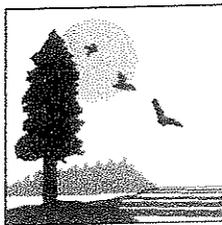


CALIFORNIA STATE LANDS COMMISSION
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Sacramento, CA 95825-8202



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DEPARTMENT OF
COMMUNITY DEVELOPMENT

January 30, 2009

Contact Phone: (916) 574-1900
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File Ref: SCH# 2006042024

City of Eureka
Attn: Sidnie L. Olson
531 K Street
Eureka, CA 95501

Subject: Marina Center Mixed Use Development Project, Draft Environmental Impact Report (DEIR), City of Eureka

Dear Ms. Olson:

Staff of the California State Lands Commission (CSLC) has received the above referenced Draft Environmental Impact Report. For this project, the CSLC is both a trustee agency and a responsible agency under the California Environmental Quality Act (CEQA).

By way of background, the State acquired sovereign ownership of all tidelands, submerged lands, and beds of navigable waterways upon its admission to the United States in 1850. Known as "sovereign lands," these lands include tide and submerged lands adjacent to the entire coast, the offshore islands, and the inland bays and estuaries of the State from the ordinary high water mark to three nautical miles offshore. The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable river, sloughs, lakes, etc. The CSLC retains residual and review authority for sovereign lands legislatively granted in trust to local jurisdictions. All granted and ungranted lands are subject to the Public Trust, such that restrictions on the use of tide and submerged lands apply in order for the State to maintain the lands for waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space.

The California Legislature has granted in trust to the City of Eureka the State's interested in filled and unfilled sovereign lands involving portions of the project area pursuant to Chapter 82, Statutes of 1857, no minerals reserved, and Chapter 225, Statutes of 1945, as amended, with minerals reserved to the State of California. Any proposed uses involving granted tidelands must be consistent with the public trust generally, and with the applicable granting statute(s).

The Marina Center falls within these lands granted to the city of Eureka and there is a disagreement between the CSLC and the project proponent over the extent of the legislatively granted lands in the Balloon Track. The DEIR acknowledges (beginning on

page IV.E-4) that the extent of sovereign and public trust lands within the proposed development footprint is not clear. The parties have been holding ongoing discussions to resolve this matter and contemplate entering into a title settlement agreement, wherein the interest of the parties will be defined as well as the uses to which the legislatively granted lands can be dedicated. In the interim, this comment letter is written assuming that much of the property is either sovereign or retains a public trust easement. The proposed development of the brownfield, that of mixed-use including office, multi-family, light industrial, restaurant, and a museum, may not provide water-dependant uses as required by the public trust easement. The project applicant should continue discussions with the CSLC's legal and land management divisions to resolve this issue.

In the event that a lease is required for the use of sovereign lands, the City's environmental document will be used by the CSLC for that discretionary action. Staff of the CSLC has concerns about the adequacy of the DEIR with regard to mitigation for greenhouse gases (GHGs) and wetlands.

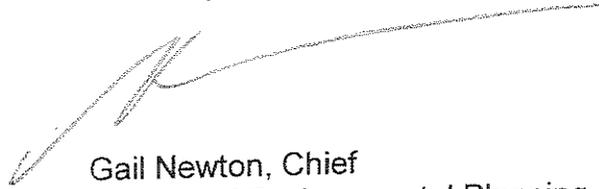
- 1) The DEIR states that the GHG emissions produced by the project, 20,000 metric tons of CO_{2(e)} per year, are less than significant with mitigation measures C-2a and C-2b. These two mitigation measures were designed to reduce criteria pollutants, and incidentally, will also reduce some GHG emissions. However, the contribution of 20,000 metric tons of CO_{2(e)} per year to this global issue remains unmitigated. The mitigation and monitoring program should be enhanced to include measures that will fully mitigate the direct GHG emissions produced by this project (including construction of the buildings and of the wetland). As an example, an appropriate mitigation measure for fully offsetting direct GHG emissions would be "The applicant shall, 60 days prior to the start of construction, provide a plan for the CSLC Executive Officer's review and approval to purchase carbon offsets from the California Climate Action Registry (CCAR), the local Air Pollution Control District (APCD), or other source that is approved by the CSLC and is consistent with the policies and guidelines of the California Global Warming Solutions Act of 2006 (AB 32)."
- 2) The project proposes to permanently fill 5.54 acres of freshwater wetlands and mitigate those impacts, at a 1:1 ratio, with the creation of out-of-kind estuarine wetlands. Details for the wetland creation/restoration project are lacking, and need to be further developed in the DEIR to ensure adequate mitigation. Typically, a greater than 1:1 ratio is proposed for creating out-of-kind mitigation, and we would suggest that the applicant work with the Department of Fish and Game to arrive at a more appropriate ratio.
- 3) Once the appropriate mitigation ratio is determined, a conceptual wetland restoration plan for the southwest corner of the Marina Center project should be developed. This plan should depict locations for different types of wetland, i.e., open tidal channels, saltmarsh, etc., with a list of the target species. The target species should then serve as the basis for quantitative performance standards

(such as 80% coverage by *Salicornia* sp. within 5 years, or 90% of fish species-richness within 5 years) that be used to determine if the mitigation measures (D-3a, b, c, d, f) are adequate and, ultimately, if the wetland creation/restoration project is successful. A quantitative performance standard should also be proposed that addresses the invasive species that are problematic in Humboldt Bay wetlands. In addition, a performance bond should be required to ensure that the outcome of the ultimate wetland mitigation has met its performance standards. Funds should also be provided to ensure the long-term management of the wetlands. If the wetland creation/restoration project occurs on sovereign lands, the mitigation plan should be submitted to CSLC for review and approval.

- 4) Success of the wetland restoration project at this location will be largely dependant upon the substrate and the hydrology. There was inadequate information in the DEIR to evaluate whether or not the substrate is appropriate for a wetland and to evaluate the impacts of the contaminated site and the non-point pollution of the watershed on the water quality of the proposed wetland. The DEIR should be modified to fully disclose such aspects of the restoration project or provide performance standards for both substrate and hydrology. In addition, the DEIR should describe how the tidal gates or structure(s) will be re-designed to provide adequate tidal flushing for this constricted tidal prism.
- 5) A small buffer area is proposed around the wetland creation/restoration site. This buffer should not only be adequate to protect the new site from the surrounding land uses, but should also provide adequate space for the wetland to "retreat" toward the upland areas as the sea-level continues to rise. Without building into the design the extra area to account for sea-level rise, the resultant marshes will ultimately not provide the intended ecological functions and values.
- 6) It is our understanding that the old rail yard is known to be contaminated and that the area may be capped, rather than having the contaminated materials removed. However, there are few details in the DEIR regarding the actual level contamination and the proposed remediation for the site, and therefore, it is difficult to determine the levels of remaining contaminants that may influence the surrounding wetlands. Specific details regarding the proposed remedial actions on the site need to be included in the DEIR.
- 7) The current and past uses of the adjacent property south of the proposed Marina Center project are industrial in nature. The DEIR should evaluate the impact of the adjacent properties on the water quality of the wetland. It is unclear whether such run-off would be treated prior to entering the wetland or if the wetland will be used to ameliorate the run-off. In the event the restored wetlands are used as a temporary surface water attenuation basin, the DEIR should discuss how the excess water will be treated and discharged out of the wetland and the need, if any, for a discharge permit.

Thank you for the opportunity to provide comments on the Marina Center. If you have questions regarding CSLC's jurisdiction, please contact Grace Kato, Public Land Manager, at (916) 574-1227 or at katog@slc.ca.gov. If you have any questions on the environmental review, please contact Christopher Huitt, Staff Environmental Manager, at (916) 574-1938 or by e-mail at huittc@slc.ca.gov.

Sincerely,



Gail Newton, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
G. Kato - CSLC
C. Huitt - CSLC