To:
City of Eureka
Community Development Department
Sidnie L. Olson, AICP Principal Planner
531 K Street
Eureka, CA 95501-1165
Email: solson@ci.eureka.ca.gov

Submitted by:
Patricia Clary
Programs & Policy Director
Californians for Alternatives to Toxics
315 P Street
Eureka, CA 95501
Email: patty@alt2tox.org

Regarding: **Draft Environmental Impact Report MARINA CENTER**

Californians for Alternatives to Toxics (CATs) is a regional public-interest organization with members in Eureka and the Humboldt Bay Area who are concerned about the impacts of pollutants on their health and their use and enjoyment of the environment for work, study, recreation, culture, residence, education and other activities. Though regional in nature, CATs is based in Eureka and has a particular interest in activities that may impact the environment where CATs owns and office building and where its employees work.

In these comments, CATs will focus on parts of the Draft Environmental Impact Report relating to the analysis of the effects of toxic chemicals, particularly the use of herbicides and the impacts of vehical and truck emissions associated with the project.

HERBICIDE APPLICATIONS

The project would use herbicides in two of the mitigations proposed to reduce the impact to biological resources. The first is mitigation D-3f which regards implementation of a non-native invasive species control program for areas disturbed as a result of project activities.

Prior to construction, plants considered by the State of California to be exotic pest plants would be destroyed using methods which may include the application of an herbicide approved by the United States Environmental Protection Agency for use near and within aquatic environments.

The same mitigation of the mitigation – which in effect this is – is proffered in mitigation H-5c, where again, herbicides would be used to mitigate the impact, here of runoff water, using only herbicides registered by the EPA as the mitigation of the mitigation.

The California court of appeal has found that herbicide use that would occur as a result of the project must be independently evaluated and cannot rely solely on the existence of the regulatory program administered by the state [or, in this case, federal] agency to conclude the application of pesticides under the project would not result in significant adverse impacts.

No evidence is provided to support the feasibility of any proposed mitigation and in the case of using herbicides, the use of the chemical alone could result in rendering it infeasible, but the necessary evidence is not provided on which a decision could be made regarding this mitigation method.

Herbicides can have a profound negative impact in the environment. It hardly seems necessary to provide evidence to support the potential for adverse effects of herbicide use but we provide

citations below to documents about the environmental fate and effects of herbicides in the environment to inform the analysis of impacts.

CATs is particularly concerned about the mitigation to the mitigation proposed here, where in effect it is admitted that if herbicides are used their impact must be mitigated in that only those registered with the EPA or registered for aquatic uses with the EPA would be used.

Herbicides can impact endangered and other protected species, affect water quality, cause harm to workers and the public, affect the composition of soil organisms and wreak other havoc in the course of their use. Those impacts are what drive federal and state courts to rule that evaluation of the impacts of herbicides and other pesticides must be undertaken if these chemicals are to be used in a project. CEQA requires that if mitigation would cause a significant effect in addition to those caused by the project it must be analyzed. Since the impact is mitigated to a less-than-significant level in part by the use of herbicides, the EIR must also provide evidence of the herbicide's feasibility and how the mitigation will be monitored, just as is required for any of the mitigations.

AIR QUALITY

Air quality impacts C-1 to C-3 are described as "Significant and Unavoidable," yet -- though the public can only guess at this because the analysis is inadequate -- none of the mitigations described for these impacts can avoid these acknowledged impacts on air quality either technically or economically. The public is left guessing because no evidence is provided to support this apparent proposed finding of feasible mitigation. The California Environmental Quality Act (CEQA) requires that the feasibility of mitigations measures be supported with substantial evidence. In the current DEIR, no evidence is offered to support any claim regarding the feasibility of the proposed mitigations. None of the benefits are quantified to provide evidence that the significant impacts of the project would be avoided or reduced.

For example, Mitigation Measure C-2a provides for electrical outlets for cars, perhaps to reduce emissions by fueling electric or hybid cars. No evidence is provided that this mitigation will accomplish anything, that it would be used, where outlets would be located, or how many would be available. How many cars would use the outlets? By what amount might air pollution be reduced? Because the location of these outlets depends on appropriateness and feasibility, the number installed could conceivably be one or none because decisions about appropriateness significant and feasibility are put off until the future. As with all other proposed mitigations to air quality impacts, no monitoring or enforcement of the mitigation is proposed, though such will be required for the project to go forward.

Another example of an inadequate mitigation is the proposal to provide bicycle and pedestrian travel zones. No evidence is offered to show how installing these paths would avoid or reduce impacts to air quality or how this mitigation would be monitored. Would the installation of bike and pedestrian paths be an overall benefit, or would local pedestrian, car and truck traffic be impacted, and thus air quality impacted, due to inadequate receiving bike and pedestrian lanes, by stop-and-go car and truck traffic responding to bike and pedestrian inputs?

The installation of synchronized traffic signals along Hwy 101 in the project area is not a mitigation that can be attributed to the project because these signals would have been installed anyway. What's more, how do we know this mitigation would reduce air quality impacts since no evidence is provided to show this would likely be the result? The EIR assumes that installing synchronized traffic signals will reduce air quality impacts but does not reveal the feasibility of the mitigation – the how or why – or to what degree – it will or will not avoid or reduce impacts to air quality.

Not only is significant evidence of the feasibility of the mitigations not provided as required under CEQA, no monitoring or enforcement plan for the mitigations is proposed. A mitigation is

only as good as its implementation, and monitoring is needed to enforce its application and to measure the reduction of impact.

The public has been informed that 38 tons of PM10 will be added to our air as a result of the project, taking us way over the already violated regional limit of 16 tons, but we are to accept a set of probably infeasible and certainly not evidence-supported mitigation measures that may or may not be monitored and enforced as the actions that will avoid or reduce the impacts. This is not permissible under CEQA.

What's more, though significant mitigations do exist and, because they are in use elsewhere, evidence to support the feasibility of these mitigations is readily available, the mitigations offered fail to take these into consideration.

Eureka could require, as mitigation, that only diesel trucks with up-graded pollution output such as that now required by the ports of Los Angeles and Long Beach, could deliver to the project retail outlets. The idling of trucks could be limited or banned. Traffic currently funneled through 4th and 5th Streets could be routed through 6th and 7th Streets or through other areas of the City to distribute the impact of exhaust emissions over a broader area. None of these potentially feasible mitigations were analyzed.

Another mitigation not analyzed for feasibility would require installation of extensive solar panels, passive solar design and other off-sets that would reduce the need for electricity generation at the PG&E generation plant and thus reduce North Coast regional air quality non-attainment for PM 10.

Again, no substantial specific or concrete evidence is provided to show that additional costs or low profitability are sufficient severe to warrant a finding of "Unavoidable" impacts.

Impacts C-3 to C-6 are found to be "Less Than Significant."

CATs is particularly concerned about the finding of less-than-significant for impact C-4: "Expose sensitive receptors to substantial pollutant concentrations."

The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the lead agency involved, based to the extent possible on scientific and factual data.

Significant scientific and factual data regarding, in particular, the impacts of diesel exhaust were not considered because the lead agency improperly relies exclusively on the models and evaluations of the North Coast Unified Air Quality Management District (NCUAQMD or "Air District") thus not undertaking an independent analysis of adverse health effects as is required by CEQA.

The lead agency ignores analysis of evidence including a wide body of scientific and technical evidence such as that provided by U.S. EPA (which considers diesel exhaust to be harmful at all levels of exposure), the California Air Resources Board and peer reviewed scientific publications such as Environmental Health Perspectives published by the National Institute of Environmental Health Sciences.

The Health Risk Assessment for Diesel Emissions Associated with Wetlands Construction and Delivery Operations and Health Risk Assessment Regarding Vehicle Emissions Associated with the Proposed Marina Center Project relied upon for analysis by the lead agency are inadequate for a number of reasons. Among these are that data sets are inadequate.

Data from the Jacobs Monitoring Station was only available for a few days for the preparation of the risk assessments. This extreme limitation was not described or considered in the analysis.

The Eureka I Street Monitoring Station is located upwind from prevailing wind pattern of the proposed project and cannot be relied on for adequate air monitoring for the project area.

The wetlands construction health analysis is for a project that is infeasible due to the extreme toxic conditions of soil at all parts of the site thus it cannot be relied on as a health risk analysis for purposes of evaluation of the significance of the impacts of this project. The EIR omits

analysis of air quality impacts associated with the excavation and removal of contaminated soil which will likely be very extensive based on evidence obtained by Humboldt Baykeeper in samples taken in discovery during the course of their federal lawsuit regarding the storage of and discharge from of toxic chemicals the project site.

The health risk assessments omit analysis of impacts to the people most at risk of exposure to toxic air contaminants, the workers and residents who will spend many hours each week at the site.

The health risk assessments omit analysis of toxic levels of pollutants concentrated in the project's parking garage.

The health risk assessments omit analysis of the high rank of Humboldt County for cancer incidence in California and how this project would affect that rate.

In fact, cumulative impacts are inadequately described and analyzed in violation of CEQA.

For example, the cumulative impact of current delivery vehicle emission sites throughout the City that contribute diesel exhaust emissions such as the North Coast Mercantile, USF Reddaway and Eureka City Garbage Company were not analyzed.

The cumulative impact of current PM10 contributors such as Evergreen Pulp Inc and Fairhaven Co-Generation Plant were not analyzed.

The cumulative impact of known adverse effects of PG&E's Repowering Plant which, in its permit application, uses Air District models to allow for just below the significance threshold of 10 in one million cancer risk is not analyzed.

The cumulative impact of reasonably foreseeable projects including the Marine Terminal proposed by the Humboldt Bay Recreation and Conservation District and the re-opening of the railroad proposed by the North Coast Rail Authority is not analyzed.

The cumulative impact of transportation corridor effects outside immediate vicinity of project area is not analyzed.

The impact of PM 10 and other pollutant contribution from the exceptionally high level of dependence on combustion of wood for heat in Eureka is not analyzed.

For these reasons and others submitted by concerned citizens and public agencies regarding the inadequacies of the EIR, Californians for Alternatives to Toxics requests that the City of Eureka require that this draft be rewritten to comply with the California Environmental Quality Act. If that were done, residents of Eureka and other concerned citizens and the decision makers, i.e. the Eureka City Council, would have sufficient information on which to base decisions made about the proposed Marina Center project. At this point, such decision making is not possible.

Sincerely,

Patricia M Clary
Programs and Policy Director
Californians for Alternatives to Toxics

Citations:

For the requirement that independent CEQA analysis must be undertaken regarding the impacts of toxic chemicals and cannot rely solely on the existence of a regulatory program to conclude that the project would not result in a significant adverse impact see:

Californians for Alternatives to Toxics v. Department of Food and Agriculture (1st Dist. 2005) 136 Cal. App. 4th 1 [38 Cal.Rptr. 3d 638]
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Herbicides

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Clean Air Task Force: Diesel Engines, Health and Environmental Impacts
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Clean Air Task Force: Diesel Soot Health Impacts

http://www.catf.us/projects/diesel/dieselhealth/county.php?site=0&c=06023

California Energy Commission: Humboldt Bay Repowering Project, May 2008
http://www.energy.ca.gov/sitingcases/humboldt/documents/index.html
California Environmental Protection Agency- Air Resources Board: Fact Sheet
Diesel Particulate Matter Health Risk Assessment Study for the West Oakland Community: Preliminary Summary of Results. March 2008
http://www.arb.ca.gov/ch/communities/ra/westoakland/documents/factsheet0308.pdf

Environmental Protection Agency- Integrated Risk Information System: Diesel Engine Exhuast
http://www.epa.gov/IRIS/subst/0642.htm
Los Angeles Times: "L.A., Long Beach Ports Inaugurate New Anti-smog Plan"
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http://articles.latimes.com/2008/oct/02/local
North Coast Unified Air Quality Management District: July 2007 Annual Air Monitoring Network Plan
http://www.ncuaqmd.org/files/Annual%20network%20plan%202007.pdf

Red Orbit News: "Port of Los Angeles Announces Shift Toward Air Quality Improvement Initiatives Powered By Natural Gas, Electricity and Alternative Fuels". 2005
http://www.redorbit.com/news/display/?id=269797

South Coast Air Quality Management District: Multiple Air Toxics Exposure Study in the South Coast Air Basin. March 2000
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The Pacific Institute: Paying with our Health, the Real Cost of Freight Transport in California. November 2006
http://www.pacinst.org/reports/freight_transport/

ScienceDaily Toxic Air Pollution In Urban Parking Garages: SUVs Pollute Slightly More (Aug. 27, 2007) http://www.sciencedaily.com/releases/2007/08/070823141003.htm

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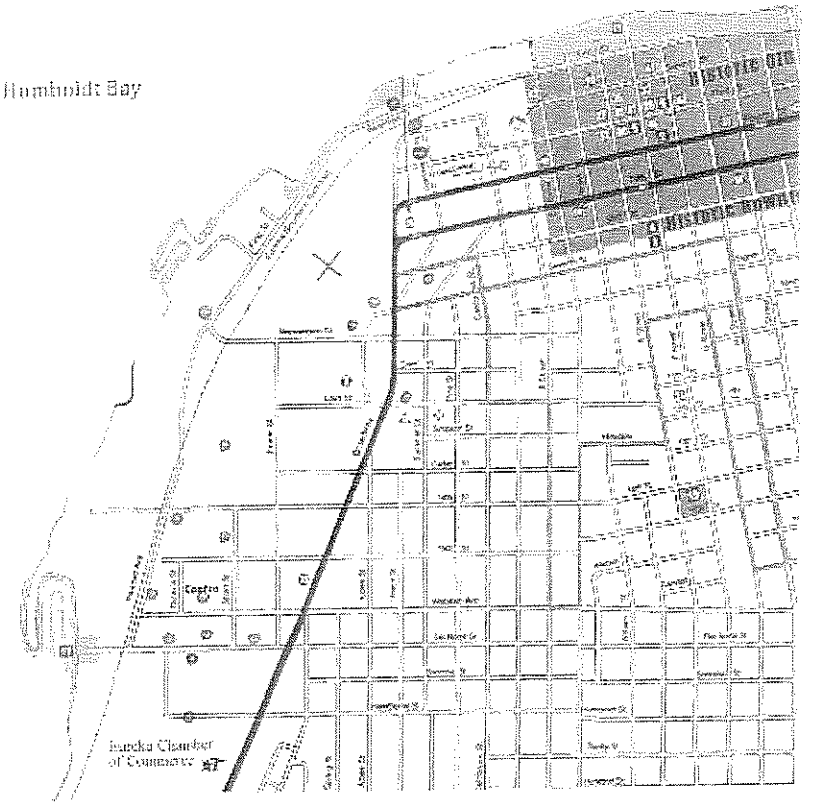
Map of vehicle emission site map for transportation hubs upwind of the project site. Compiled by Californians for Alternatives to Toxics.



Delivery Vehicle Emission Sites

1. Eureka City Garbage Company
2. Renner Gas Station
3. North Coast Mercantile
4. USF Reddaway
5. Mendes Supply Company
6. Mattheson Freight
7. Costco
8. Atech Distribution/UPS
9. Schmidbauer Lumber
10. Eureka School Bus Yard
11. Renner Fuel Yard
12. Pacific Choice Seafoods
13. Delreka Distribution
14. Coors
15. City Corporation Yard
16. Humboldt Beer Distributors
17. Grocery Outlet
18. USPS Main Center