon outdated hazard values for many of the substances analyzed. The hazard value for arsenic, for example, is now approximately 5 times more stringent.[30] The project proponent does include an HRA prepared specifically for the project, but this HRA only looks at the health hazards posed by diesel emissions from the remediation of the wetlands and from eventual use of the project.[31] This HRA does not assess the risks posed by the full range of contaminants found onsite, including dioxins, furans, and PCBs, even though it acknowledges that after remediation contamination may still remain onsite.[32] It also fails to address all potential pathways of exposure, such as digestion of contaminated fish and shellfish, and contact with contaminated sediments in wetland areas and the slough.

There are additional problems with the impact analysis and mitigation measures provided for hazards and hazardous substances. The potential hazards posed by the project are discussed in Impact G-1, with the proposed mitigation measures found in mitigation measures G-1a-G-1e. In actual substance, the mitigation measure merely calls for the property to be remediated based upon a site specific workplan that would "meet the requirements of the Regional Water Quality Control Board (RWQCB) or other overseeing agency…".[33] This mitigation measure is woefully inadequate to meet the requirements of CEQA. Purely basing a conclusion and analysis on the fact that the

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prepared by WESCO on the Balloon Track, two wetland delineations prepared by Huffman and Broadway Group, dye tracer study report dated March 4, 2008, fish tissue sampling results dated February 24, 2008, and laboratory sheets for sampling conducted January 10, 2008 and July 30, 2007.

[27] DEIR at IV.G-11- IV.G-14.

[28] DEIR at IV.G-13.

[29] DEIR at IV.G-13

[30] *See* Expert Reports of Atul M. Salholtra, attached as Exhibits 7 and 8.

[31] DEIR at IV.G-14.

[32] DEIR at IV.G-19.

[33] DEIR at IV.G-20.

requirements of another agency will be met is insufficient under CEQA.[34] There is no way based upon the information provided that the public or decision-makers can fully assess the ability of some future prepared and designed workplan to reduce the impact of the project to a "less-than-significant level" as concluded in the DEIR.[35] One of CEQA's main purposes is to ensure that the public and decision-makers are fully informed about the potential, significant environmental effects of a proposed project. This basic requirement is not being met.

An initial problem with the undisclosed future workplan being a proposed mitigation measure is that there is no guarantee that such workplan will in fact provide the benefits claimed in the DEIR. There is no legal requirement that the inclusion of mitigation measures will in fact result in their being carried out by the project proponent or required by the lead agency. Mitigation measures are "suggestions which may or may not be adopted by the decision makers. There is no requirement in CEQA that mitigation measures be adopted. The adoption of mitigation depends, among other matters, upon economic and technological feasibility and practicality."[36] By including the workplan as a mitigation measure with no assurances that it will in fact be required, we cannot determine whether it will lessen the impacts of the proposed project to less than significant levels.

It is inappropriate to allow for some undisclosed future workplan to both reduce the impacts caused by the project regarding hazards and hazardous materials to a less than significant level and to cover the required mitigation for this impact. The DEIR contains no standards or provisions that can be reviewed to determine the effectiveness of these requirements. Generally speaking it is inappropriate to identify as mitigation measures that will be determined at a later date if the mitigation does not describe the nature of the actions to be incorporated and include standards that will be applied to those mitigation measures.[37] Here the DEIR contains no standards or requirements that will be included in the workplan, instead merely relying upon an undefined agencies approval. Furthermore, the DEIR contains no reasoning for its decision to defer the identification of the specific remedial measures until a later date.[38] The proper approach would be for the project proponent to first prepare a remedial action plan for the site and seek the Regional Board's approval. At that point the public and all relevant agencies can make a proper assessment of the potential environmental and human health impacts from the proposed project.

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[34] *Californians for Alternatives to Toxics v. Department of Food and Agriculture*, (2005) 136 Cal.App.4th 1, 17 (citing *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882).
[35] DEIR at IV.G-21.
[36] *Native Sun/Lyon Communities v. City of Escondido*, (4th Dist. 1993) 15 Cal. App. 4th 892, 908.
[37] Cal. Pub. Res. § 15126.4(a)(1(B). *See also San Joaquin Raptor Rescue Ctr. v. County of Merced*, (2007) 149 CA4th 645, 669; *Endangered Habitats League v. County of Orange*, (2005) 131 CA4th 777, 794.
[38] *See San Joaquin Raptor Rescue Ctr. v. County of Merced*, (2007) at 670.

The public's and the decision makers' need to review a remedial action plan prior to its being an accepted basis for the determination of no significant impact regarding hazards and hazardous materials is underscored by the history of this site. Although the Regional Board has been overseeing activities on the site since the 1980's, the site still has extensive contamination issues.[39] As with most if not all state agencies, the Regional Board is severely understaffed and underfunded, increasing the likelihood of inadequate oversight. This problem is exacerbated by the fact that the Regional Board relies entirely upon information provided to them by the project proponent – information which to date has not been complete. For example, although the project proponent has taken samples of onsite of soils and sediments which have been analyzed for dioxins and furans, the results of this sampling has not been provided to the Regional Board. Additionally, there is a known discharge point on the southern boundary of the property which discharges contaminated surface and groundwater into Clark Slough that was not disclosed to the Regional Board until after its discovery by Humboldt Baykeeper. Furthermore, the Regional Board will not be determining what the workplan will contain, instead they will be offering a concurrence with the proposal of the project proponent that whatever they propose will meet the requirements of the California Water Code, not that the undisclosed future workplan, and the resulting project, will not have a significant effect on the environment as required by CEQA.[40]

e. Section IV. H: Hydrology and Water Quality

Problems regarding the hydrology and water quality section of the DEIR can predominately be classified as inadequate or incomplete information. As an initial note, this section incorrectly states that "Dioxins and PCBs have no immediate effect on health, even at the highest levels found in foods; the potential risks to health come from long-term exposure to high levels."[41] Dioxins are considered likely human carcinogens by the EPA, and even at low exposure levels are known to affect development of the fetus and infants.[42] In addition to the human health impacts of dioxins, ecological risks associated with dioxin exposure include dermal toxicity, immunotoxicity, carcinogenicity, and adverse effects on reproduction, development, and endocrine functions.[43] As noted above, dioxins have been found in site soils, sediments, and fishes.

Site soils and sediments have been impacted by this contaminant, it has and is likely to continue to be discharged from the site through surface runoff, among other

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[39] *See* documents provided by Humboldt Baykeeper from the files of the North Coast Regional Water Quality Control Board.
[40] California Water Code § 13360(a) "No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner."
[41] DEIR at IV.H-3.
[42] Dioxin Reassessment NAS Review Draft 2004, *available at* http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87843. *See also* Exhibit 7 at 12.
[43] Exhibit 5 at 14.

means. Related to the above deficiencies regarding the undisclosed future workplan for site remediation is the lack of discussion of continuing discharges of this substance from the site post-project completion. Though the DEIR does require a construction storm water permit, BMPs, and other site controls, it is necessary to evaluate this chemical's potential to be mobilized off site through construction activities, both on vehicles used on-site, and through becoming air born during construction itself.[44]

In addition to the inaccuracies contained in the DEIR report regarding the potential risks of dioxin exposure, the DEIR incorrectly states that the City of Eureka is not currently regulated by an NPDES permit for Discharges of Storm Water from a Small Municipal Separate Storm Sewer System (MS4 Permit).[45] This is an inaccurate statement of fact – the City has been covered by an MS4 Permit since approximately July of 2006. Its WDID # is 1B03185SHUM.

The identified impacts and mitigation measures are additionally inadequate. Impact H-2 states that:

> "Water supplies for the proposed project would not be derived from groundwater wells and thus the project would not deplete groundwater supplies underlying the project site. In addition, due to the proximity of the project site to Humboldt Bay, increase in impervious surface area resulting from the proposed project would not have a significant impact on groundwater recharge."[46]

This statement inaccurately describes site conditions – even those recognized in the DEIR itself.[47] The Balloon Tract has two distinct water bearing zones, the upper zone, or the A-zone, is recharged primarily through onsite infiltration of groundwater.[48] By covering virtually the entirety of the site with impermeable surfaces this A-zone will not recharge through infiltration of groundwater. This inaccuracy in the DEIR needs to be corrected and the impacts to the groundwater bearing zone addressed.

Impact H-5 recognizes that the development of the proposed project would result in increased levels of non-point source urban pollutants being discharged from the site and eventually into Humboldt Bay. There is no estimate of the increased levels even though this value could easily be estimated based upon information provided in the transportation study, for instance. Without this information it is not possible to determine whether there would be a significant impact on the environment resulting from the increased traffic and storm water flows off of the property. The mitigation measures identified for this potential impact additionally do not provide sufficient information to determine their effectiveness – would the storm water treatment facilities treat vehicle

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[44] DEIR at IV.H-15- IV.H-18.
[45] DEIR at IV.H-14.
[46] DEIR at IV.H-16.
[47] DEIR at IV.H-10.
[48] Expert Report of Benjamin Ross attached as Exhibit 9 at 7.

related discharges such as oil and grease alone? Or would they additionally be designed to treat pesticides and fertilizers?

An additional concern regarding water quality that is related to the hazards and hazardous materials section discussion above is the potential risks posed to water quality post-remediation from either a tsunami or from sea level rise caused by global warming. There is no discussion within the DEIR of the potential hazards to water quality that would exist from either of these two potential events. Without presenting the future workplan for analysis it cannot be determined whether significant risks to water quality would remain at the site after remediation is conducted. It cannot even be determined what the final elevation of the site would be (currently estimated at 8'-12'), and thus its susceptibility to sea level rise or flooding, after the remediation is conducted without first reviewing the future workplan. If hazardous materials are allowed to remain on the property would they be subject to mobilization should either of these events occur?

f. Section IV. Q: Utilities and Service Systems

The primary issue with the Utilities section of the DEIR relates to the inaccurate information, and thus inaccurate analysis, of the City's waste water capacity. The DEIR incorrectly states that the City will be updating their permitted discharge capacity from 5.24 mgd to 6 mgd, a capacity of the waste water treatment plant based upon a plant rating study. Attached to this letter is a copy of a letter sent by the City of Eureka to the Regional Board on December 8, 2008 rescinding the City's request to increase its permitted capacity.[49] This incorrect information is the basis for the entire analysis of the potential impacts of the project upon waste water requirements.

As stated in the DEIR the City's waste water capacity is 5.24 mgd. Based upon this capacity, the waste treatment plant currently operates at more than 70% capacity in dry weather months and at 100% capacity during wet weather months. Thus any addition to the system would cause regular violations of the City's waste water permit, at least during wet weather conditions.

Based upon correspondence between the City of Eureka and the Humboldt Community Services District is appears that the City has been using waste water capacity that is actually under contract to the Community Services District. Based upon this letter the City of Eureka is only allowed a total of 3.64 mgd of discharge through the waste water treatment plant.[50] There is no analysis or discussion of this contract in the DEIR, nor is there any discussion of the actual capacity remaining to the City after the contracted value is considered. This is a serious flaw in the DEIR and must be addressed before any certification can be considered. Not only would the proposed project cause regular violations of the City's permit it would also foreclose the possibility of any

[49] Exhibit 10
[50] Letter to David Tyson dated August 2, 2007 attached as Exhibit 11.

additional construction or hookups within the City's jurisdiction, as well as possibly within the Community Services District service area.

The above considerations also indicate that the cumulative impacts analysis for utilities and service systems is inadequate. This portion of this section states that "(t)he project would not result in significant project-level impacts that would affect the ability of the City of Eureka and other service providers to effectively deliver …sanitary sewer (wastewater) to the project site."[51] This section goes on to state that "Overall, the project effect on utility services, in combination with other foreseeable development, would be less than significant."[52] These statements are based upon absolutely no facts or analysis. The first statement only refers to the ability to deliver services to the project site and does not discuss the ability to provide services elsewhere within the service areas. The second statement is merely a statement of opinion – there is no discussion of other proposed or reasonably foreseeable future development either within the City of Eureka or within the rest of the service area served by the waste water treatment plant. Based on these reasons this section of the DEIR is further inadequate and does not meet the requirements of CEQA.

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Humboldt Baykeeper believes that the DEIR prepared by the project proponent and adopted by the City of Eureka is inadequate for meeting the requirements of CEQA and cannot be certified in its current form. The document is seriously lacking in solid meaningful analysis and identification of potential significant environmental impacts that could result from this proposed project. The City of Eureka has a responsibility to the local citizens, as well as the local environment, to ensure the complete, accurate and comprehensive analysis of potential impacts of the proposed project are disclosed and considered. Based upon the document presented here, this responsibility has not been met.

Thank you for your consideration of our comments,

/s/
Pete Nichols
Baykeeper and Director
Humboldt Baykeeper

/s/
Michelle D. Smith
Staff Attorney
Humboldt Baykeeper

[51] DEIR at IV.Q-10.
[52] DEIR at IV.Q-10.

Documents Attached as Exhibits

Exhibit 1:	E-mail from Sidnie Olson to Michelle Smith dated April 14, 2008.
Exhibit 2:	Letter from Michelle Smith to Sidnie Olson included with documents produced, dated May 13, 2008.
Exhibit 3:	E-mail from Sidnie Olson to Michelle Smith dated May 14, 2008.
Exhibit 4:	Expert Report of H.T. Harvey dated January 28, 2008.
Exhibit 5:	Expert Report of James Rogers dated Janurary 28, 2008.
Exhibit 6:	Expert Rebuttal Report of James Rogers dated February 27, 2008.
Exhibit 7:	Expert Report of Atul M. Salholtra dated January 28, 2008.
Exhibit 8:	Expert Rebuttal Report of Atul M. Salholtra dated February 27, 2008.
Exhibit 9:	Expert Report of Benjamin Ross dated January 28, 2008.
Exhibit 10:	Letter from the City of Eureka to the Regional Board dated December 8, 2008.
Exhibit 11:	Letter from the Humboldt Community Services District to David Tyson dated August 2, 2007.
Exhibit 12:	Expert Rebuttal Report of H.T. Harvey dated
Exhibit 13:	Expert Report of Bruce A. Bell dated January 28, 2008
Exhibit 14:	Expert Rebuttal Report of Bruce A. Bell dated February 27, 2008.