

# **CHAPTER 3**

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## **Master Responses**

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## B. Master Responses

### Master Response 1: Urban Decay Analysis

This master response addresses the issues comments raise with respect to the Urban Decay Analysis. The Draft EIR addresses this topic in Chapter IV.P, Urban Decay. See especially Impact P-1 (the potential for the proposed project to result in urban decay in the greater Eureka area) and Impact P-2 (the potential for the proposed project, in conjunction with other development, to result in urban decay in the greater Eureka area). The Draft EIR also references analyses and findings of the following appendices:

- Appendix K: Eureka Balloon Track Retail Development Economic Impact and Urban Decay Analysis
- Appendix L: Peer Review of the Eureka Balloon Track Retail Development Economic Impact and Urban Decay Analysis done by CB Richard Ellis
- Appendix M: Response to Economic Research Associates' October 17, 2007 Peer Review of the Eureka Balloon Track Retail Development Economic Impact and Urban Decay Analysis done by CB Richard Ellis in November 2006
- Appendix N: Eureka Balloon Track Retail Development Economic Impact and Urban Decay Analysis—Current Economic Conditions Summary Analysis

This master response addresses all or part of the following comments: 3-27, 9-4, 9-27, 9-29, 9-30, 14-1, 14-2, 14-3, 14-4, 14-7, 16-3, 16-4, 16-10, 16-33, 16-56, 16-72, 16-79, 16-80, 16-87, 16-134, 16-178, 16-225, 16-238, 16-247, 16-261, 16-269, 16-275, 16-286, 17-2, 17-3, 17-6, 17-12, 24-10, 24-11, 24-12, 24-13, 24-15, 25-47, 30-1, 31-9, 31-10, 32-13, 32-14, 33-12, 34-2, 36-1, 38-1, 38-6, 40-6, 41-3, 42-1, 46-1, 46-2, 47-1, 47-3, 48-3, 48-4, 50-4, 51-1, 51-2, 51-3, 52-2, 52-3, 52-4, 52-5, 52-6, 52-7, 52-9, 52-12, 52-13, 52-14, 52-15, 56-1, 57-1, 61-2, 62-5, 63-1, 64-1, 64-2, 64-3, 65-2, 67-1, 67-2, 68-16, 71-1, 71-2, 72-1, 75-5, 76-1, 78-2, 79-2, 81-1, 83-2, 84-4, 84-10, 85-5, 87-7, 87-10, 88-12, 90-3, 92-1, 93-2, 94-1, 94-2, 95-19, 96-1, 98-3, 99-2, 99-3, 100-8, 101-2, 102-4, 102-8, 105-2, 105-3, 105-4, 109-7, 110-13, 110-14, 110-15, 113-3, 115-1, 115-3, 117-10, 117-11, 118-1, 122-13, 122-14, 122-15, 125-3, 125-7, 125-12, 126-13, 127-6, 128-1, 128-2, 129-1, 130-2, 132-1, 133-1, 134-1, 134-6, 134-7, 134-10, 137-2, 138-1, 142-2, 142-7, 142-13, 143-1, 146-1, 147-2, 147-3, 148-17, 148-18, 148-19, 148-21, 149-1, 149-2, 149-5, 150-2, 150-3, 152-2, 152-3, 154-1, 159-2, 159-6, 160-2, 161-1, 162-4, 163-3, 168-3, 168-4, 170-3, 173-1, 174-2, 175-2, 175-4, and 175-5.

Comments suggest that the urban decay analyses is inadequate and most disagree with the findings of Impacts P-1 and P-2, both of which conclude that the project would result in less-than-significant impacts to urban decay. Comments also disagree with the findings of the technical appendices containing urban decay analyses. Specifically, comments state that:

- The urban decay analyses fails to accurately account for all of the existing vacant commercial space in the city.

- The proposed development, the anchor tenant in particular, would have a destructive impact on the ability of locally owned businesses to attract customers, which would force existing businesses to close. Numerous comments state that the Bayshore Mall’s opening in the 1980s provides an example of what happens to locally owned businesses when chain retail stores open in the same market. Other comments state that modern anchor tenants are known as “category killers,” which expand into new markets and use aggressive sales and marketing tactics to drive competition out of business.
- The revenues and/or tax on the revenues earned by the anchor tenant would leave the City of Eureka, as opposed to the revenues and/or the tax on revenues earned by locally owned businesses.
- The employment opportunities offered by the anchor tenant would not be sufficient in number, salary, benefits, or ability of advancement beyond entry-level positions.
- The potential anchor tenant, the retail sector in general, and the overall economy have all significantly deteriorated since 2007, resulting in job losses, vacant storefronts, decreased sales, lower customer demand, and business closures. These comments state that demand and need for the proposed project’s retail component is therefore insufficient, and implementation of the proposed project would put the area in jeopardy of losing the anchor tenant in the current or a future economic Downtown, resulting in the loss of hundreds of jobs, personal income, and tenants to fill the retail space.

## Response

Upon reviewing all of the comments regarding the economic analysis, it was noted that many focused on the same, relatively small number of topics. Those comments have been grouped under two major topic headings, one relevant to the California Environmental Quality Act (CEQA), and one not. With regard to the CEQA-related comments, the economic analysis concluded that less-than-significant impacts to urban decay would result from the development of the proposed project. However, where available, further information is provided to best respond to the public comments. In addition, where information relevant to answering questions was already included in the economic analysis, this information is reiterated herein.

CEQA is specifically interested in any impacts that would result in a physical change in the environment. Comments have been considered not relevant to CEQA if they have no bearing on the project’s likelihood of resulting in significant physical deterioration of properties or structures and, thereby, leading to urban decay. Changes to the City’s General Fund and changes to the job and wage markets are not relevant to the physical environment. In addition, CEQA is not concerned with the type of store that may be impacted by a project, such as whether a store is a national big box chain or whether it is a locally owned small business. Given this focus, a master response was drafted for the following comment topics:

### ***Fiscal Impacts to the City of Eureka and Other Jurisdictions***

The following comments relate to this topic: 14-1, 16-4, 52-12, 52-13, 52-14, 90-3, 93-2, 125-12, 147-2, and 163-3.

These comments address concerns as to what extent sales tax gains from the proposed project would be offset by losses from impacted businesses, whether the sales tax revenues to Eureka would exceed the costs to the city to provide public services to the site, and whether the sales tax revenues of cities surrounding the City of Eureka would decrease due to the proposed project.

Chapter 10 in CBRE Consulting's November 2006 report "Eureka Balloon Track Retail Development: Economic Impact and Urban Decay Analysis, Eureka, California" addresses the bulk of these questions. It was estimated in the report that retail sales generated by the proposed project would total \$122.3 million in 2010 dollars. Maximum store sales impacts of \$30.5 million were estimated (i.e., the proposed project might draw as much as that amount away from existing retail in the City). Given these figures, the annual amount of retail sales generated would be a net gain of \$91.8 million. In the past, Eureka's General Fund received 1.0 percent of taxable retail sales, which would result in a net revenue gain of \$918,000 from increased retail sales. However, last November 2008, voters passed a .25 percent transaction and use tax that goes directly to the General Fund. Therefore, the net revenue gain is here re-estimated to be \$1.1 million, in 2010 dollars.

Chapter 10 also estimates increased police and fire service costs to the City of Eureka. The Fire Chief of Eureka estimated that service costs would not change dramatically due to the proposed project. Currently the Eureka Fire Department responds to wild fires on the project site as well as medical emergencies with the homeless population. These risks would decrease with proposed project, but there would then be a new risk of structure fire. Given these factors, the Fire Department does not believe costs to service the site would change significantly. The Police Department estimated increased costs to servicing the site at \$147,411 in 2006 dollars, or two new positions. Inflating that figure to 2010 dollars equals \$167,018.<sup>1</sup> Netting out these costs from the estimated 2010 net sales revenues of \$1.1 million results in \$933,000 in new revenues for the City of Eureka's General Fund. The net sales tax revenues to the City of Eureka would clearly exceed the increased costs of providing fire and police services to the site. In addition to sales tax proceeds, there are estimated to be annual property taxes of \$911,396 on an assessed value of \$91.1 million in 2010 dollars.

To the extent that residents change their shopping patterns, the cities and unincorporated County areas surrounding Eureka may experience a loss of sales tax revenue due to the new competition of the proposed project. Fiscal impact analysis is not a required CEQA topic. Consequently, the issue of sales tax distribution by municipal jurisdiction and how it might be affected by the project is not addressed in this Final EIR. In any event, it would be speculative to determine whether a potential decrease in retail sales tax revenue would be large enough to lead to public service cuts and whether those cuts would lead directly to urban decay in those communities. Comment letter 147 from BrendaLou Scott of Eureka states that her household spends thousands of dollars each year at Home Depot stores located outside of Humboldt County.<sup>2</sup> If this is representative of the spending patterns of others, it would suggest that much of the fiscal impact resulting from the proposed Home Depot

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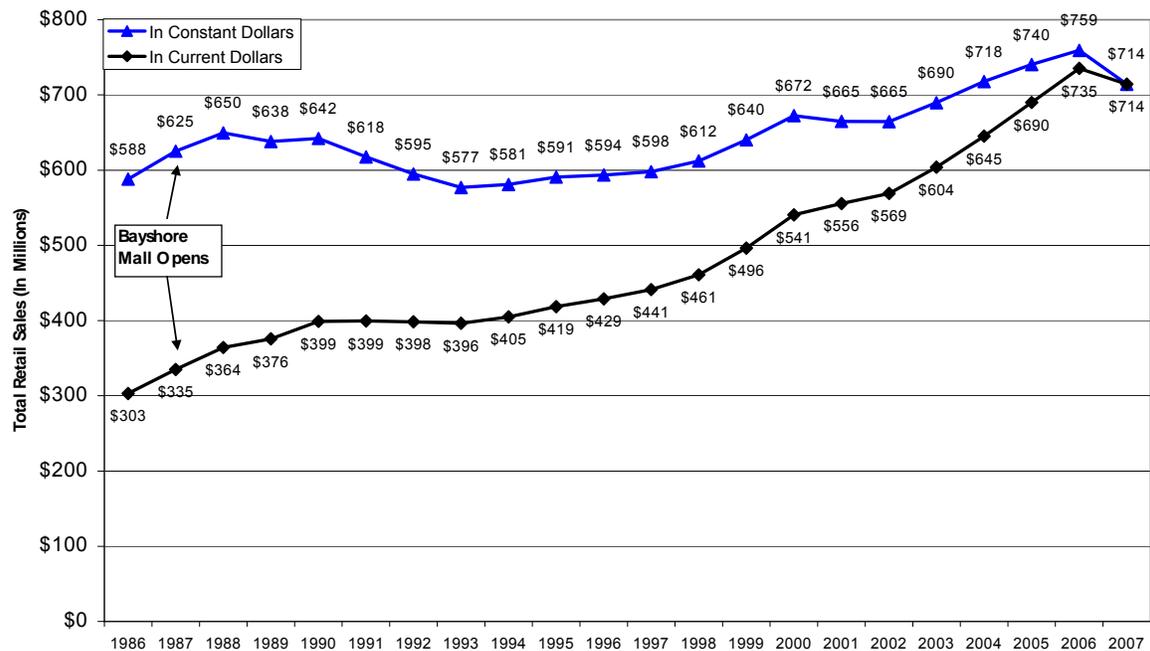
<sup>1</sup> Using California consumer price index data from the California Department of Industrial Relations. Inflation from 2006 to 2007 was 3.29 percent; inflation from 2007 to 2008 was 3.40 percent. Inflation was assumed to be an average of 3.0 percent per year from 2008 to 2010.

<sup>2</sup> See response to comment 16-286 that states that 4.3 million dollars in credit card sales were made by shoppers based in the Eureka trade area at the Crescent City Home Depot in 2008.

store at the proposed project may be to Home Depot and Lowe's stores outside of Humboldt County, indicating that the local communities just outside of Eureka may not experience much retail sales tax loss.

Another fiscal concern expressed by comments is that new shopping centers only draw retail sales from existing stores and do not generate new sales. The history of retail in Eureka illustrates that this is not the case. Figure 3-1, below, shows historical annual retail sales tax in the City of Eureka from 1986 to 2007. Actual total annual retail sales is shown as well as retail sales in constant 2007 dollars, which adjusts for inflation effects. Although total retail sales in Eureka has increased almost every year from 1986 to 2007, adjusting the figures for inflation shows the impacts of the early 1990s recession. From 1991 through 1993, inflation-adjusted retail sales decreased in Eureka. Decreases were also seen in 2001 and 2007.

The Bayshore Mall opened in 1987. Annual retail sales in current dollars grew from \$303 million in the year before the mall opened to \$364 million the year after the mall opened, reflecting a 20 percent increase. In constant 2007 dollars, sales grew from \$588 million to \$650 million, reflecting a 10 percent increase. The effects of the Bayshore Mall on existing retail will be discussed separately, but Figure 3-1 shows that even when adjusted for inflation, retail sales in Eureka grew after the mall was built. It is likely the new mall brought additional choices in retail that had not existed before, which spurred new spending.



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**Figure 3-1**  
Total Retail Sales for City of Eureka  
1986 – 2007 (in millions)

While fiscal impacts are not a CEQA-required topic, a review of historical retail sales tax revenues suggests that net gains in Eureka's retail sales tax revenues could be expected as a result of the proposed project, even when accounting for impacts on existing businesses and increased police costs to service the site. Historical sales data for Eureka show that the last large shopping center built in the city coincided with increased total sales tax revenue. Sales data in Eureka also show that during recessionary periods, such as from 1990 through 1991 and from 2001 through 2003, sales data in constant dollars declined, but this is counterbalanced by strong subsequent growth in following years, such as in 1994 through 2000 and 2003 through 2006. Although surrounding cities may experience a decrease in sales tax revenue, this could be partially offset by the impacts to stores outside of Humboldt County. It is speculative to comment on whether possible sales tax revenue declines would lead to service cuts as well as whether any possible service cuts would lead to urban decay.

### ***Jobs/Wages Impacts***

The following comments relate to this topic: 36-1, 38-6, 48-3, 50-4, 52-3, 52-4, 56-1, 61-2, 67-1, 87-7, 93-2, 94-2, 100-8, 105-4, 110-14, 122-14, 127-6, 143-1, 146-1, 147-3, 175-2, and 175-4.

The viewpoints expressed in these comments are mixed, with some people expressing concerns that there would be no net increase in retail jobs or that new jobs would pay low wages, while others are confident that new jobs would result from the project.

Chapter 11 in CBRE Consulting's November 2006 report analyzed the impact that the proposed project would have on jobs. It was estimated that 1,246 jobs would be created at the project. This estimate comprises 264 jobs at Home Depot, 391 other retail jobs, 416 office jobs, 140 light industrial jobs, 13 museum jobs, and 22 property management jobs. The potential loss of retail jobs due to negative sales impacts was estimated to be 267 in Humboldt County, leaving a net gain of 979 jobs. In Eureka, the potential loss of jobs was estimated at 154; therefore, the net gain is 1,092 jobs in the City of Eureka. In addition to these gains, the Eureka Police Department estimated that two jobs would be created in order to service the proposed project.

One comment refers to a study published in January 2007 by the Institute for the Study of Labor entitled "The Effects of Wal-Mart on Local Labor Markets" (Neumark, et al., 2007). The study showed that retail employment growth was slower than it might have been without the Wal-Mart store, and examined the impacts of Wal-Mart stores specifically. It is not clear, however, how applicable the study would be to a mixed-use development, which includes a Home Depot store and other retail stores, such as proposed by the Marina Center project.

Two of the comment letters express confidence in the project's ability to generate jobs with good wages. Pastor Don Schatz of the Lutheran Church of Arcata, in particular, mentions a great need for new jobs and states that many local employers currently pay minimum wage. Chapter 11 in CBRE Consulting's November 2006 report also examines wages in Humboldt County, finding average retail wages of \$9.96 per hour in 2004. In contrast, Home Depot's average hourly rate in 2004 was \$12.57 per hour, or 26 percent higher than the average retail wage in Humboldt County, and 57 percent higher than the minimum wage in California. The current minimum wage in

California is \$8.00 per hour. Home Depot also offers medical, dental, vision, disability, life insurance, paid vacation, holiday, and sick leave, and 401(k) retirement plans to all full-time and part-time employees.

More than half the new jobs would be office and industrial jobs. In 2004, average wages were \$12.31 per hour for office workers and \$15.70 per hour for industrial workers in Humboldt County. Wages for the jobs created at the proposed project would vary depending on the type of job, but it is clear that many would likely pay well above the current minimum wage in California.

### ***National Stores vs. Local Stores***

The following comments relate to the question of whether having national stores is less desirable than having local stores: 16-79, 24-11, 30-1, 32-13, 33-12, 34-2, 36-1, 38-6, 40-6, 46-2, 52-2, 52-4, 52-6, 52-15, 61-2, 63-1, 78-2, 84-4, 85-5, 94-1, 94-2, 95-19, 98-3, 118-1, 132-1, 143-1, 148-17, 149-2, 175-2, 170-3, 175-2, 175-4, and 175-5.

Comments on this topic often refer to studies that state \$1 spent at a local store contributes more money to the local economy than \$1 spent at a national chain store. Looking at the share of revenues spent locally by firms overlooks the big picture of total economic impacts to the local region. None of the studies were named, but there are several that were prepared by Civic Economics on retail areas in San Francisco, Austin, and Chicago (2009). These areas are not comparable to Humboldt County, given their dense urban setting. However, one study identified by CBRE Consulting was prepared in Maine, which has a similar population base to Humboldt County. This study was written by the Institute for Local Self-Reliance in September 2003 and was called “The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine.” This study analyzed the revenues and expenditure data for eight local firms and compared them to Target and Wal-Mart stores in Maine.

The 2003 study found that the local businesses spent about half of their revenues in the local area. These expenditures consisted of the following as a share of total revenues:

- 28.1 percent – wages and benefits to local employees
- 16.9 percent – inventory, supplies, and services from other local businesses
- 5.4 percent – profits accruing to local owners
- 2.4 percent – taxes to local and state government
- 0.4 percent – charitable contributions

The two national chain stores studied, Wal-Mart and Target, spent 14.1 percent of their revenue in the local area. Most of that spending went to payroll. In terms of charitable contributions, the local firms gave \$24,000 to local charities, or 0.4 percent of their total revenue of \$5.7 million.

It makes sense that national chain stores would take advantage of economies of scale in order to buy inventory and services for their whole company at a lower price than could be purchased locally. Consequently, as a share of total revenues, chain stores may purchase less from the local area than a small business. However, because big box stores have higher revenues than small

stores, they have much greater economic impacts on local economies than small local firms. These impacts include a greater number of jobs provided, a greater amount of money spent locally (even if it's a smaller percentage of revenue generally), a greater amount of tax revenues, and a greater amount of charity given locally.

The eight firms surveyed in the Maine study employed 62 people total, or an average of eight persons per firm. In contrast, large stores run by national chains employ many more people. In 2002, the average Wal-Mart store had 313 employees (Wal-Mart, 2003). The Home Depot store planned for the proposed project is estimated to employ 264 workers. Although the share of revenues spent locally by national chains may seem low, their total expenditures are large. In order to match the data in the study, CBRE Consulting examined national chain data from 2002. The average Wal-Mart store in 2002 had annual revenue of \$49.0 million. If 14.1 percent of that revenue on average is spent locally, then a Wal-Mart store would contribute \$6.9 million locally. In 2002 the average Target store had revenue of \$30.0 million (Target, 2003). If 14.1 percent were spent locally that would total \$4.2 million. Given the figures cited in the study, one big box store would contribute 47 to 142 percent more dollars to the local economy than 8 local businesses combined. In terms of philanthropic giving, an average Wal-Mart store in 2002 gave \$490,000 to the local community while an average Target store gave \$600,000. This compares, in the study, to an average of \$3,000 given by each local business. Consequently, large national chain stores have the potential to contribute to the local economy.

### ***CEQA-Related Comments***

#### **New Recessionary Conditions**

The following comments refer to the current recessionary economic climate and its relationship to the success of the proposed project: 3-27, 9-29, 14-1, 16-286, 17-2, 17-3, 41-3, 47-3, 51-1, 51-2, 51-3, 52-3, 52-9, 64-2, 95-19, 102-8, 105-3, 127-6, 134-1, 134-18, 134-10, 142-2, 142-7, 148-18, 149-5, 152-2, and 152-3.

Recent headlines were dire with claims that the current recession is the worst since the Great Depression. Although the economy is clearly in a downturn currently, it is important to take a long-term perspective. Given the approvals process and the time needed for construction, the proposed project is not likely to open until 2011 at the earliest. Subsequent to the Great Depression, the longest recessions have lasted 2 years each (1973-1975 and 1980-1982). The current recession started in December 2007 and has now lasted 20 months. Although it is not possible to predict the future, it is likely that by the time the proposed project opens, the current recession would be over.

Declining retail sales have become a reality in the current economy. This is also the case in Eureka, with the City Finance Department reporting a paired quarter decline in total retail sales tax of 3.7 percent from 3rd quarter 2007 to 3rd quarter 2008. Among retail categories, new and used auto sales fared the worst, with a 28.0 and 47.1 percent decline, respectively, during this time period, followed by more modest declines in categories more relevant to the proposed

project, such as a 2.5 percent decline in hardware store sales and 5.5 percent decline in lumber/building materials.

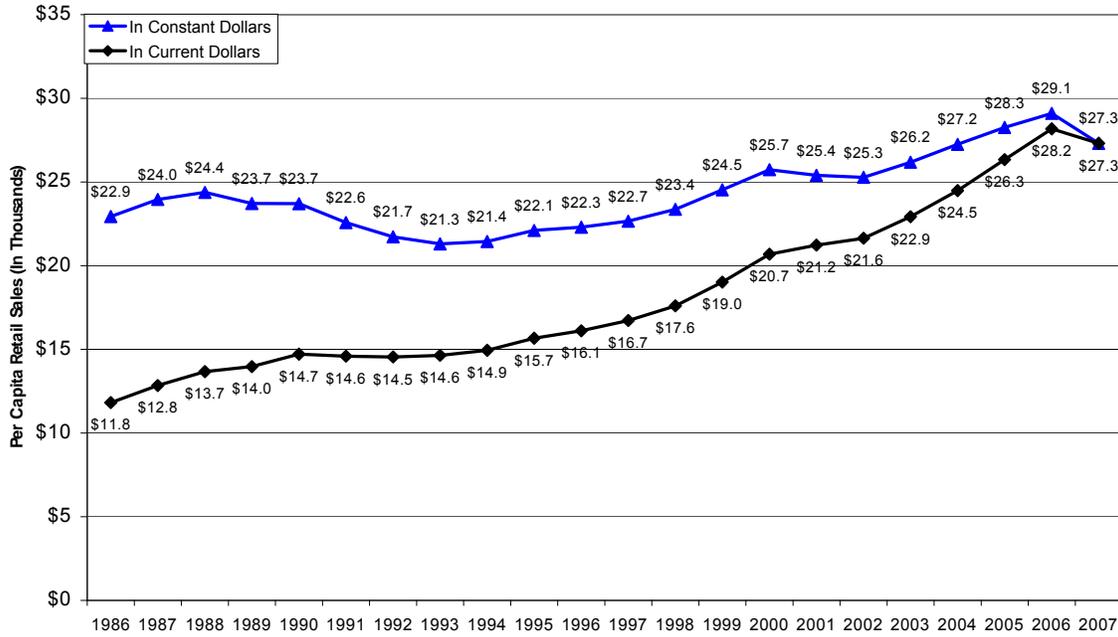
Given the declining trend in retail sales, it is reasonable to expect that some retailers would be able to weather the decline in sales, while others would not. Regardless of whether the proposed project is constructed, there are likely to be some store closures in the market area and, because of depressed economic conditions, the resulting vacancies would likely take longer to re-tenant (i.e., find replacement tenants) than would be the case under more normal economic conditions.

In reconsidering the Draft EIR's analysis and conclusions, it is important to reiterate how urban decay relates to CEQA. The leading court case on the subject, *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1204, described the phenomenon as "a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake." This is the limited circumstance under which economic impacts result in physical changes to the environment subject to CEQA (Section 15131 of the CEQA Guidelines). Thus, not all vacancies constitute urban decay. An example of this at the Bayshore Mall in Eureka is the currently vacant Mervyn's store, which has not resulted in any adverse physical changes to the surrounding environment.

Given the state of the economy, with reduced retail spending, the economic projections included in the November 2006 report may not prevail in the short term. However, the EIR's economic consultant, CBRE Consulting, concludes that the economic conditions evident since the preparation of the Draft EIR would not alter or change the conclusion of the analysis with respect to urban decay. The economy is expected to rebound after some period of disequilibrium (Izzo, 2009).

There have been past periods of slow growth in Eureka, characterized by declining or flat retail sales on a per capita basis. These declines were counterbalanced by strong subsequent growth, with per capita inflation-adjusted taxable retail sales increasing annually in Eureka (illustrated in Figure 3-2, below). Despite these irregular periods of decline, per capita retail sales in Eureka have increased on a real basis over time.

While conditions now are more difficult than previous recessions, the rebounds in the 1990s, early 2000s, and even earlier periods demonstrate that with time, growth prevails, which bodes well for the future retail spending at the proposed project and other Eureka retailers. Moreover, while population growth may also be lower than historical rates, this is likely to be temporary, as home foreclosures and ultimate resales are proving to make home ownership accessible to households that previously could not gain access to the homeownership market. For example, the Humboldt Association of Realtors reported that the median home price in the City of Eureka was \$254,500 in February 2009, which reflects a 36 percent decrease from the peak of \$345,000 in February 2006. The median home price throughout all of Humboldt County declined 31 percent from its peak of \$349,500 in March 2006. As a result, housing affordability for first-time home buyers has increased substantially in Humboldt County. According to the Humboldt Association of Realtors' most recent available data for February 2009, 23 percent of households in the county have income levels sufficient enough to afford a single-family home. Although this is still much lower than the share in



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**Figure 3-2**  
Per Capita Sales in City of Eureka  
1996 – 2007 (in thousands)

the late 1990s, when almost half of all households could afford the median-priced home, it is much higher than the most recent low of only 10 percent in February 2006. Thus, homeownership opportunities are becoming available for a population base previously locked out of the housing market, which bodes well for sustaining the local population base and ultimately contributing to future growth and a corresponding growth in retail customer base.

As of April 2009, the vacancy rate in Downtown and Old Town districts is greater than 10 percent (see “Vacancy in the City of Eureka,” below), which is more than the 5.0- to 10.0-percent vacancy rate threshold many industry representatives believe is indicative of a healthy retail market. The Bayshore Mall has vacancy rate of more than 20 percent. Other shopping centers and business districts have a healthy rate of vacancy near or below 5 percent. Several commercial real estate brokers indicated that this rate would likely increase in the coming months as the recession drags on, but that the vacancy rate would be unlikely to surpass 20 percent overall. Generally, increase in vacancies during market downturns increase the risk of urban decay, but it does not necessarily mean that urban decay would result.

Retail market conditions, as discussed in “Vacancy in the City of Eureka,” below, indicate that despite existing vacancy, including above-market equilibrium levels, the market is not currently characterized by urban decay. Properties characterized by vacancy generally do not have visible signs of neglect, abandonment, or poor maintenance. While only a few of the hundreds of buildings in Eureka are suffering from a lack of maintenance and some graffiti, loitering is not

evident, the parking lots are free of trash, and cars are not parked with “For Sale” signs—all typical signs of declining property. Therefore, it is not a foregone conclusion that increased vacancy attributable to the proposed project would become a trigger for urban decay.

The degree to which urban decay may occur would be dependent upon many factors, including the degree to which property owners cannot adequately maintain their properties. The degree to which individual property owners can sustain a decline in revenue associated with increased vacancy would also be a factor in the potential emergence of urban decay, if they do not have the financial wherewithal to provide proper maintenance. In the short term, i.e. the next 6 to 12 months, the Eureka retail market is likely to continue to suffer due to the current recession and vacancy is likely to increase as more businesses close. However, the economy is likely to recover within the next two years and before the proposed project would likely open (please see updated information on project phasing plans in Master Response 4). By then, most of the weak businesses would have closed and the remaining ones would benefit from less competition. Many of the vacant spaces would have been retenanted or converted to new uses. There may be store closures due to the increase in competition from the proposed project, but given the current lack of urban decay in the market in the face of economic recession and high vacancy, CBRE Consulting maintains its original conclusion that the proposed project would not contribute to or cause urban decay.

### **Vacancy in the City of Eureka**

The following comments refer to current vacancies in the City of Eureka that are not presented in the November 2006 Economic Impact Study or in the response to the peer review of this study dated December 13, 2007: 9-30, 14-2, 14-3, 14-4, 16-3, 16-72, 16-87, 16-225, 16-269, 16-286, 32-13, 38-1, 42-1, 48-4, 52-5, 64-1, 64-3, 72-1, 99-2, 101-2, 102-8, 105-2, 125-3, 125-7, 126-13, 127-6, 129-1, 148-17, 159-6, 161-1, 168-3, 173-1, and 174-2.

Original fieldwork for the November 2006 report was done in October 2005. At the time few vacancies were observed in the market. Brokers indicated that vacancy rate in the Old Town and Downtown shopping districts ranged between 5 and 10 percent. Bayshore Mall at the time had a 7 percent vacancy rate. An updated analysis reflecting changes in the economic conditions was completed in October 2008; however, no fieldwork was done at that time.

Follow-up fieldwork was done on April 23 and 24, 2009, to determine the current conditions. The fieldwork found that overall vacancies have increased, although vacancy rates vary based on shopping center or district. Some smaller shopping centers are fully occupied or have healthy vacancy rates near 5 percent. Vacancy rates in the Old Town and Downtown shopping districts, according to broker’s estimates and from observation, ranges from 10 to 15 percent. The Bayshore Mall currently has a relatively high vacancy rate at more than 20 percent. The following is a summary by major shopping center or district with information current as of late April 2009.

**Bayshore Mall.** The largest center, Bayshore Mall, has four anchor spaces, two of which are undergoing transition. Sears and Ray’s Food Place, a grocery store, are occupied. Mervyn’s, which liquidated its merchandise and closed in late 2008, is currently vacant. However, Kohl’s is moving into the space, with a planned opening in September 2009. Gottschalk’s, which filed for

bankruptcy in January 2009, announced in late March that the entire chain will be closing. The Gottschalk's store at Bayshore Mall is currently liquidating. A new tenant has not been announced. Bayshore Mall also has six other large spaces that are all occupied: the movie theatre; Borders Books & Music; Pier 1 Imports; PetCo; Ross Dress for Less; and Bed, Bath & Beyond. There are about 90 smaller stores inside the mall, 25 of which are vacant. Leasing officials at the center would not verify the vacancy rate, but given information from Claritas about the size of the anchors and large stores, and the average size of a smaller store, the vacancy rate appears to be about 23 percent.<sup>3</sup> The Gottschalk's store accounts for more than half the current vacant space. The owner of the mall, General Growth Properties, is struggling with debt and going through bankruptcy court, but may emerge from bankruptcy as a stronger operator due to restructured debt servicing or potential acquisition by a better capitalized shopping center operator. Either of these scenarios could allow more capital to be invested in the property to secure new tenants or simply maintain the property in the future. Despite the high vacancy rate, however, the center is in good condition. Many of the vacancies are disguised by having displays for other stores in their windows. There were no signs of urban decay.

**Eureka Mall.** The Eureka Mall is a 222,300-square-foot community-serving shopping center located at the intersection of West Harris Street and Central Avenue. It is anchored by Safeway, Michael's, Staples, and Long's Drug store. An 82,500-square-foot WinCo Foods store is also located in the mall. There were two vacant spaces in this center: a 3,000-square-foot space in the front (Harris Street) and a 10,000-square-foot space in the back (Henderson Street). This indicates a center vacancy rate of 6 percent. The center is in good condition and is clearly popular as evidenced by a crowded parking lot, and there are no signs of urban decay.

**Henderson Center.** The Henderson Center is a business and shopping district located approximately between D, G, Harris, and Henderson Streets. It is a mix of office and retail spaces surrounded by a residential neighborhood. The anchor retail tenants are Rite Aid Pharmacy, Shafer's Ace Hardware store, and Joann Fabrics. Six vacant spaces were observed, including two storefronts, a former realtor's office, counseling space, a former attorney's space, and an office space located in residential building. The Greater Eureka Visitor's Guide, published by the Chamber of Commerce, states that there are more than 100 retail, service, and professional businesses located in Henderson Center. This implies a vacancy rate of 6 percent, which is fairly healthy, and there are no signs of urban decay.

**Old Town.** This shopping district is located approximately along First, Second, and Third Streets between C and P Streets. The east end of the district is largely residential, with picturesque Victorian buildings that are being used as hotels or office spaces, as well as the Humboldt County Library. The west end of the district borders a light industrial area. The north end borders the waterfront, and the south end borders the Downtown shopping district. The core of the district is oriented towards tourists, with museums, art galleries, cafes and restaurants, and specialty shops. Many small offices are also located here. A close examination found more than 170 office or

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<sup>3</sup> This figure does not include the vacant Mervyn's space, as plans for retenanting this space by Kohl's have been announced. The figure does include the Gottschalk's space, even though it is currently occupied, because there are plans to close the store.

retail spaces, 17 of which were vacant. Assuming the vacant spaces are on average the same size as the typical space in the district, this implies a vacancy rate of 10 percent. Several brokers familiar with the area felt the vacancy rate was closer to 15 percent. Overall, vacant spaces were generally in good condition. However, two of the larger vacancies located on the north and west ends of the district did have signs of being close to urban decay, with graffiti and deteriorating facades. The first building is at 401 Waterfront Drive (a.k.a. 333 First Street), known as both the “Feuerwerker building” and the “the old Co-Op building.” This building has a current code case through the Building Department, which has determined that the building is a public nuisance. The Building Department received a response from the owner on July 27, 2009 stating that the owner would hire an engineer to determine structural stability. The second building is at 207 3rd Street, and it is known as the “Schooner Saloon” The building is currently occupied by a bar and upstairs residences. Although there are no current code cases, the building does not appear to be well maintained.

A recent article in the North Coast Journal discussed retailers in Old Town (Walters, 2009). The article stated that from October 2008 through March 2009, 15 businesses have closed, but 27 businesses have opened. According to the article, the recession was not a factor in all of the closures. Some stores, such as Restoration Hardware, were closed because of a decision by their corporate headquarters. Other stores, such as Geppetto’s and Cotton Works, closed for personal reasons. The vacancies have also been good opportunities for some businesses to lease better space. The article stated that North Soles, which has been located in a less visible portion of the F Street Plaza, is moving into part of the former Restoration Hardware space and Humboldt Herbals has had increased business since it moved in February 2009 from an upstairs space to a first floor corner space on Second Street.

**Downtown.** The Downtown shopping district is located just south of Old Town along Fourth, Fifth, and Sixth Streets from C Street to K Street. The Downtown district is more diverse than Old Town in its uses, with theatres, government buildings, hotels, health clinics, churches, auto repair shops, and some warehouse/light industrial space. A close examination found more than 200 office and/or retail spaces, 21 of which were vacant. Three of the vacant spaces were large: the former McMahan’s Furniture store, the former Bank of America building, and a large retail space (prior tenant unknown). The number of stores vacant would imply an 11 percent vacancy rate, but the few larger spaces, as well as an opinion from local brokers, indicate that vacancy rate is closer to 15 percent. For the most part, vacant spaces were in good condition, but one building on the south end of the district, part of the former Nader Automotive dealership at 304 Sixth Street, looked to be poorly maintained, and could be construed to be close to urban decay. The Nader dealership went out of business last fall and so this building has been vacant for less than a year. The building is slated to be occupied by “Picky Picky Picky Surplus,” and the new occupancy will include façade rehabilitation.

**Other Smaller Centers in Eureka.** There are several other smaller centers in Eureka. A strip center, Victoria Place, anchored by a Big 5 Sporting Goods store is located adjacent to Bayshore Mall. This center is service-oriented with a nail salon, hair salon, dentist, insurance and financial services firms, check-cashing store, UPS store, and military recruitment center. At the time of the

recent vacancy survey, the shopping center had no vacancies and was in good condition. Next door is a small center called Boardwalk Mall, containing a Curves gym, arcade, clothing store, and flooring store. There are several vacant spaces. This center is an older style of shopping center and could use refurbishing, but there were no signs of urban decay.

Burre Center is a 63,000-square-foot shopping center located south of U.S. 101 on Myrtle Avenue and West Street. Neighborhood-oriented stores predominate this center, which contains a dry cleaner, café, flower shop, video store, realtor, dentist, and Kentucky Fried Chicken chain. Built in 1987, the center looks dated, but there were no vacancies. Adjacent to this center is a newer-looking center with a Long's Drugs, Dollar Tree, Starbucks, Radio Shack, Subway, and nail salon. This center had no vacancies, as well, and no signs of urban decay.

**Other Vacancy Indicators.** CoStar is another resource for retail vacancy information. Table 3-1 shows a survey of retail spaces in the City of Eureka. Data from CoStar are from brokers listing spaces for lease. Only properties available for lease through brokers are listed, so this table does not represent a comprehensive inventory of all existing retail. The data are likely skewed towards larger spaces more likely to be listed with a broker versus smaller spaces directly marketed by property owners. Nevertheless, Table 3-1 demonstrates a wide range of available vacancies in Eureka, ranging from less than 1,000 square feet suitable for small, start-up retailers to larger tenant spaces, such as those located in the Bayshore Mall. The list represents the CoStar data supplemented with other market knowledge. In some cases more information was known about the spaces, either from interviews with brokers, or from Claritas, and that was added. The last time this list was generated was in November 2007 in the response to the ERA peer review of the November 2006 report. At that time the vacancy rate in Humboldt County, according to the CoStar data, was 2.4 percent. The vacancy rate in just the City of Eureka was higher, at 3.6 percent. The updated list shows only space in the City of Eureka and is sorted by rentable building area, so that the largest spaces are listed first. Vacancy as of March 2009 based upon CoStar's data resources was 9.0 percent, up by 5.4 percentage points since November 2007. This figure is calculated assuming that the Mervyn's space would be retenanted by Kohl's and that Gottschalk's would soon be vacant.

**TABLE 3-1  
SUMMARY OF VACANCY IN THE CITY OF EUREKA**

<b>Center/Area</b>	<b>Vacancy Rate</b>
Bayshore Mall <sup>1</sup>	23%
Eureka Mall	6%
Henderson Center	6%
Old Town	10 – 15%
Downtown	11 – 15%
Burre & Adjacent Center	0%

<sup>1</sup> Vacancy rate excludes the former Mervyn's space, but includes the Gottschalk's space.

SOURCES: Leasing brokers; and CBRE Consulting.

The recession, which began in December 2007, and associated decrease in consumer demand, has affected the retail market in Eureka, increasing vacancies. The most severely affected retail has been the Bayshore Mall, where several corporate bankruptcies have led to large store closures. Numerous small retailers at the Bayshore Mall have also closed. However, there are positive signs, as well. The Mervyn's space will be re-tenanted by the end of summer 2009 by a Kohl's store. One new tenant occupying a large space in the interior of the Bayshore Mall is Bounce-A-Palooza, a store providing entertainment for young children. During this period of low consumer spending, store spaces may need to be retenanting by non-retail uses. The largest vacancy in Downtown Eureka is the 45,000-square-foot former McMahan's Furniture store. The leasing broker indicated that several office users are interested in the space, indicating a respective lack of supply of larger spaces in the office market. One possible future vacancy is a 25,000-square-foot Safeway store at Harris Street and Harrison Avenue. The store is planning to expand into a larger space across the street. One broker opined that the existing space may be reused for medical use because the nearby hospital is looking for a space to open a regional cancer center.

Table 3-1 summarizes vacancy by center or area in the City of Eureka. Brokers interviewed stated that the current vacancy rate in Eureka is likely to increase due to the continued weak retail environment and that the vacancy rate would likely peak at 20 percent.

It should be noted that when tenants vacate prior to lease expiration, they continue to be responsible for rent and their share of building operating expenses. While not all tenants would have the finances to continue these payments, national retailers are more likely to have this capability than local retailers. This is an important consideration because landlords would continue to receive income on these vacated spaces, which means they would have available financial resources to continue to maintain their properties. More importantly, city ordinances, such as the City of Eureka Municipal Code Chapters 131 and 150, require property owners to maintain their properties so as not to create a nuisance by creating a health and safety problem. Enforcement of these ordinances can help prevent physical deterioration due to any long-term closures of retail spaces. One other possible outcome of retail store closures and prolonged vacancies is that existing property owners, or buyers, might decide to redevelop these spaces with other uses, thereby preventing physical deterioration and the threat of urban decay. While the poor economic conditions may in turn limit the rate of growth of these alternate uses, nonetheless the potential would exist, with properties positioned for alternate use when market demands pick up concurrent with the return of economic growth. Based upon these findings, CBRE Consulting concludes that the increased retail vacancy rate picture in the City of Eureka does not change the conclusions of the November 2006 report.

### ***The Effect of the Bayshore Mall on Local Businesses***

The following comments refer to local business closures occurring in response to the new competition after the Bayshore Mall opened: 14-4, 16-286, 32-13, 51-1, 64-3, 78-2, 102-8, 105-2, 126-13, 129-1, 134-1, 148-17, 150-2, 159-2, 162-4, and 168-4.

These comments generally refer to the history of retail in Eureka and store closures after the opening of the Bayshore Mall. Opinions varied on which parts of the city were impacted and how

long these impacts lasted. This topic is mentioned in the November 2006 report in Chapter 9, Urban Decay Determination, under the characterization of the market. This topic is also discussed above, under “Fiscal Impacts to the City of Eureka and Other Jurisdictions,” where data show that total sales in Eureka increased after the mall opened. This increase indicates that sales were not just redistributed from existing retailers to new retailers at the mall, but that the mall generated new sales. These new sales could have come from the introduction of products not previously available in Humboldt County at existing stores.

In order to become more familiar with the retail history in Eureka, CBRE Consulting interviewed city officials who have lived in the area since before the Bayshore Mall opened in 1987. According to the interviews, after the Mall opened some stores in the Downtown closed. These stores were largely department stores that had been there since the 1950s and were dated in design and function. Retail is a dynamic industry with numerous changes in how and where people prefer to shop. In the United States the Downtown department store model has generally been overtaken by the suburban auto-oriented center. More recently, indoor malls have gone out of fashion and more outdoor lifestyle malls, with a mix of restaurants and entertainment, are being built. As cited in a November 2008 Newsweek article, “Last year was the first in half a century that a new indoor mall didn’t open somewhere in the country—a precipitous decline since the mid-1990s when they rose at a rate of 140 a year.” Eureka’s Downtown shopping district has recovered from its loss of department stores and transitioned into a government and office district with some supporting retail. According to city officials, there was no urban decay in the stock of Downtown buildings during this transition.

The Bayshore Mall affected the Eureka Mall directly because it took one of its anchors. Sears originally had a store at the Eureka Mall, but moved to Bayshore Mall, leaving a vacant space at the Eureka Mall. However, this space was vacant for less than one year and did not take on any signs of urban decay while it was vacant.

Officials interviewed did not believe that the Bayshore Mall caused store closures in the Old Town shopping district because this area specializes in stores oriented towards tourists. Officials also felt that the Costco and Target stores did not lead to any retail closures in the city. The Target store is discussed further under “The 1999 Bay Area Economics Report,” below.

The history of retail in Eureka, and of the Bayshore Mall in particular, shows the changing nature of shopping and the resiliency of Eureka’s business districts. This bodes well for the reuse of buildings currently vacant or potentially becoming vacant due to impacts from the proposed project.

### ***Potential Local Store Closures***

The following comments share the concern that the proposed project, and in particular the Home Depot store, would have a strong negative impact on smaller locally owned stores and that this negative impact would lead to store closures: 9-30, 16-3, 16-79, 16-87, 25-47, 31-9, 31-10, 32-13, 46-2, 48-3, 51-3, 52-7, 52-15, 56-1, 71-2, 72-1, 75-5, 76-1, 81-1, 83-2, 84-10, 85-5, 87-7, 92-1, 95-19, 96-1, 99-3, 100-8, 101-2, 102-8, 105-4, 113-3, 115-1, 115-3, 117-10, 118-1, 126-13,

132-1, 133-1, 134-7, 142-2, 143-1, 148-17, 149-1, 150-2, 152-2, 154-1, 159-2, 159-6, 160-2, 173-1, and 174-2.

CBRE Consulting's November 2006 study examined this issue of impacts on existing businesses in depth. The results determined that existing businesses in Eureka and Humboldt County may experience diverted sales due to new competition from the proposed project and that some store closures could occur. Any existing store that sells products in the relevant retail categories could be impacted. These include small, locally-owned businesses, as well as larger regional and national chain stores. The results in terms of maximum sales diversions in 2010 dollars and potential square feet affected are summarized in Table 3-2, below. The retail categories determined to be affected are restaurants, building materials, books and electronic specialty stores, garden supplies, and other retail stores, which is a broad category encompassing some general merchandise.

**TABLE 3-2  
SUMMARY OF EXISTING STORE IMPACTS IN HUMBOLDT COUNTY DUE  
TO THE PROPOSED PROJECT ONLY, 2010 ESTIMATE**

<b>Retail Type</b>	<b>Maximum Sales Diversions (Millions)</b>	<b>Maximum Square Feet Affected</b>
Restaurants	\$2.5	6,800
Building Materials	\$11.9	32,300
Specialty Stores (Books & Electronics)	\$6.7	18,000
Garden Supplies	\$5.7	15,500
Other retail stores <sup>1</sup>	\$22.5	60,800

<sup>1</sup> Includes general merchandise, liquor stores, second-hand merchandise, farm implement dealers, fuel and ice dealers, mobile homes, trailers, campers, boat, motorcycle, and plane dealers. Excludes drug stores.

SOURCES: Exhibit 28 of November 2006 report; and CBRE Consulting.

There are many factors that influence whether stores impacted would close. One response of existing stores to new competition is business repositioning. This strategy can include providing strong customer service, providing specialty niche products and services, carrying different product lines or changing product mixes, and enhanced marketing. These types of strategies have been successfully employed by many small businesses dealing with competitive influences, especially from high volume retailers like Home Depot. These kinds of strategies are well documented in industry literature, exemplified in the article "Staying One Step Ahead of the Boxes," published August 2008 in *Hardware Retailing*. This article discusses strategies used by the president of a local hardware chain in Florida to compete against big box retailers like Home Depot and Lowe's.

As explained above under, "The Effect of the Bayshore Mall on Local Businesses," the history in Eureka shows that many businesses have been able to adapt when new competition enters the region. However, some stores may close leaving vacant spaces. CEQA is most concerned with whether these vacant spaces are likely to devolve into urban decay. The existing retail market in

Eureka is weak, with some areas and shopping centers experiencing high vacancy rates. In the short term, these weak conditions are likely to worsen, but over the next two years it is expected that the economy will revive (Izzo, 2009). By the time the proposed project opens in 2011, at the earliest, vacancy is likely to be returning to market equilibrium.

Even now there are several signs that retenanting is possible. The Mervyn's space at the Bayshore Mall will be retenanting by Kohl's, and McMahan's Furniture store in Downtown Eureka is likely to be retenanting by office users. As discussed above under "Vacancy in the City of Eureka," despite the high vacancy rate prevailing in April 2009, there are very few signs of urban decay. Only three buildings were observed in Downtown and Old Town that were suffering from a lack of maintenance and some graffiti. Given the recessionary conditions, drop in consumer spending, and many vacant storefronts, this is a fairly strong performance for the hundreds of buildings located in the shopping districts. No signs of urban decay were observed at any of the other business districts and shopping centers in Eureka. Given the history of resiliency in Eureka and its prevailing performance during difficult times, CBRE Consulting concludes that the proposed project would result in a less-than-significant impact to urban decay.

### **The 1999 Bay Area Economics (BAE) Report: *Economic Impacts Assessment for New Retail Development Regarding a Proposed Wal-Mart Store in Eureka***

The following comments refer to this BAE report and state that the report should have been considered in the EIR for the proposed project: 14-7, 16-275, 16-286, 46-1, 51-1, 51-2, 51-3, 52-3, 102-8, 105-3, and 152-2.

In August 1999, Bay Area Economics (BAE) prepared a report for the City of Eureka titled "Economic Impacts Assessment for New Retail Development" (BAE Report). At the time, there was an outstanding proposal to build a Wal-Mart at the project site. The BAE Report examined the potential impacts of a big box store such as Wal-Mart or Target, as well as the potential impacts of a home improvement warehouse, such as Home Depot. The zoning initiative that would have enabled the proposed Wal-Mart eventually was rejected. A Target store opened at the former Montgomery Ward site in 2004.

Comments suggest that the 1999 BAE Report should have been considered. Although the BAE Report was considered, it was prepared 10 years ago and relied on data that is now obsolete. The BAE Report also studied a different proposal—a stand-alone, big box store versus a mixed-use development with Home Depot as the anchor tenant.

### **Underestimation of Taxable Sales Increases**

In the BAE Report, taxable retail sales in Humboldt County are projected from 1998 to 2005. The BAE projection was done in constant 1998 dollars. In order to compare the projection to actual sales, an adjustment must be made for inflation. In Table 3-3 (Exhibit 3 of the BAE Report), the BAE projection is adjusted for actual inflation and then compared to actual sales. The BAE Report projected that Humboldt County would have sales of \$899 million in 2005. After adjusting for inflation, the projection is \$1.1 billion. Actual sales in 2005 were \$1.2 billion, 5.7 percent higher than the BAE forecast. Thus, BAE modestly underestimated sales growth in Humboldt County.

Although the BAE total sales projection was lower than actual sales by only 5.7 percent, the variation by category ranged from a 28.7 percent underestimate of the home furnishings and appliances category to a 15.0 percent overestimate of the food stores category. The two categories most relevant to a Home Depot store are: 1) home furnishings and appliances; and 2) building materials. For these two categories, the BAE projection greatly underestimated taxable sales. The underestimation in home furnishings and appliances was 28.7 percent and the underestimation in building materials was 26.8 percent. The category most relevant to a Wal-Mart or Target is general merchandise. That category was underestimated by 4.5 percent.

Table 3-3 also shows actual 2005 retail sales in 1998 dollars and the actual sales growth in 1998 dollars. The BAE Report estimated that a typical Wal-Mart store generates \$30 million in annual sales. The BAE Report projected that taxable sales in the general merchandise category would grow from \$157 million in 1998 to \$176 million in 2005. Given the BAE forecast increase of \$19 million in the general merchandise category, the BAE Report states that sales at a potential Wal-Mart would likely be cannibalized from existing general merchandise stores. The implied impact would be the difference between Wal-Mart sales and the projected increase in general merchandise sales, or \$11 million (i.e. \$30 million Wal-Mart sales less \$19 million growth in sales). However, actual sales growth for the period 1998 to 2005 in 1998 dollars totaled \$27 million, 42 percent higher than the BAE projection, implying impacts of only \$3 million. The underestimation of future taxable sales resulted in an overestimation of the impact of a Wal-Mart store on local retailers. The same type of overestimation would apply to the Target store if analyzed by BAE, although no such analysis is included in the BAE Report.

The BAE Report implies that impacts from a Home Depot store would be \$30 million. These impacts are based on a Home Depot sales estimate of \$40 million and a forecast sales increase of \$10 million in the building materials and farm implement dealer's categories. However, actual sales increases were \$35.1 million in the building materials and farm implement dealer's categories. If BAE were to redo their analysis with the actual sales growth, the estimated impact would be smaller, at \$4.9 million.

### ***Potential Sales Impacts of Home Depot***

Table 3-3 shows BAE's Home Depot sales estimate distributed by the sales categories assumed by CBRE Consulting. The BAE Report assumed that all impacts from a Home Depot store would be in the building materials category. The CBRE Consulting Report distributes Home Depot sales into three categories based on typical Home Depot store sales data historically provided to CBRE Consulting by Home Depot. Approximately 20 percent of Home Depot sales are products in the home furnishings and appliances category, 63 percent are in building materials, and 17 percent are in "other retail," mostly garden supplies. In the table, the BAE forecasted increase in sales is distributed to the categories deemed relevant by CBRE Consulting. Then actual sales increases are displayed. The difference between the BAE forecast and actual sales, all in 1998 dollars, is \$59.4 million for categories relevant to Home Depot. The possible impacts in the home furnishings and appliances category are the difference between actual sales and the BAE estimate of Home Depot sales, or \$300,000. The other two categories, building materials and other retail,

**TABLE 3-3**  
**ESTIMATED HOME DEPOT STORE SALES BY CATEGORY VS. FORECAST SALES AND**  
**ACTUAL SALES IN MILLIONS, IN 1998 DOLLARS**

Category	BAE Home Depot Sales Estimate	Share of Sales	BAE Forecast Increase	Actual Sales Increase	Difference Between Forecast and Actual	Implied Impacts
Home Furnishings and Appliances	\$8.0	20.0%	\$2.1	\$7.7	\$5.6	\$0.3
Building Materials	25.2	63.0%	10.2	35.1	24.9	0.0
Other Retail	6.8	17.0%	14.6	43.5	28.9	0.0
Total	\$40.0	100.0%	\$26.9	\$86.3	\$59.4	\$0.3

SOURCE: Exhibit 3 of BAE Report; and CBRE Consulting.

both had actual increases in sales that could have accommodated a Home Depot store without negative impacts to local retailers.

The CBRE Consulting Report, using a retail sales leakage model, found that the proposed project would have no sales impact on the home furnishings category. CBRE Consulting also estimated that the building materials category could have an \$11.9 million sales impact in 2010 and the “other retail” category could have a \$22.5 million sales impact in 2010. These estimates are higher than BAE’s implied estimates because the proposed project is a larger project, the estimates are in 2010 and not 1998 dollars, and the size and composition of Eureka’s retail base has changed. In addition, the CBRE Consulting Report includes a more detailed analysis of these prospective impacts.

The BAE Report examines retail leakage in Humboldt County, but it does not take it into account when estimating impacts. In fact, the BAE Report found \$9.8 million in retail sales leakage from the home furnishings category in Humboldt County. That amount would be enough to absorb the \$8.0 million in new Home Depot sales in that category, according to BAE’s sales estimate distributed by category. The BAE Report also found \$16.6 million of retail sales leakage in the building materials and farm implements category and \$35.8 million of retail sales leakage in the “other retail stores” category, but it did not take this leakage into consideration when examining potential impacts. This contributed to the overestimation of sales impacts by overlooking current retail sales leakage in the market area.

### **Effects on the City’s General Fund**

The BAE Report found that a new home improvement or big box store in Eureka would result in a net positive effect on the City’s General Fund. Specifically, if a home improvement store were built, BAE estimated that the net fiscal effect after increased municipal costs would be \$149,000 in 2005. That estimate is in 1998 dollars. The inflation-adjusted estimate would be \$184,000 for 2005. The CBRE Consulting Report also found that retail development in Eureka would result in a net positive effect on the City’s General Fund. CBRE Consulting estimated that in 2010, the

proposed project would have a net positive effect of \$947,000 on the City of Eureka's General Fund. This positive effect would be \$813,000 in 2005 dollars.

CBRE Consulting's estimate is larger than the BAE Report's estimate for two reasons. First, the BAE Report was examining the impact of one large home improvement or big box store, whereas plans for the proposed project include a Home Depot store as well as 195,500 square feet of additional retail. Second, as stated above, the BAE Report underestimated taxable sales, especially in the (1) home furnishings and appliances and (2) building materials categories. Still, even though the two estimates are different, it is useful to note that both reports find that new retail development in Eureka would affect the City's General Fund in a net positive manner.

### **Case Studies**

The results of the two case studies in the BAE Report reflect similar findings to the CBRE Consulting Report case studies. The BAE Report examined economic impacts in Ukiah and Chico after Wal-Mart stores were built. In both cases there were no significant impacts on the local retailers or Downtown shopping districts. In fact, the BAE Report found some positive impacts on the communities. The CBRE Consulting Report investigated the economic impacts in Ukiah, San Rafael, and Woodland after Home Depot stores were built. In all three cases there were no identified negative economic impacts on local retailers or Downtown shopping districts.

In Ukiah, the BAE Report found that subsequent to the opening of Wal-Mart's new store, which was built near the freeway, the City of Ukiah Planning Department rezoned the area to incorporate mixed-use development. That area has since seen numerous retail developments, including a Friedman Brothers hardware store. The experience in Chico was similar, with numerous big box retailers following the development of the Wal-Mart store. In both Chico and Ukiah, the Downtown shopping areas have thrived by carving out a unique niche of specialty products that do not compete with big box stores.

### **Job Impacts**

The BAE Report and CBRE Consulting Report both estimate job impacts, but each report uses different methods. The reports examined different scenarios, with the BAE Report looking at a Wal-Mart or Home Depot store and the CBRE Consulting Report looking at the proposed project. Still, both reports found that there would be a net gain of jobs or at least no net job losses for the City of Eureka.

The BAE Report estimates jobs impacts with the assumption that a new type of store would not attract new sales to the county, but would capture the projected increase in countywide retail sales. If a new store has more sales than the expected increase in countywide retail sales, then the store would cannibalize sales from existing stores. Even without a new store, the BAE Report states that the projected increase in taxable sales would result in 650 to 675 new jobs in Humboldt County by 2005. Given that BAE underestimated future taxable sales, this new jobs estimate is low. The BAE Report finds that if a Wal-Mart store were built in Eureka, some current jobs would be lost, but they would be replaced by new jobs at Wal-Mart. In other words, there would be no net loss of jobs. If a home improvement store were built, the BAE Report concludes that

there would be a net gain of jobs, albeit a small gain of less than 10 jobs. This gain is attributed to new sales coming from Del Norte County, which did not have a major home improvement store when the BAE Report was written. Currently, there is a Home Depot store in Del Norte County in Crescent City.

The CBRE Consulting Report estimates jobs created at the proposed project using industry-accepted assumptions about how many employees per square foot there are on average for different types of space. There are estimated to be 1,246 new jobs created at the proposed project, including 655 retail jobs, 416 office jobs, 140 light industrial jobs, 22 property management jobs, and 13 other jobs. Job losses are calculated by taking the estimated maximum sales impact divided by the average sales per square foot to calculate square feet impacted. This estimate is then divided by an assumed 500 square feet per employee to reach a worst-case scenario of 267 jobs impacted in Humboldt County. This estimate is multiplied by the City of Eureka's percent share of county sales to reach the 154 impacted jobs in Eureka. This leaves a net gain of 1,092 jobs for the City of Eureka.

Since the two reports used different methods to calculate job impacts, it is difficult to compare the results directly. However, both reports show that new retail development in Eureka would not result in a net loss of jobs.

#### **Impacts if Retail Is Built Outside Eureka**

The BAE Report states that the worst case for the City of Eureka is if a big box store were built outside of the City, but within Humboldt County. In Table 22 of the BAE Report, the fiscal losses from a general merchandise store built outside Eureka are estimated at \$80,000 in 2005. Fiscal losses from a major home improvement store built outside Eureka are estimated at \$90,000 in 2005. Both estimates are expressed in 1998 dollars.

The CBRE Consulting Report does not estimate fiscal impacts of a store built outside of Eureka, but it does estimate potential diverted sales from a proposed development in the City of Fortuna. This specific development, which is still in the preliminary stages, is located on the former Pacific Lumber Company Sawmill site and is likely to have big box stores and other retail. CBRE Consulting estimated potential diverted sales in Eureka alone at \$126.8 million in 2010, or 14 percent of Eureka's retail base. These diverted sales are equal to \$1.3 million in sales tax revenue that would go to the City of Fortuna. There would be no mitigating effects of the sales impacts since all the new jobs, new property tax, and new sales tax would accrue to the City of Fortuna. If a smaller development similar to the proposed project were built outside Eureka, the sales impacts would be \$30.5 million and the lost sales tax would be \$305,000. Given that sales from the Home Depot store would comprise about 34 percent of the total proposed project's sales taxes, sales impacts for just the Home Depot store would be approximately \$10.4 million and lost sales tax for just the Home Depot store would be approximately \$104,000. This estimate is similar to the BAE Report's estimate for fiscal impacts from a home improvement warehouse.

### **Actual Impacts of the Eureka Target Store**

A Target store opened in 2004 in the City of Eureka. The space had previously been occupied by a Montgomery Ward store that closed in 2001. The typical size of a Target is 123,000 square feet (TradeDimensions, 2006) and the average sales per square foot in 2005 was \$298 (Retail Maxim, 2006), so the annual sales expected were approximately \$36.7 million in 2005. Sales tax data are available for 2005; therefore, analysis can be conducted to assess the possible effects of the new store on retail sales tax collected in Eureka.

Target's 2005 annual report states that 95 percent of the goods it sold were consumables and commodities, electronics, entertainment, sporting goods and toys, apparel, and home furnishings. The most relevant Board of Equalization categories are apparel, general merchandise, food stores, home furnishings and appliances, and "other retail stores."

Even though Target sells goods in several categories, all sales at the store are recorded under the general merchandise category. Actual growth in the general merchandise category was \$35.9 million from 2003 to 2005. This is similar to the estimate for Target's annual sales. However, all of the categories had sales growth, although the most dramatic was in general merchandise. This growth strongly suggests that Target sales were a net addition to the city, with no diversions from existing retailers. The trend in number of outlets was mixed, with a net decrease of six stores in the home furnishings and appliances category and a net loss of one general merchandise store. However, there was no net loss of apparel stores, and there was a net gain of two food stores and 18 "other retail stores." These trends do not determine causation, but are still useful to examine for possible effects of the new store.

An interview with a Department of Finance official at the City of Eureka reveals that there has been no clear impact either negative or positive from the new Target store. The city official states that it is not clear if any stores have closed due to the Target, nor has there been any major subsequent development near the Target store. There also has been no noticeable impact on the Old Town and Downtown shopping districts. This interview suggests that the BAE Report overstated potential impacts of a big box general merchandiser on local retailers. Also, the store that is most competitive with Target, the K-Mart store in Eureka, has not closed due to the new competition.

### **Conclusion**

A review of the 1999 BAE Report using actual sales achieved reveals that forecasted sales growth is underestimated, especially in categories relevant to a Home Depot store. In addition, existing retail sales leakage is not taken into consideration when estimating sales impacts of new retail. Therefore, potential impacts on existing home improvement retailers are overestimated in the BAE Report.

The BAE Report and the CBRE Consulting Report have similar conclusions in most areas. Both find that retail development would have a net positive effect on the City of Eureka's General Fund. Through case studies of other California cities, both reports also find that new Wal-Mart and Home Depot stores in the case study cities do not necessarily lead to local retailer store

closures. They also find that new retail is not expected to produce a net loss of jobs. Both reports examine the issue of potential impacts to Eureka if retail is built elsewhere in Humboldt County, and both reports find that the City of Eureka General Fund and Eureka retailers would likely be negatively impacted if this occurs.

Finally, CBRE Consulting's analysis of sales trends in Eureka before and after the Target store was built finds that there was a possible negative impact on home furnishings and appliances retailers because there was a net loss of six stores. However, sales tax rose in all relevant categories, and an interview with a City of Eureka official reveals that there is no clear evidence of negative impacts, such as store closures, due to the new Target store. The store that is most competitive with Target, the K-Mart store in Eureka, has not closed due to the new competition. The city official also says that there has been no noticeable impact on the Old Town and Downtown shopping districts. These results indicate that the BAE Report overstates potential impacts on local retailers from a big box general merchandiser.

## Master Response 2: Air Quality Health Risk Assessment

This master response addresses the issues comments raised with respect to the Air Quality Health Risk Assessment (HRA) Analyses. The Draft EIR addresses this topic in Chapter IV.C, Air Quality and Chapter IV.G, Hazards and Hazardous Materials. See especially Impact C-4 (the potential for the proposed project to expose sensitive receptors to substantial pollutant concentrations) and Impact G-3 (the potential for the proposed project to emit hazardous emissions within one-quarter mile of a school). The Draft EIR also references analyses and findings of the following appendices:

- Appendix E: Health Risk Assessment Regarding Vehicle Emissions Associated with the Proposed the Marina Center
- Appendix F: Health Risk Assessment Associated with Diesel Emissions Associated with Wetlands Construction and Delivery Operations for the Proposed Marina Center Project

This master response addresses all or part of the following comments: 12-10, 16-17, 16-20, 16-268, 32-2, 32-3, 33-5, 33-14, 74-2, 74-5, 84-2, 95-5, 95-8, 126-11, and 148-3.

The comments suggest that the HRAs prepared for the proposed project are inadequate. The comments specifically state that:

- The HRAs fails to account for higher than normal cancer rates and/or risks in Humboldt County.
- The HRAs uses out-of-date data, data upwind from the project site according to prevailing wind patterns, and/or cited data that was not yet available at the time of the preparation of the HRAs.
- The HRAs insufficiently analyzes diesel emissions and should be redone.
- The HRA data sets omit analysis of air quality impacts associated with excavation and removal of contaminated soil and the levels of toxic pollutants in the proposed project's parking area.
- The HRAs fails to take into account current pollutant source contributors, such as the Evergreen Pulp and Fairhaven Co-Generation Plant, wood combustion for heating, delivery sites, and the U.S. 101 corridor-related automobile pollutants.
- An HRA should be prepared for operational automobile traffic.

### Response

An HRA was conducted to evaluate the cancer risks and non-cancer health effects associated with exposure to toxic air contaminants (TACs) emitted during wetlands construction and operation of the proposed project. Cancer risks are evaluated based on assumed lifetime exposure to TACs over the expected lifespan of the projects. Non-cancer health risks evaluated include adverse health effects from both acute (highest 1-hour exposure) and chronic (1-year exposure). The assessment methods are designed to estimate the highest possible, or "upper bound" risks to the

most sensitive members of the population (i.e., children, elderly, infirm), as well as those that are potentially exposed to TACs on a routine and prolonged basis (i.e., residents, recreational area users, and workers). The HRA was conducted in accordance with technical guidelines developed by federal and state agencies, including USEPA, California Office of Environmental Health Hazard Assessment (OEHHA),<sup>4</sup> and the BAAQMD.<sup>5</sup> The HRA is based on estimated emissions of a wide variety of TACs from the project site, and the length of time those living, working, and recreating in the vicinity of the project site could be exposed to TAC emissions. Actual exposures are not measured, but rather are modeled using sophisticated software that uses local meteorology and topography to predict the dispersion of TACs from their source, and the resulting concentrations at receptor sites. The models tend to be conservative, both in terms of the estimated exposure, and the toxic effects of the substances to which people are exposed: the models tend to overestimate the adverse health effect.

According to CalEPA guidelines, the results of an HRA should not be interpreted as the expected rates of cancer or other potential human health effects, but rather as estimates of potential risk or likelihood of adverse effects based on current knowledge, under a number of highly conservative assumptions and the best assessment tools currently available.<sup>6</sup>

As a note of clarification, Draft EIR Appendix F, *Health Risk Assessment Associated with Diesel Emissions Associated with Wetlands Construction and Delivery Operations for the Proposed the Marina Center Project*, is based on an outdated concept of the proposed project. This earlier report was superseded by the report in Draft EIR Appendix E, *Health Risk Assessment Regarding Vehicle Emissions Associated with the Proposed Marina Center Project*, which includes an updated site layout, traffic counts, and other updates. The report in Appendix E represents the most up to date Health Risk Assessment and the Report in Appendix F should be disregarded; it was inadvertently included as an appendix in the Draft EIR. (Please also see Chapter 2, Errata).

One comment suggests that the Draft EIR ignores the technical evidence that indicates that diesel exhaust can be harmful to health. However, in acknowledgment of the potential harmful effects of diesel particulate matter, the HRA was prepared for the project that estimated the health risk that would be caused by diesel and other emissions that would be associated with project. For a discussion of the results of the HRA, which discloses a less-than-significant project-related health hazard impact, please see Draft EIR pages IV.C-16 through IV.C-19.

The assessment of health related impacts due to diesel exhaust, as summarized in Appendix E, are based on data calculated from the existing and projected traffic flows using accepted methods established in the California Air Resources Board (CARB) risk assessment tools. The CARB risk assessment tools follow the Health Risk Assessment guidelines and steps outlined by the National Academy of Sciences. The emission components and rates used in the analysis are for pollutants associated with emissions that are designated as hazardous in CARB's Emission Inventory

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<sup>4</sup> Air Toxics Hot Spots Program Risk Assessment Guidelines, Parts I-IV and Appendices, California Environmental Protection Agency, OEHHA, 1997 - 2003.

<sup>5</sup> BAAQMD Health Risk Screening Analysis Guidelines ([http://www.baaqmd.gov/pmt/air\\_toxics/risk\\_procedures\\_policies/hrsa\\_guidelines.pdf](http://www.baaqmd.gov/pmt/air_toxics/risk_procedures_policies/hrsa_guidelines.pdf)), June 2005.

<sup>6</sup> California Environmental Protection Agency, OEHHA, Op Cit

Criteria and Guidelines Regulations (Title 17, California Code of Regulations, Sections 93300-93300.5), and CARB's Emission Inventory Criteria and Guidelines Report. The HRA evaluates the incremental health risk associated with projected mobile sources, including diesel delivery trucks. This analysis is included in the Draft EIR to specifically assess the impacts of diesel and automotive emissions at the site.

Several comments appear to criticize the Draft EIR for not describing Humboldt County as an area with a high ranking for cancer incidence. However, as described on Draft EIR page IV.C-17, The American Lung Association has graded Humboldt County as A, the best grade possible. In addition, one commenter appears to have incorrectly interpreted the intent of Table IV.C-7 by indicating that it suggests that there are no health effects in Humboldt County due to the small population in the County. However, the purpose of the table is to illustrate that the population of Humboldt County appears to be at no greater risk than the total population of California for the groups identified.

Several other comment concern that the Draft EIR does not include evaluation of the health effects of project-related traffic that would be diverted into Eureka neighborhoods. In order to evaluate the project's potential impacts on traffic in the surrounding geographic area, the Draft EIR evaluates and models the potential diversion of vehicle trips from major arterials onto surrounding neighborhood roadways, including Herrick Avenue, Harris Avenue, and S Street, that might be caused by the project. The transportation analysis specifically modeled the geographic distribution and magnitude of trips at all intersections and on all segments within the Eureka area using the Greater Eureka Area Traffic Model, which is an accepted method for identifying potential project impacts on surrounding traffic patterns. For all locations mentioned by the comments, the increase in traffic was found to be insignificant. For example, the project is expected to increase traffic on Herrick Avenue by only 13 trips in the a.m. peak hour and 17 trips in the p.m. peak hour. On F Street, south of Downtown, the project would contribute 5 trips in the a.m. peak hour and 9 trips in the p.m. peak hour. Similar results were found for Harris Avenue and S Street. Given the negligible number of vehicle trips and the low level of emissions anticipated from those trips, the project would not be anticipated to have a measurable effect, and certainly no significant effect, on human health or sensitive receptors along the referenced roadways.

Health risk assessments measure incremental health risks based on a number of factors, including the type and concentration of emissions and the proximity of those emissions to sensitive receptors. For the proposed project, the two major sources of emissions from a health risk perspective involve the starting and stopping of motor vehicles (personal and commercial) and the operation of diesel trucks at the project site. Emissions from personal motor vehicles, including vehicle trips around surrounding roadways, pose substantially less risk. The Draft EIR nonetheless evaluates those risks and concludes that the project would have a less-than-significant impact on human health (see Draft EIR pages IV.C-16 and IV.C-17 and Appendix E). As for sensitive receptors—such as the Pinehill School, Eureka Golf Course, or Zane Middle School in the neighborhoods surrounding Herrick Avenue, Harris Avenue, and S Street—the few vehicle trips and associated emissions that would occur during the peak-hours would not be expected to result in a significant increase in health risk to sensitive receptors.

At least two comments indicate that the HRA fails to analyze prevailing wind patterns for localized effects in relation to specific demographics or land uses such as schools, hospitals, and senior centers. However, a meteorological data set that includes the prevailing wind patterns was incorporated into the air dispersion modeling and risk analysis performed for the site. The weather data used in the analysis was provided in a database compiled by CARB. The database provides weather data for wind direction, temperature, and air inversion modeling. The appropriate values from the database are selected based on the site location coordinates. If the closest weather station represented in the database does not have a particular parameter, such as wind direction, data from the next nearest station with appropriate data is selected.

One comment asks what mitigation measures would be implemented to reduce emissions of particulate matter. The estimated project and cumulative construction-related emissions, as summarized in Table 3 on page 13 of Draft EIR Appendix E are below the North Coast Unified Air Quality Management District (NCUAQMD) thresholds for significance, and therefore no further mitigation measures are warranted. See also Draft EIR page IV.I-12 Impact C-2.

## Master Response 3: Local Coastal Program Policy Issues

This master response addresses the issues comments raise with respect to the proposed project's uses and their compliance with the Local Coastal Program (LCP) and/or their appropriateness for the waterfront. The Draft EIR addresses this topic in Chapter IV.I, Land Use and Planning. See especially Impact I-2 (the potential for the proposed project to conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect) and Impact I-4 (the potential for the proposed project, together with other developments in the vicinity, to result in any adverse cumulative land use impacts).

This master response addresses all or part of the following comments: 3-1, 3-16, 3-17, 3-19, 3-20, 3-21, 3-25, 3-26, 9-15, 9-17, 16-61, 16-69, 16-95, 16-96, 16-118, 16-148, 16-168, 17-4, 17-6, 17-26, 24-1, 24-3, 24-8, 24-30, 25-28, 25-30, 31-5, 31-11, 37-1, 50-5, 52-38, 52-39, 52-40, 58-16, 66-9, 83-1, 84-7, 87-3, 88-14, 95-16, 95-17, 108-1, 108-4, 113-1, 117-4, 117-8, 122-22, 133-2, 133-3, 142-5, 148-8, 148-9, 151-11, 151-12, 173-3, 174-4, 179-15, 179-21, and 179-22.

The comments suggest that the proposed project's uses are inconsistent with the Local Coastal Program and/or the General Plan, are out of character with the waterfront, and are inappropriate waterfront uses. The comments specifically state that:

- The Draft EIR should be supplemented to include a quantitative analysis of the bulk and scale of development in the surrounding area and in the proposed project, and a determination of whether the project is visually compatible.
- The project is in direct conflict with the General Plan and/or the Local Coastal Program. Some proposed uses, such as the shopping center, are in direct conflict with uses recommended in the area. The project does not include coastal-dependent or even coastal-related businesses, for which the land along the waterfront is reserved. The uses proposed are the lowest priority uses for the Coastal Zone.
- The retail plan does not increase public access to the waterfront, as required by the Local Coastal Program.
- Other coastal-dependent, or at least -related, uses should be analyzed as Alternatives in the EIR, especially recreation- and tourism-related uses, given they would comply with the Local Coastal Program.
- If the proposed project's approvals are obtained but the development does not move forward, the City would be left with a piece of property zoned for uses specific to this project and not consistent with the Local Coastal Program.

A number of comments on the Draft EIR have raised concerns that the proposed project would be inconsistent with the adopted Local Coastal Program (LCP). This is acknowledged in the Draft EIR, and the project description states that the project would require an amendment to the adopted LCP. The potential physical impacts of the project's inconsistency with the LCP are discussed and analyzed in Chapter IV.I, Land Use and Planning, of the Draft EIR; the majority of

issues raised in the comments are policy questions that do not fall within the scope of CEQA but are nonetheless addressed in this Master Response.

This master response will:

- summarize the discussion in the Draft EIR concerning the Local Coastal Program
- summarize the Draft EIR discussion of the existing and proposed amendments to the Land Use Plan and the Implementation Plan
- discuss what uses would be permitted should the proposed LCP amendment be denied
- examine the proposed LCP Amendment for conformity with Chapter 3 of the Coastal Act
- discuss the range of allowed uses of the property should the LCP amendment be approved

## **Response**

### ***Local Coastal Program***

The California Coastal Commission was established by voter initiative in 1972 (Proposition 20) and made permanent by the Legislature in 1976. The mission of the Coastal Commission, as the lead agency responsible for carrying out California's coastal management program, is to plan for and regulate development in the coastal zone consistent with the policies of the California Coastal Act. In order to carry out the policies of the Coastal Act, each of the 73 cities and counties in California's coastal zone were charged with preparing and implementing Local Coastal Programs (LCPs) to carry out the Coastal Act's mandate to protect coastal resources and maximize public access to the shoreline. These LCPs established the allowable kinds, locations, and intensities of new development in the coastal zone, and set out other development limitations, to achieve the objectives of the Coastal Act. Once each Local Coastal Program was certified, responsibility for implementation of State Coastal Act provisions reverted to the local government and the Coastal Commission assumed a secondary role, conducting appeals of local permit decisions under limited circumstances, considering proposed amendments to LCPs, providing technical assistance and advice, monitoring local permits to assure compliance, and performing five-year evaluations of LCPs.

According to the Coastal Act, a Local Coastal Program is divided into two components: (1) the Land Use Plan (LUP), which outlines the existing conditions, permitted uses, and policies needed to achieve the goals of the Coastal Act and includes the general plan map; and (2) the Implementation Plan (IP), which includes zoning regulations, the zoning map and specific coastal zone ordinances to implement the policies of the LUP. The proposed project would require an amendment to both the LUP and the IP.

LCPs have become an important part of California's coastal zone management program, and they need to be updated to remain effective. Significant changes have occurred that directly impact efforts to protect California's coast. Population and development patterns have changed, leading to new pressures on resources and public access. New nonpoint source pollution laws are in

place, and scientists have learned more about sensitive species, habitats and other coastal resources. Global warming and sea level rise are concerns are now under consideration.

Successfully providing for a community's need to grow and thrive while protecting resources depends on the ability to address such changes in planning documents. If an LCP is out of sync with current conditions, knowledge, and practices, the potential for land use conflicts is exacerbated, and it is less likely either appropriate development or coastal resource protection can be achieved.

In May 1984, the City of Eureka adopted its LCP in accordance with the California Coastal Act. The LCP governs land use and development within the coastal zone, superseding the land use provisions of the 1977 General Plan and preexisting zoning in the coastal zone. In the 1990s, the City of Eureka updated its LUP through a citywide General Plan update. The City determined that the most effective way to address the separate legal requirements of State General Plan law and the California Coastal Act was to combine the goals, policies, and programs addressing these requirements (i.e., non-coastal and coastal) into a single, unified document. The current City of Eureka LUP, as an integral component of the citywide General Plan for Eureka, was certified by the Coastal Commission on September 9, 1998, and adopted by the City Council on February 23, 1999.

The adopted General Plan and LUP have a planning horizon of 15 to 25 years, and together they formalize a long-term vision for the physical evolution of Eureka. To achieve their purposes, the General Plan and LUP must be flexible enough to respond to changing conditions and at the same time specific enough to provide predictability and consistency in guiding day-to-day land use and development decisions. Over the years, conditions and community needs change and new opportunities arise; the General Plan and LUP need to keep up with these changes and new opportunities.

### ***Existing and Proposed Land Use Plan and Implementation Plan Designations***

The project site currently has three LUP designations: Light Industrial (LI), Highway Service Commercial (HSC), and Public/Quasi-Public (PQP). The implementing zoning designations are Limited Industrial (ML), Service Commercial (CS), and Public (P). The Draft EIR Figure IV.I-1 shows the existing and proposed land use designations, Figure IV.I-2 shows the existing and proposed zoning designations, and the Table IV.I-1 shows the existing and proposed zoning and land use designations by assessor parcel number.

Under the proposed project, approximately 3.50 acres between the northerly extension of the west line of Broadway to A Street and between Second Street and Waterfront Drive, the LCP would not be amended and would continue to have a general plan designation of Light Industrial (LI) with a corresponding zoning of Limited Industrial (ML).

Approximately 3.54 acres from west of the northerly extension of the west line of Broadway to the proposed Fourth Street extension and between Waterfront Drive and the proposed Second

Street extension, the proposed LCP amendment would include a general plan designation of Waterfront Commercial (WFC) with a corresponding zoning of Waterfront Commercial (CW).

Approximately 5.91 acres west of Broadway, south and east of the proposed Second Street extension and north of the proposed Fourth Street extension, the proposed LCP amendment would include a general plan designation of Professional Office (PO) with a corresponding zoning of Office and Multi-Family Residential (OR).

Approximately 16.65 acres south of the proposed Fourth Street extension to the south property line and between the eastern edge of the proposed wetland restoration area and the west line of Broadway, the proposed LCP amendment would include a general plan designation of General Service Commercial (GSC) with a corresponding zoning of Service Commercial (CS).

Approximately 13.13 acres for the proposed wetland restoration area, the LCP amendment would have a general plan designation of Water - Conservation (WC) with a corresponding zoning of Conservation Water (WC).

### ***Permitted Uses under Existing Land Use Plan and Implementation Plan Designations***

There are three existing zoning designations covering the property: Limited Industrial (ML), Service Commercial (CS), and Public (P). The uses of the ML and CS zones are described below in the section discussing the allowed uses of the site should the proposed LCP amendment be approved.

Pursuant to Eureka Municipal Code Section 156.079, the P Public District is included in the zoning regulations to provide a procedure for the orderly establishment of public facilities, expansion of their operations, or changes in the use of lands owned by governmental agencies. In addition to the uses and structures that existed on the property as of the adoption date of the regulations, the P District principally permits the following nineteen uses:

- (1) Airports;
- (2) Animal shelters;
- (3) Boat harbors and wharves;
- (4) Cemeteries;
- (5) Corporation yards;
- (6) Fire stations;
- (7) Hospitals;
- (8) Libraries;
- (9) Offices;
- (10) Police stations;
- (11) Power stations;
- (12) Pumping stations;

- (13) Public recreation facilities, including parks, playgrounds, zoos, and golf courses;
- (14) Public buildings and grounds;
- (15) Public schools, including nursery, elementary, junior high, and high schools, colleges and universities;
- (16) Reservoirs;
- (17) Sewage treatment plants;
- (18) Storage tanks;
- (19) Uses which are accessory and incidental to a permitted use.

The following three uses are permitted upon the granting of a use permit:

- (1) Oil and gas pipelines;
- (2) Parking facilities located on a site separated from the use which the facilities serve;
- (3) Storage or processing of materials or equipment accessory to other permitted or conditional uses.

As discussed in the Draft EIR, the subject property is privately owned. Although Section 156.079, states that the P District provides for the development of lands owned by governmental agencies, the regulations would not prohibit a private owner of lands in the P District from developing the lands with any of the uses listed above. If the proposed LCP amendment is denied and the property remains zoned Public, and if the private property owner were to propose the development of any of the uses allowed in the P District, the proposal would be reviewed by the city for conformance with the applicable adopted regulations. But, because the property is privately owned, the City cannot dictate to the private property owner which of the above uses the owner must develop. Even though the property is in the P District, it does not eliminate the private property rights of the owner.

### ***Proposed LCP Amendment Conformance with Chapter 3***

Although an LCP amendment is required for the proposed project, approval of the LCP amendment is not approval of the proposed project. Conceivably, the LCP amendment could be approved and the proposed project denied. As discussed in the Draft EIR and in this master response, the proposed LCP amendment includes amendments to both the Land Use Plan (LUP) and the Implementation Plan (IP). The amendments to the LUP include both mapping amendments and a text amendment, the amendments to the IP are mapping only. The Coastal Act sets the standards of review for the LUP and the IP amendments.

The standard of review for LUP amendments is found in Section 30512 of the Coastal Act, which requires the Coastal Commission to certify a Land Use Plan amendment if it finds that the amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Chapter 3 of the Coastal Act, commencing with Section 30200, contains seven Articles: General; Public Access; Recreation; Marine Environment; Land Resources; Development; and Industrial Development.

In April 2007, the Coastal Commission issued a report titled *Updating the LCP—A Place to Start*. The document provides guidance to local governments about issues that should be addressed in an LCP update and it highlights recent Coastal Commission decisions and policy concerns. Although the document is intended to guide an LCP update, it is also relevant to LCP amendments. The guide broadens the seven Articles of Chapter 3 into a list of ten topics for discussion. The ten topics recommended by the Coastal Commission for discussion are:

- Public Access
- Recreation and Visitor Serving Facilities
- Water Quality
- Natural Resources (ESHA, Wetlands, etc.)
- Agricultural Resources
- Planning and Locating New Development
- Scenic Resources
- Coastal Hazards
- Shoreline Erosion and Protective Structures
- Energy, Industrial and Other Coastal Development

This master response will divide discussion of the proposed LUP mapping amendments into the ten topics listed above. The discussion will focus on conformance of the LUP mapping amendments with Chapter 3 of the Coastal Act, not the subsequent development project's compliance with Chapter 3.

### **Public Access**

Providing maximum public access to the coastal and public recreation areas is a fundamental goal of the Coastal Act. This goal includes the protection of existing and the provision of new public access to and along the shoreline with new development when warranted. Eureka's adopted LCP includes such provisions by requiring that new development protect existing and provide new vertical and lateral public access to the shoreline. The proposed LCP amendment would change the LUP designations of the property for the purpose of facilitating private development of the subject property. A subsequent section of this master response lists the types of uses that would be allowed if the LUP mapping amendments were approved. The proposed LCP amendment, however, would make no changes to the adopted LCP policies or regulations pertaining to coastal public access. Therefore, the existing coastal public access policies and regulations would be equally applicable regardless if the LUP mapping amendments were approved or not.

Some comments on the Draft EIR suggest that mitigation should be required to provide coastal public access. There are no significant impacts to public access identified in the Draft EIR and therefore, no mitigation is required. In addition, the subject property is not located on the "coast" and is separated from the shoreline of Humboldt Bay by Waterfront Drive. Therefore, regardless of the LUP mapping amendments, the City cannot require the Project Applicant to develop access to or along the shoreline because the Applicant has no control of the lands upon which such shoreline access would be developed. Nonetheless, there already exists in the area public access

to and along the shoreline including, but not limited to, Waterfront Drive, the public parking area on Marina Way, and the public parking lot and boat launch at the marina. Furthermore, if the LCP amendment was approved, and if subsequently the proposed project was approved, access to Waterfront Drive from U.S. 101 (Broadway) would be improved by construction of Fourth Street from Broadway to Waterfront Drive through the project site; thereby improving public access to the coast.

### **Recreation and Visitor Serving Facilities**

The Coastal Act emphasizes protection of oceanfront land suitable for recreation uses and with respect to visitor serving uses and notes in Section 30222 that “The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.” The City’s adopted LCP includes a policy (1.N.6) to “ensure that sufficient area is provided for parks and open space in all of the City’s residential neighborhoods...”

As noted above, the project site is not waterfront or oceanfront and is separated from Humboldt Bay by two roads, a railroad line, and waterfront property already in public ownership. Consequently, the project would not negatively affect the ability of the City to provide water-oriented and other related recreation uses and publicly owned waterfront property is available in the immediate project site vicinity to meet that type of land use demand. In addition, the proposed wetland reserve and associated open space uses in the southwest portion of the project site would in effect allocate sufficient area to parks and open space to satisfy City recreation policies related to residential neighborhoods.

With respect to visitor serving facilities, the proposed LUP amendments would specifically provide for uses that are considered visitor serving, such uses could include the proposed 12,500 square foot museum in the northern portion of the site and some of the restaurant and retail uses. As noted later in this Master Response, the proposed zoning designations (e.g. Waterfront Commercial, Service Commercial, Conservation Water District) would allow for a wide range of potential future uses, including many that could be considered visitor serving.

Therefore, the proposed LUP amendment is consistent with this provision of Chapter 3.

### **Water Quality Protection**

The Coastal Act requires the protection and enhancement of marine and coastal water quality. The adopted LCP provides the planning and regulatory framework for addressing water quality impacts and it includes policies, ordinances, and programs that establish Best Management Practices (BMPs) for new development both during construction and for the life of a project. The proposed LUP amendments do not alter the adopted LCP with regard to any policy, program or regulation concerning marine and coastal water quality. Therefore, the proposed LUP amendment is consistent with this provision of Chapter 3.

### **Protecting Sensitive Habitats and Other Natural Resources**

The Coastal Act sets high standards for the protection of Environmentally Sensitive Habitat Areas (ESHAs), wetlands, riparian areas, and other natural resources in the coastal zone. The City's adopted LCP includes policies and regulations that require the identification of ESHAs, wetlands, etc. through an evaluation of existing known resources at the time of proposed development regardless of a site's inclusion or lack thereof on a resource map.

The proposed LUP amendments would allow the development of a broader range of uses than is currently allowed. However, the identification of ESHAs is not dependent on the range of uses, but the actual existence of ESHAs; and any area that meets the definition of ESHA must be given all the protection provided for in the Coastal Act regardless of whether the proposed LUP amendment is approved or not.

As discussed in the Draft EIR and in Master Response 4, the property is under a Clean-Up and Abatement Order from the Regional Water Quality Control Board. The implementation of the Interim Remedial Action Plan (IRAP) would result in the loss of existing scattered low-quality wetlands on the site. The IRAP includes onsite mitigation of the impacted wetlands, and the proposed LUP amendment would facilitate such mitigation by designating approximately 13.13 acres "Conservation Water" for the purpose of creating a wetland restoration area.

### **Protecting Agricultural Resources**

The adopted LCP includes policies and ordinances to ensure the long term protection of prime coastal agricultural and rural lands through such means as agricultural use designations, minimum parcel sizes, designation of stable boundaries separating urban and rural areas and restrictions on divisions of lands outside the urban limit line. As discussed in the Draft EIR, there are no prime coastal agricultural lands on the project or in the vicinity; therefore, the proposed LUP mapping amendment would not convert agricultural lands to non-agricultural uses.

### **Planning and Locating New Development**

The proposed LUP mapping amendments would alter the allowed uses of the property. The most prominent LUP mapping amendment would change the lands designated Public-Quasi Public (PQP) to a combination of designations that would support commercial, office & residential and open space uses. Some comments on the Draft EIR assert that because the proposed project is not a coastal-dependent development or use, it should not be approved; by extension, the commenters evidently believe that because the LUP amendment would not restrict future development or uses to coastal-dependent development, the LUP amendment should not be approved. However, as discussed in the Draft EIR and this master response, the proposed LUP designations would, in fact, allow priority uses including coastal-dependent development, in addition to a broad range of other uses.

The Coastal Act, Section 30101 defines "coastal dependent development or use" as any development or use which requires a site on, or adjacent to, the sea to be able to function at all. As stated previously, the subject property is not on or adjacent to the sea, therefore, it is arguable whether coastal-dependent uses could even be developed on the property (regardless of the LUP

designation). Priority uses including public accessways and related support facilities, water-oriented public and private recreation, coastal-dependent industrial operations.... and this LCP amendment doesn't preclude the development of coastal dependant land uses.

Some comments on the Draft EIR state that the proposed project should include more housing. Under the proposed LUP designations of Waterfront Commercial (WFC), Professional Office (PO) and General Service Commercial (GSC), the residential uses permitted in the multi-family residential districts would be allowed; the land area for these three designations is about 26 acres. Therefore, the LUP amendment could facilitate additional housing should the developer chose to do so.

Given the site characteristics and constraints, ownership, and applicable policies, there appear to be no other higher-priority uses that could be more effectively provided for at the project site in a more expeditious timeframe. Please also see response to comment 3-25.

### **Protecting Coastal Scenic Resources**

The adopted LCP provides for the protection of significant public views to and along the shoreline and critical scenic views. The Draft EIR analyzes the potential impacts of the proposed project on coastal and scenic views and vistas. Regardless of the LUP general plan designation, any development of the property would have the same or similar impacts as discussed and analyzed in the Draft EIR. Therefore, the proposed LUP mapping amendments would have no change on how development of the site would affect coastal scenic resources.

### **Managing Coastal Hazards**

Managing coastal hazards is a key component of the coastal program. The adopted LCP aims to reduce risks to life and property and avoid substantial changes to natural landforms, and it contains hazard policies that direct the siting and design of new development so as to minimize risk to life and property as well as impacts to coastal resources. The proposed LUP amendments would not amend any of the existing policies or regulations pertaining to coastal hazards. Any development, regardless of the LUP General Plan designation, would be required to comply with the policies and regulations protecting coastal landforms and guarding against risks to life and property.

### **Shoreline Erosion & Protective Structures**

As discussed in the Draft EIR and in this master response, the subject property is not located on the shoreline and it does not have any coastal bluff faces, sandy and rocky beach areas, or other sensitive coastal resources that would require protection through the construction of shoreline erosion or protective measures. The proposed restoration and enhancement of Clark Slough on the project site could entail some limited erosion control structures at the point that it would pass under Waterfront Drive. But the LUP amendment would not increase the potential for shoreline erosion or impact protected structures.

### **Energy and Industrial Development**

The adopted LCP contains policies for the expansion and location of energy and coastal-dependent industry. The proposed LUP amendments would not amend any of the policies or regulations pertaining to the siting, development or expansion of energy or coastal-dependent industrial development.

By definition, coastal-dependent industrial development would be industrial development that requires a site on, or adjacent to, the sea to be able to function at all. The subject property is not located on or adjacent to the sea—it is separated from Humboldt Bay by Waterfront Drive; therefore, it is arguable whether coastal-dependent industrial development could be developed on the property regardless of the LUP land use designation.

With regard to the proposed LUP text amendment, applying the land use designation “Professional Office” would require an amendment to Table B-1 of Appendix B of the General Plan Policy Document. Appendix B is titled “Coastal Land Use Policy,” and it addresses the coastal planning requirements established by the California Coastal Act. Table B-1 is a matrix that lists the (inland) general plan designations, the comparable LUP plan designation and the corresponding Implementation Plan zoning designation. It also lists the purposes, principal uses and conditional uses for each LUP plan designation.

Under Table B-1, there is no corresponding LUP plan designation for the (inland) general plan designation of Professional Office (PO). However, the Coastal Zoning Regulations (Section 156.071) include the Office and Multi-Family Residential zone district (OR), and pursuant to Table 1-1 of the adopted General Plan, the corresponding zoning district for the Professional Office land use designation is the OR district.

Table B-1 does include a LUP plan designation of Core-Residential Office (C-RO) which has as its implementing ordinance the Office and Multi-Family Residential zone district (OR). The portion of the City’s core area that is in the coastal zone between roughly “I” and “O” Streets and First and Third Streets has an LUP designation of C-RO with a corresponding zone designation of OR. However, because the corresponding LUP designation for the OR zone is only in the core area, the OR zone cannot be expanded to lands within the coastal zone but outside the core area. The proposed amendment to Table B-1 would allow the expansion of the OR zone within the coastal zone and outside the core area of the city through the use of the Professional Office LUP designation. It is important to note that the proposed amendment to Table B-1 would not permit a use that is not already allowed in the coastal zone.

The proposed amendment to General Plan Table B-1 with strikethrough/underline is shown below.

With regard to the Implementation Plan amendments, pursuant to Coastal Act Section 30513 the Coastal Commission may only reject IP amendments if they do not conform with, or are inadequate to carry out, the provisions of the certified Land Use Plan. Because the proposed IP mapping amendments would be specifically designed to conform with and carry out the proposed LUP mapping amendments, this master response will not include a detailed discussion of the proposed IP amendments.

<b>GP Designation(s)</b>	<b>LCP-LUP Designation(s)</b>	<b>LCP-IP (Zoning) Designation(s)</b>	<b>Purpose(s)</b>	<b>Principal Use(s)</b>	<b>Conditional Uses</b>
PO Professional Office	<u>No corresponding LUP designation PO Professional Office</u>	<u>N/A OR Office/Multi- Family Residential</u>	<u>N/A To provide opportunities for offices of a commercial character to locate outside commercial districts and to provide opportunities for compatible mixed uses such as commercial and single and multiple family dwellings.</u>	<u>N/A Single family residences, multi- family residences, administrative, business, and professional offices.</u>	<u>N/A Hotels, motels, boarding houses, private institutions, retail services compatible with principal uses.</u>

**Range of Allowed Uses Under Proposed LCP Amendment.** If the LCP amendment is approved and certified by the Coastal Commission, the land use and zoning designations would change as described in the Draft EIR and summarized above. If the LCP is amended, the uses allowed in each District would not be limited to only those uses proposed for the project, rather the full range of permitted and conditional uses for each District would be allowed.

As evident by the following list, an array of permitted and conditional uses would be possible under each designation. It would be unreasonable and speculative to analyze what uses could be realistically proposed for the project site in the future, should the LCP amendment be approved but the proposed project not go forward. In addition, any different subsequent project would be subject to CEQA environmental review and an updated regulatory approved process.

Below is the list of principally and conditionally permitted uses for each District proposed in the LCP amendment.

### **Limited Industrial (ML)**

#### ***Permitted uses.***

- (1) Manufacturing, assembling, compounding, packaging, and processing of articles or merchandise from the following previously prepared materials: asbestos, bone, canvas, cellophane, cellulose, cloth, cork, feathers, felt, fiber, and synthetic fiber, fur, glass, hair, ink, horn, leather, paint (not employing a boiling process), paper, plastics, precious or semi-precious metals or stones, rubber and synthetic rubber, shells, straw, textiles, tobacco, and wood (not including a planing mill or saw mill);
- (2) Manufacturing, assembling, compounding, packaging, and processing cosmetics, drugs, pharmaceuticals, perfumes, perfumed toilet soap (not including refining or rendering of fats or oils), and toiletries;
- (3) Manufacture of ceramic products, such as pottery, figurines, and small glazed tile, utilizing only previously pulverized slag, providing that kilns are fired only by electricity or gas;

- (4) Manufacture and maintenance of electric and neon signs, commercial advertising structures, and light sheet metal products, including heating, and ventilating ducts and equipment, cornices, eaves, and the like;
- (5) Manufacture of scientific, medical, dental, and drafting instruments, orthopedic and medical appliances, optical goods, watches and clocks, electronics equipment, precision instruments, musical instruments, and cameras and photographic equipment, except film;
- (6) Assembly of small electric appliances, such as lighting fixtures, irons, fans, toasters, and electric toys, but not including refrigerators, washing machines, dryers, dishwashers, and similar home appliances;
- (7) Assembly of electrical equipment, such as radio and television receivers, phonographs, and home motion picture equipment, but not including electrical machinery;
- (8) Manufacture and assembly of electrical supplies, such as coils, condensers, crystal holders, insulation, lamps, switches, and wire and cable assembly, provided no noxious or offensive fumes or odors are produced;
- (9) Manufacture of cutlery, hardware, and hand tools, die and pattern making, metal stamping, and extrusion of small products, such as costume jewelry, pins and needles, razor blades, bottle caps, buttons, and kitchen utensils;
- (10) Manufacturing, canning, and packing of food products, including fruits and vegetables, but not including meat products, pickles, sauerkraut, vinegar, or yeast, dehydrating of garlic or onions, or refining or rendering of fats and oils;
- (11) Processing, packing, and canning of seafood for human consumption, not including processing seafood for fish oils;
- (12) Bakeries;
- (13) Blacksmith shops;
- (14) Boat buildings;
- (15) Bottling works;
- (16) Building material storage yards;
- (17) Bus depots;
- (18) Cold storage plants;
- (19) Contractors' equipment yards;
- (20) Dairy products plants;
- (21) Freight forwarding terminals;
- (22) Furniture manufacture;
- (23) Ice manufacture;
- (24) Janitorial services and supplies;
- (25) Kennels;
- (26) Laboratories;
- (27) Laundry and cleaning plants;
- (28) Lumber yards, not including planing mills or saw mills;

- (29) Machine shops not involving the use of drop hammers, automatic screw machines, or punch presses with a rated capacity of over 20 tons;
- (30) Mattress manufacture;
- (31) Metal finishing and plating;
- (32) Offices, not including medical or dental offices;
- (33) Printing, lithographing, and engraving;
- (34) Public utility and public service pumping stations, equipment buildings and installations, service yards, power stations, drainage ways and structures, storage tanks, and transmission lines;
- (35) Railroad stations;
- (36) Repair shops, including electrical, glass and automotive;
- (37) Sheet metal shops;
- (38) Storage yards for commercial vehicles;
- (39) Textile, knitting and hosiery mills;
- (40) Trucking terminals;
- (41) Veterinarians' offices and small animal hospitals;
- (42) Warehouses, except for the storage of fuel or flammable liquids;
- (43) Welding shops;
- (44) Woodworking shops and cabinet shops;
- (45) Pickup truck camper and canopy assembly;
- (46) Retail sales establishments with single occupant floor areas of 40,000 square feet or larger;
- (47) Wholesale stores with single occupant floor areas of 40,000 square feet or larger and public utility building, and uses;
- (48) Parking lots;
- (49) Accessory structures and uses located on the same site as a permitted use.  
(‘63 Code, Section 10-5.29162)
- (50) Emergency shelters pursuant to the requirements and regulations contained in Section 156.041 of this chapter.

***Conditional uses.***

- (1) The following conditional uses shall be permitted upon the granting of a use permit in accord with the provisions of Sections 155.280 through 155.299 of this title:
  - (a) Accessory structures and uses located on the same site as a conditional use;
  - (b) Motor vehicle wrecking yards and scrap metal yards;
  - (c) Oil and gas pipelines;
  - (d) Recreational vehicle parks in accordance with the regulations prescribed in Sections 155.230 through 155.232 of this title.
  - (e) Storage of fuel and flammable liquids;
  - (f) Storage of logs or wood chips;

- (g) Gymnastics schools and health clubs.
- (2) Any of these uses listed as permitted uses in the MG District provided that, on the basis of the use permit application and evidence submitted, the Planning Commission makes the following findings:
  - (a) The consideration of all determinable characteristics of the use that is the subject of the application indicates that the use has the same essential characteristics as the uses listed as permitted uses in the ML District with respect to the method of operations, type of process, materials, equipment, structures, storage, and appearance;
  - (b) That the use will conform with each of the principles and standards prescribed for uses in the ML District;
  - (c) That the use will not create significantly, more vehicular or rail traffic than the volumes normally created by the permitted uses of the ML District.

### **Waterfront Commercial (CW)**

#### ***Permitted uses.***

- (1) Docks, piers and wharfs;
- (2) Boat launching;
- (3) Commercial fishing facilities;
- (4) Recreational boating facilities;
- (5) Public and commercial recreation;
- (6) Hotels and motels;
- (7) Visitor-serving facilities, including antique shops, art galleries, restaurants (but not including drive-in establishments), bars and taverns, and other establishments that offer retail sales and services to visitors;
- (8) Offices related to or dependent upon coastal-dependent or coastal-related uses;
- (9) Ice vending stations;
- (10) Marine and boat sales, services and repairs;
- (11) Coastal-dependent and coastal-related uses.

#### ***Conditional uses.***

- (1) The following conditional uses shall be permitted in the CW Waterfront Commercial District upon the granting of a use permit in accord with the provisions of Section 155.280 through 155.299 of this title. The Applicant shall demonstrate and the city shall find that granting of a use permit will not diminish recreational or visitor-serving opportunities.
  - (a) Accessory uses and structures located on the same site as a permitted use;
  - (b) Administrative, business, and professional offices, except medical and dental offices;
  - (c) Art and artists' supply stores;
  - (d) [Reserved]
  - (e) Arts and crafts schools and colleges;

- (f) Bakeries, including baking for sale on the premises only;
- (g) Banks;
- (h) Barber shops and beauty shops;
- (i) Bus depot;
- (j) Bus depots, provided all buses shall not be stored on the site and no repair work or servicing of vehicles shall be conducted on the site;
- (k) Business, professional, and trade schools and colleges;
- (l) Charitable institutions;
- (m) Churches, parsonages, parish houses and other religious institutions;
- (n) Christmas tree sales lots;
- (o) Cleaning, coin-operated;
- (p) Clothing and costume rental establishments;
- (q) Clothing stores;
- (r) Conference center;
- (s) Dairy products manufacturing for retail sales on the premises only;
- (t) Dance halls;
- (u) Department stores;
- (v) Dry goods stores;
- (w) Finance companies;
- (x) Florists;
- (y) Food stores and supermarkets;
- (z) Fur shops;
- (aa) Furniture stores;
- (bb) Garden shops;
- (cc) Gunsmiths;
- (dd) Gymnasiums;
- (ee) Hardware stores;
- (ff) Ice storage houses;
- (gg) Interior decorating shops;
- (hh) Jewelry stores;
- (ii) Laundries, self-service type;
- (jj) Leather goods and luggage stores;
- (kk) Liquor stores;
- (ll) Locksmiths;
- (mm) Massage and physical culture studios;
- (nn) Medical and dental offices;
- (oo) Medical and orthopedic appliance stores;
- (pp) Meeting halls;
- (qq) Mens' furnishing stores;
- (rr) Messengers' offices;
- (ss) Millinery shops;
- (tt) Music and dance studios;

- (uu) Music stores;
- (vv) Musical instrument repair shops;
- (ww) Office and business machine stores;
- (xx) Offices and office buildings;
- (yy) Oil and gas pipelines;
- (zz) Optician and optometrical shops;
- (aaa) Parking facilities, including fee parking facilities;
- (bbb) Passenger railroad stations;
- (ccc) Pet and bird stores;
- (ddd) Picture framing shops;
- (eee) Post offices;
- (fff) Prescription pharmacies and dental and optical laboratories;
- (ggg) Pressing establishments;
- (hhh) Printing shops, including lithographing and engraving;
- (iii) Radio and television broadcasting studios;
- (jjj) Realtors and real estate offices;
- (kkk) Recreational vehicle parks;
- (lll) Residential uses permitted in the RM Districts shall be permitted in a CW District, provided the residential units are located above the ground floor of commercial structures and the minimum size of such dwelling units shall not be less than what is required in the Building and Housing Code;
- (mmm) Saving and loan offices;
- (nnn) Scientific instrument shops;
- (ooo) Skating rinks within buildings;
- (ppp) Sporting goods stores;
- (qqq) Sports arenas within buildings;
- (rrr) Stamp and coin stores;
- (sss) Stationery stores;
- (ttt) Stenographic services;
- (uuu) Tailor and dressmaking shops;
- (vvv) Telegraph offices;
- (www) Television and radio sales and repair stores;
- (xxx) Theaters and auditoriums within buildings;
- (yyy) Toy stores;
- (zzz) Variety stores;
- (aaaa) Warehouses;
- (bbbb) Watch and clock repair shops;
- (cccc) Wholesale establishments without stocks;
- (dddd) Women's apparel accessory stores;
- (eeee) Public utility service pumping stations, power stations, equipment buildings and installations, drainageways and structures, storage tanks, and transmission lines found by the Planning Commission to be necessary for the public health, safety or welfare.

**Office and Multi-Family Residential (OR)*****Permitted uses.***

- (1) Any use permitted under Section 155.053(C) of this title in RM Districts, provided that there shall be not less than 1,000 square feet of site area per dwelling unit, and provided that units not located above a permitted nonresidential use shall be subject to the requirements of usable open space per dwelling unit of the RM-1,000 District. Yards at and above the first level occupied by dwelling units shall be as required in the RM District;
- (2) Administrative, business, and professional offices;
- (3) Any other use which is determined by the Planning Commission, as provided in Sections 155.265 through 155.270 of this title, to be similar to be used listed in subsection (2) of this division;
- (4) Parking facilities, including fee parking facilities improved in conformity with the standards prescribed for required off-street parking facilities in Section 155.118 of this title; and,
- (5) Accessory structures and uses located on the same site as a permitted use.

***Conditional uses.***

- (1) Nursing homes, not including nursing homes for mental, drug addict, or liquor addict cases;
- (2) Private schools and colleges, including music and dance studios not less than 150 feet from an R District;
- (3) Public utility and public service pumping stations, power stations, equipment buildings and installations, drainageways and structures, storage tanks, and transmission lines found by the Planning Commission and to be necessary for the public health, safety, or welfare;
- (4) Accessory structures and uses located on the same site as a conditional use;
- (5) Family care homes and halfway houses;
- (6) Charitable institutions;
- (7) Churches and other religious institutions;
- (8) Nursery schools;
- (9) Private noncommercial clubs and lodges;
- (10) Mortuaries;
- (11) Motels and hotels; and,
- (12) Retail and service establishments that are compatible with and complementary to other permitted uses, including only:
  - (a) Art and artists' supply stores;
  - (b) Art galleries and stores selling objects of art;
  - (c) Banks and savings and loan offices;
  - (d) Bail bonding establishments;
  - (e) Bars not less than 150 feet from an R District;

- (f) Barber shops and beauty shops;
  - (g) Book stores and rental shops;
  - (h) Candy stores;
  - (i) Finance companies;
  - (j) Florists;
  - (k) Gift shops;
  - (l) Interior decorating shops;
  - (m) Prescription pharmacies provided at least 80% of the interior display area of a pharmacy shall be used for the sale of prescription or trade drugs and provided liquor shall not be sold;
  - (n) Restaurants and soda fountains, not including drive-in establishments, not less than 150 feet from an R District;
  - (o) Telegraph offices; and,
  - (p) Travel agencies.
- (13) Timber harvest of less than three acres.

**Service Commercial (CS)**

***Permitted uses.***

- (1) Accessory uses and structures located on the same site as a permitted use;
- (2) Accessory uses and structures located on the same site as conditional use;
- (3) Addressograph services;
- (4) Administrative, business, and professional offices, except medical and dental offices;
- (5) Art and artists' supply stores;
- (6) Art galleries and stores selling objects of art;
- (7) Arts and crafts schools and colleges;
- (8) Auction rooms;
- (9) Auction establishments, including outdoor displays;
- (10) Ambulance services;
- (11) [Reserved]
- (12) [Reserved]
- (13) [Reserved]
- (14) [Reserved]
- (15) [Reserved]
- (16) Automobile rental agencies;
- (17) Automobile repairing, overhauling, rebuilding, and painting;
- (18) Automobile (new car) sales and services, including used car sales incidental to new car sales;
- (19) Automobile (used car) sales;

- (20) Automobile supply stores;
- (21) Automobile upholstery and top shops;
- (22) Automobile washing, including the use of mechanical conveyors, blowers, and steam cleaners;
- (23) Bail bonds;
- (24) Bakeries;
- (25) Bakeries, including baking for sale on the premises only;
- (26) Banks;
- (27) Banquet rooms;
- (28) Barber shops and beauty shops;
- (29) Bars;
- (30) Beverage distributors;
- (31) Bicycle shops;
- (32) Blacksmith shops not less than 300 feet from an R or OR District;
- (33) Blueprint and photostat shops;
- (34) Boat sales, services, and repairs;
- (35) Book stores and rental libraries;
- (36) Bookbinding;
- (37) Bottling works;
- (38) Bowling alleys;
- (39) Building materials' yards and other than gravel, rock, or cement yards not less than 300 feet from an R or OR District;
- (40) Bus depots, provided buses shall not be stored on the site and no repair work or servicing of vehicles shall be conducted on the site;
- (41) Business, professional, and trade schools and colleges;
- (42) Cabinet shops;
- (43) Candy shops;
- (44) Carpenter shops;
- (45) Carpet and rug cleaning and dyeing;
- (46) Catering establishments;
- (47) Christmas tree sales lots;
- (48) Cigar stores;
- (49) Cleaning and dyeing;
- (50) Cleaning and dyeing, including the use of one synthetic dry cleaning machine using nonexplosive solvents and having a capacity of not more than 40 pounds per cycle only;
- (51) Cleaning, coin-operated;

- (52) Clothing and costume rental establishments;
- (53) Clothing stores;
- (54) Cold storage plants;
- (55) Columbariums and crematories not less than 300 feet from an R or OR District;
- (56) Contractors' equipment rental or storage yards not less than 300 feet from an R or OR District;
- (57) Dairy products plants;
- (58) Dairy products manufacturing for retail sales on the premises only;
- (59) Dance halls;
- (60) Delicatessen stores;
- (61) Department stores;
- (62) Diaper supply services;
- (63) Drugstores;
- (64) Dry goods stores;
- (65) Electrical appliance sales and repair stores, provided repair services shall be incidental to retail stores;
- (66) Electrical repair shops;
- (67) Employment agencies;
- (67.1) Emergency shelters pursuant to the requirements and regulations contained in Section 156.041 of this chapter.
- (68) Feed and fuel stores;
- (69) Finance companies;
- (70) Florists;
- (71) Food lockers;
- (72) Food stores and supermarkets;
- (73) Freight forwarding terminals;
- (74) Frozen food distributors;
- (75) Fur shops;
- (76) Furniture stores;
- (77) Garden shops;
- (78) Gift shops;
- (79) Glass replacement and repair shops;
- (80) Golf driving ranges;
- (81) Gunsmiths;
- (82) Gymnasiums;
- (83) Hardware stores;

- (84) Heating and ventilating shops;
- (85) Hobby shops;
- (86) Hospital equipment;
- (87) Hotels and motels;
- (88) Household appliance stores;
- (89) Household repair shops;
- (90) Ice storage houses;
- (91) Ice vending stations;
- (92) Interior decorating shops;
- (93) Janitorial services and supplies;
- (94) Jewelry stores;
- (95) Laboratories;
- (96) Laundry plants;
- (97) Laundries, self-service type;
- (98) Leather goods and luggage stores;
- (99) Linen supply services;
- (100) Liquor stores;
- (101) Live storage, killing, or dressing of poultry or rabbits for retail sale on premises not less than 300 feet from an R or OR District;
- (102) Locksmiths;
- (103) Lumberyards, not including planing mills or saw mills, not less than 300 feet from an R or OR District;
- (104) Machinery sales and rentals;
- (105) Massage and physical culture studios;
- (106) Mattress repair shops;
- (107) Marine sales, services, and repairs;
- (107.1) Medical and dental offices;
- (108) Medical and orthopedic appliance stores;
- (109) Meeting halls;
- (110) Men's' furnishing stores;
- (111) Millinery shops;
- (112) Motorcycle sales and services;
- (113) Mortuaries;
- (114) Motels and hotels;
- (115) Music and dance studios;
- (116) Music stores;

- (117) Musical instrument repair shops;
- (118) Newsstands;
- (119) Nurseries and garden supply stores;
- (120) Nurseries and garden supply stores provided all equipment, supplies, and merchandise other than plants shall be kept within a completely enclosed building, and fertilizer of any type shall be stored and sold in packaged form only;
- (121) Office and business machine stores;
- (122) Offices and office buildings;
- (122.1) Optician and optometrical shops;
- (123) Packing and crating;
- (124) Paint, glass, and wallpaper shops;
- (125) Parcel delivery services, including garage facilities for trucks but excluding repair shop facilities and repair shop facilities;
- (126) Parking facilities, including fee parking facilities improved in conformity with the standards prescribed for required off-street parking facilities in Section 155.118 of this title;
- (127) Passenger railroad stations;
- (128) Pet and bird stores;
- (129) Phonograph record stores;
- (130) Photographic supply stores and studios;
- (131) Pickup truck camper, and canopy assembly, sales, and service;
- (132) Picture framing shops;
- (133) Plumbing, heating, and ventilating equipment showrooms with storage for floor samples only;
- (134) Plumbing shops;
- (135) Pool halls;
- (136) Post offices;
- (137) Prescription pharmacies and dental and optical laboratories;
- (138) Pressing establishments;
- (139) Printing, including lithographing and engraving;
- (140) Printing shops;
- (141) Private clubs and lodges;
- (142) Public utility and public service pumping stations, power stations, equipment buildings and installations, drainageways and structures, storage tanks, and transmission lines;
- (143) Radio and television broadcasting studios;
- (144) Realtors and real estate offices;
- (145) Refrigeration equipment;

- (146) Rental and tools, garden tools, power tools, trailers, and other similar equipment;
- (147) Residential uses permitted under permitted uses in RM Districts shall be permitted in a CS District provided the minimum size of such dwelling units shall be not less than as set forth in the Building Code and Housing Code of the city;
- (148) Riding stables;
- (149) Saving and loan offices;
- (150) Safe and vault repairing;
- (151) Scientific instrument, shops;
- (152) Secondhand stores and pawn shops;
- (153) Self-service laundries and self-service drycleaning establishments;
- (154) Septic tank and cesspool installation and service;
- (155) Service stations, including automobile, truck, and trailer rentals as accessory uses only;
- (156) Sheet metal shops;
- (157) Shoe repair shops;
- (158) Shoe stores;
- (159) Shooting galleries within buildings;
- (160) Sign painting shops;
- (161) Skating rinks;
- (162) Skating rinks within buildings;
- (163) Small animal boarding not less than 300 feet from an R or OR District;
- (164) Sporting goods stores;
- (165) Sports arenas within buildings;
- (166) Stamp and coin stores;
- (167) Stationery stores;
- (168) Stenographic services;
- (169) Stone and monument yards not less than 300 feet from an R or OR District;
- (170) Storage buildings for household goods;
- (171) Storage yards for commercial vehicles;
- (172) Swimming pool sales and services;
- (173) Tailor and dressmaking shops;
- (174) Taxidermist;
- (175) Taxicab stands;
- (176) Telegraph offices;
- (177) Television and radio sales and repair stores;
- (178) Theaters and auditoriums within buildings;

- (179) Ticket agencies;
- (180) Tire sales and service, not including retreading and recapping, or mounting of heavy truck tires;
- (181) Tire sales and service, including retreading and recapping;
- (182) Tool and cutlery sharpening or grinding;
- (183) Toy stores;
- (184) Travel agencies and bureaus;
- (185) Travelers' aid societies;
- (186) Truck and trailer rentals, sales and services;
- (187) Truck sales;
- (188) Trucking terminals not less than 150 feet from an R or OR District;
- (189) Umbrella repair shops;
- (190) Variety stores;
- (191) Vending machine services;
- (192) Veterinarians' offices and small animal hospitals, including short-term boarding of animals and incidental care, such as bathing and trimming, provided all operations are conducted entirely within a completely enclosed building which complies with the specifications of soundproof construction by the Building Inspector;
- (193) Warehouses except for the storage of fuel or flammable liquids;
- (194) Watch and clock repair shops;
- (195) Welding shops not less than 300 feet from an R or OR District;
- (196) Wholesale establishments;
- (197) Women's apparel accessory stores.

***Conditional uses.***

- (1) Accessory uses and structure located on the same site as a conditional use;
- (2) Amusement parks;
- (3) Automobile and motorcycle racing stadiums and drag strips;
- (4) Charitable institutions;
- (5) Churches, parsonages, parish houses, monasteries, convents, and other religious institutions;
- (6) Circuses, carnivals, and other transient amusement enterprises;
- (7) Drive-in theaters;
- (8) Kennels not less than 300 feet from an R or OR District;
- (9) Light industrial uses permitted in the ML Limited Industrial District;
- (10) Mobile home parks in accordance with the regulations prescribed in Sections 155.230 through 155.232 of this title;
- (11) Oil and gas pipelines;

- (12) Pony riding rings;
- (13) Prefabricated structures sales;
- (14) Racetracks;
- (15) Recreational vehicle parks in accordance with the regulations prescribed in Sections 155.230 through 155.232 of this title;
- (16) Restaurants and soda fountains, including drive-in establishments;
- (17) Riding stables;
- (18) Sports areas or stadium;
- (19) Storage yards for fuel or flammable liquids;
- (20) Veterinarians' offices and small animal hospitals, including operations not conducted within a completely enclosed building, not less than 300 feet from an R or OD District.

### **Conservation Water District (WC)**

#### ***Permitted uses***

- (1) Management for fish and wildlife habitat, and nature study.

#### ***Conditional uses.***

- (1) Aquaculture, mariculture, noriculture, and similar resource-dependent activities;
- (2) Passive recreation;
- (3) Public access facilities consistent with resource protection;
- (4) Resource restoration and enhancement;
- (5) Restoration and maintenance dredging of previously dredged navigation channels;
- (6) Boat launch ramps;
- (7) Oil and gas pipelines;
- (8) Incidental public works projects, including but not limited to, burying cables and pipes.

## Master Response 4: Site Remediation Plans and Project Phasing

This master response addresses the issues comments raise with respect to the characterization of existing site contamination, the project's plans for remediating the site, and the phasing proposed for the remediation, wetlands restoration, and project construction. Comments also raise questions about alternative methods of remediating the site—e.g., whether capping the site would be involved—and for additional information on the various landowner responsibilities for the cleanup.

The Draft EIR addresses project phasing, site characterization, and remediation in Chapter III, Project Description; Chapter IV.D, Biology; Chapter IV.G, Hazards and Hazardous Materials; and Chapter IV.H, Hydrology and Water Quality, as well as the environmental setting, impacts analysis, and mitigation associated within each of those sections. The Draft EIR also references analyses and findings of the following appendices:

- Appendix G: Biological Assessment the Marina Center Project Balloon Track Property, Eureka, California
- Appendix J: Hazardous Material Assessment, Security National Properties, Proposed Marina Center Development, SHN Consulting Engineers & Geologists, Inc., September 2006
- New Appendix S: Environmental Resources Management, Supplemental Interim Remedial Action Plan, Former Eureka Railroad Yard and General Petroleum Site, Eureka, California, June 2009.

This master response addresses in whole or in part the following comments: 1-6, 3-3, 3-4, 3-8, 3-9, 3-15, 6-2, 6-3, 6-9, 7-1, 7-10, 8-7, 8-8, 9-6, 13-7, 16-6, 16-26, 16-39, 16-144, 16-161, 16-235, 16-238, 16-260, 16-261, 16-267, 16-270, 16-272, 16-273, 16-274, 16-278, 17-17, 17-23, 17-24, 17-26, 20-4, 22-1, 22-12, 22-13, 22-14, 22-15, 22-16, 22-17, 22-21, 23-2, 23-3, 23-6, 23-7, 23-9, 23-10, 23-11, 23-12, 23-13, 24-6, 24-7, 25-17, 25-18, 25-19, 25-22, 26-6, 29-3, 29-15, 31-2, 31-3, 31-7, 31-8, 32-5, 32-6, 32-7, 33-9, 33-10, 33-17, 36-2, 38-5, 39-1, 39-2, 40-1, 41-2, 42-3, 44-2, 48-1, 50-1, 50-2, 50-3, 52-30, 52-31, 52-32, 52-33, 52-34, 52-35, 58-1, 58-2, 58-3, 58-6, 58-8, 58-9, 58-10, 58-12, 58-13, 58-14, 58-15, 58-21, 58-22, 62-3, 66-3, 68-10, 68-13, 69-4, 69-18, 75-8, 75-10, 78-1, 84-5, 84-6, 85-6, 88-2, 88-11, 94-4, 95-1, 95-2, 95-3, 95-4, 95-7, 95-18, 101-4, 102-3, 104-1, 104-2, 107-1, 107-3, 107-4, 107-6, 109-1, 110-1, 110-4, 110-8, 110-9, 110-10, 112-2, 113-4, 116-2, 117-1, 117-3, 122-1, 122-4, 122-8, 122-9, 122-10, 122-16, 122-18, 126-7, 126-8, 127-16, 128-1, 130-3, 130-4, 133-2, 134-5, 136-1, 139-1, 143-2, 146-2, 147-1, 148-5, 148-6, 148-7, 148-8, 151-1, 151-2, 155-1, 155-7, 156-2, 160-1, 160-4, 162-1, 163-1, 166-1, 168-1, 173-4, 174-1, and 179-1.

The comments generally ask for more information or to be kept informed about the plans to remediate the site. Many of the comments express concern that the Draft EIR lacks sufficient detail regarding the proposed Remedial Action Plan, how it would be phased, and the

environmental effects of the clean up. Other comments address more specific issues. Comments include the following:

- 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 Draft EIR regarding the actual level contamination [sic] 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 Draft EIR.
- The project description is incomplete because it does not include any details of project phasing.
- The Draft EIR description of the site remediation—an integral, critical component of the project—is so cursory as to prohibit meaningful analysis of potential significant adverse environmental impacts of the project.
- Capping should never be considered as an alternative to actual cleanup of contaminants.
- A project of this size would likely require phasing, and thus phasing of mitigation in relation to planned buildout. However, the Draft EIR is incomplete because it includes no details of any development agreement that would reflect phasing and mitigation requirements, which would be triggered by ministerial development milestones or discretionary review of later phases.
- The Draft EIR is unclear whether there would be one overarching development agreement or several agreements, one for each project phase.

## Response

Numerous studies and interim remedial measures have been conducted over the years at the project site. Some of those prior studies, although not prepared specifically for the proposed project, have been referenced or reviewed in the process of preparing this EIR. Some of those studies have been superseded or supplemented by subsequent studies and ongoing remediation and monitoring activities. The Draft EIR contains the most up-to-date description of the setting and site characteristics at the time it was prepared. Monitoring is ongoing and would continue until after project approval or denial. This ongoing monitoring has not produced any additional information that is inconsistent with the Draft EIR's characterization of the project site.

The North Coast Regional Water Quality Control Board (RWQCB) has exercised continuing jurisdiction over the project site since 1988, and has supervised a wide variety of sampling and remedial actions at the site. In May 2001, the RWQCB issued a Cleanup and Abatement Order under Sections 13267(b) and 13304 of the California Water Code for the project site (CAO No. R1-2001-26), which ordered that the landowner (at that time Union Pacific Railroad) “shall cleanup and abate the discharges and threatened discharges and shall comply with the provisions of [the Order].” The Order provided a series of specified and unspecified remedial measures to cleanup the property. This Order remains in effect and provides in part:

Investigation results confirm impacts and potential impacts to Site soils and groundwater. Cleanup and abatement activities remain to be performed at the Site. These activities include: a) conducting a feasibility study assessing remedial alternatives, b) performing appropriate cleanup and abatement activities, and c) performing ongoing verification monitoring.

The California Water Code, and regulations and policies developed thereunder require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible.

The issuance of this cleanup and abatement order is an enforcement action being taken for the protection of the environment, and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et. Seq.) in accordance with Section 15308 and 15321, Chapter 3, Title 14 of the California Code of Regulations.

The discharger shall conduct all work under the direction of a California registered engineer or geologist experienced in pollution investigation and cleanup in accordance with all local ordinances.

By September 15, 2001, the discharger shall submit for Executive Officer concurrence, an interim remedial action plan (IRAP). The IRAP, shall include, but not be limited to, proposals for the following elements:

- Remedial actions to address onsite soil impacted with concentrations of Site contaminants correlating to either STLC or TTLC concentrations at or above the California Code of Regulations, Title 22 criteria for hazardous waste.
- Mitigation measures to prevent potential migration of residual soil contamination to groundwater and/or surface water bodies and a contingency plan to address any future discharges identified during monitoring activities.
- A detailed soil contingency plan, which must be implemented to address any potential subsurface activities at the site prior to development and implementation of the final RAP.
- An operation and maintenance plan to prevent ongoing illegal dumping of wastes at the Site and prevent the Site from continuing to be an attractive nuisance; and
- An implementation schedule for each task contained in the IRAP.

To comply with the Order, Union Pacific prepared an IRAP and a Draft Feasibility Study and Proposed Remedial Action Plan in 2001. A number of interim remedial measures have been implemented since 1988 (e.g., removal of underground storage tanks, contaminated soils, and other debris).

After the RWQCB's Order and the landowner's implementation of the interim remedial measures, elevated levels of metals continued to be in stormwater. In response to these testing and monitoring results and to perform the appropriate cleanup and abatement activities under the RWQCB's Order, the new landowner (CUE VI) prepared a Supplemental Interim Remedial Action Plan (SIRAP), and submitted the SIRAP to the RWQCB for concurrence. The RWQCB

on June 18, 2009, concurred in the SIRAP and its identified remedial measures, and has obligated CUE VI to carry out those further cleanup activities described in the SIRAP pursuant to the RWQCB's authority under Sections 13267 and 13304 of the California Water Code. Section 13267 of the California Water Code authorizes the RWQCB to require a discharger to furnish technical or monitoring program reports concerning the quality of any waters of the state. Section 13304 of the California Water Code authorizes the RWQCB to issue "cleanup and abatement" orders requiring a discharger to cleanup and abate waste, "where the discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the State and creates or threatens to create a condition of pollution or nuisance."

The SIRAP is added to the Marina Center EIR as Appendix S. The SIRAP addresses existing site contamination concerns of the Project Applicant and the California Regional Water Quality Control Board, and it is designed to be implemented with or without the build-out of the buildings and related improvements and infrastructure proposed in the project. The Project Applicant has proposed to implement the SIRAP in conjunction with onsite wetland restoration as Phase 1 of the proposed project and incorporate pertinent mitigation measures in the EIR, which are already described in the Chapters III and IV.G of the Draft EIR. Therefore, while this EIR addresses both this initial phase of the project as well as subsequent phases, the SIRAP has independent utility and can proceed on its own in advance of the City's approval of any entitlements necessary for the Marina Center development. Consequently, the Phase 1 approvals are limited to the following entitlements (including applicable mitigation measures and conditions of approval):

- City of Eureka Erosion Control and Grading Permits; and
- City of Eureka Coastal Development Permit.

Revisions to the Draft EIR are outlined below to address the refinement of the Phase 1 approvals and entitlements. Please see also Chapter 2, Errata, under Staff-Initiated Changes to the Draft EIR. The remaining entitlements for the Marina Center development—including construction of the various buildings, improvements, and infrastructure—will be considered by the City Council in connection with subsequent phases. All design elements of the project, as well as General Plan/Local Coastal Plan amendments, zoning, subdivision maps, and other related and applicable entitlements and conditions of approval, will be considered in subsequent phases. Nonetheless, to ensure that all phases and cumulative impacts of the project are addressed cohesively and that any environmental effects of Phase 1 (SIRAP and wetland restoration implementation) are adequately evaluated and mitigated under CEQA, the City will proceed to consider certification of the Marina Center EIR document, as well as approval of Phase 1, conditioned by incorporating all applicable mitigation measures (e.g., stormwater control, wetlands, air quality, etc.).

The information provided in the SIRAP refines and clarifies information already provided in the Draft EIR, and it does not represent new information resulting in new or substantially more severe environmental impacts, and does not require any additional mitigation. With implementation of the applicable mitigation measures for Phase 1, the environmental effects associated with Phase 1 of the proposed project would remain less than significant. In fact, further remediation and wetland restoration would improve the current environmental conditions of the project site.

This master response provides more detailed responses on the following topics: (1) Site Characterization/Level of Analysis; (2) proposed Project Phasing; (3) Interim Remediation; and (4) Alternative Remediation Approaches.

### **Site Characterization/Level of Analysis**

Many comments request more information regarding the site's previous uses and level of contamination, or claim that the Draft EIR's site characterizations are inadequate. (See, e.g., Comment 8-7.) Contrary to those comments, however, the Draft EIR outlines in detail the previous uses of the site and the existing site conditions on pages IV.G-1 through G-4.

CEQA requires a lead agency to evaluate a project's effects on the "environment," which is defined by the "physical conditions that exist within the area which will be affected by a proposed project" (Pub. Res. Code, Section 21060.5). Consequently, the EIR evaluates existing conditions and need not evaluate prior historical conditions of the project site. Nonetheless, the Draft EIR and referenced environmental studies provide extensive information on the historical uses and characteristics of the project site. For example, past operations on the site consisted of a former railroad yard, including locomotive and railroad car maintenance and repair facilities and fuel storage and fueling facilities. Additionally, the site contained several former petroleum bulk fuel plants and a vehicle fueling station. None of those uses exist there today.

### **Current Conditions of the Project Site**

Some of the comments suggest that the Draft EIR does not adequately characterize the current levels of contamination at the site, where that contamination may still be located, and whether there are any dioxins or furans onsite. (See, e.g., Comments 22-12, 22-13, 22-14.)

Contrary to the suggestions made by the comments, the current characterization of the project site is outlined in detail in the Draft EIR on pages IV.G-4 through G-11 and in Appendix J (Hazardous Material Assessment prepared by SHN Consulting Engineers & Geologists, Inc., September 2006), and is further clarified by the SIRAP attached as Appendix S. A further summary is provided in this response for clarification purposes.

The SIRAP, it should be noted, summarizes past environmental investigations of the site, reviews the results of those investigations and past remedial measures, and includes informative tables of the data contained in the previous reports reviewed for the Draft EIR. This is not new information.

Several structures and some materials remain onsite, including two metal-framed warehouses and a smaller wood-frame office on the Former Fuel Cardlock Facility, one vacant wood-framed building, a metal-framed repair shop, and a large metal-framed building that is currently occupied. Of the former railroad yard facilities, only a dilapidated turn table and the foundations of some former structures are still present. Railroad tracks are still present on the current North Coast Railroad Authority (NCRA) line that passes along the northern boundary of the property. Railcars and locomotives continue to occupy the existing NCRA tracks. Gravel and dirt roads are present in places across the site. Vegetative cover is present throughout the former operational area and most of the site.

Numerous site investigation activities have been conducted to assess the nature and extent of contamination present at the project site. Extensive field programs have been conducted which have included soil sampling, groundwater sampling, stormwater sampling, soil borings, trenching, field testing, site inspections, and laboratory analysis. The nature and extent of contamination identified at the project site briefly are summarized and broken down into three discussions below: Soil Contamination; Groundwater Contamination; and Stormwater Sampling.

**Soil Contamination.** Site investigations completed to date have identified long-chain petroleum hydrocarbons, lead, copper, and arsenic as the primary constituents of concern at the site. Past site operations resulted in the release of petroleum hydrocarbons in the area near the former roundhouse (oil disposal pits) and near the former car repair shed and former Bunker C above-ground storage tank (AST). Although long-chain petroleum hydrocarbons are found in soil at shallow depths throughout the site, only isolated areas have high concentrations. Site investigation results at the former General Petroleum area of the site indicated the presence of total petroleum hydrocarbons as gasoline (TPHG) in a limited area of the site. Elevated lead and copper concentrations were found in the former rail yard areas where the former oil disposal pits were located (south of former roundhouse). Elevated arsenic concentrations were found, particularly at one location—in the northeastern portion of the project site. Please see Figure 4 of Appendix S.

Concentrations of dioxin (and related compounds) were found in some ditches and Clark Slough. Dioxin is found at elevated levels in many places in Eureka, and is often associated with wood treatment using pentachlorophenol (penta). The site was not used for penta treatment, however, a nearby property was. Consequently, the dioxin levels on the property and in Clark Slough appear to be attributable to offsite sources. PNAs, volatile organic compounds (VOCs), penta, and other compounds, were not detected at levels or at a frequency to warrant further analysis.

Migration of contamination from soils to groundwater can be a concern at former industrial sites. Here, however, analytical results of soil samples collected across the site indicate that the long-chain petroleum hydrocarbons present in site soils and groundwater are not migrating. Analytical results of samples collected from the site indicate, just as with the petroleum hydrocarbons, the metals present in subsurface soils do not appear to be mobilizing. Dioxins are considered insoluble, and their mobility is limited to the movement of sediment.

**Groundwater Contamination.** The geology of the site is characterized by two distinct groundwater-bearing units. These two units include three stratigraphic layers: a perched zone aquifer (which is a unit of soils or rock with sufficient permeability to conduct water), an aquitard (which is a confining bed of soils or rock that prevents or retards the flow of water to another water bearing unit), and a tidally influenced lower aquifer. The uppermost groundwater layer, identified as the “A” zone, is found in the approximately 5-10 feet of fill material that was placed on the original mudflats, and is not tidally influenced. During the wet season, rain falls on the site, sinks into the ground, and replenishes the groundwater in the “A” zone. During the dry season, water levels in the “A” zone fall, and in places the aquifer becomes dry. The second layer is densely compacted, fine-

grained, estuarine clay bay mud material. The third layer is coarse-grained material that contains the “B” zone aquifer. The “B” zone aquifer is tidally influenced by Humboldt Bay.

Groundwater monitoring at the site has occurred since 1992. Groundwater monitoring is currently being conducted in accordance with RWQCB Monitoring and Reporting Program (MRP) No. R1-2002-0082, and consists of monitoring 15 wells throughout the site and 4 wells located at the former General Petroleum site. Groundwater monitoring is conducted semi-annually as outlined in MRP R1-2002-0082 from 11 “A” Zone monitoring wells, 7 “B” Zone monitoring wells, and one “A” zone piezometer.

There are six ground water monitoring wells at the former ARCO site that are not included in MRP R1-2002-0082, and therefore are not monitored as part of the site monitoring program. Ground water monitoring at the ARCO site is currently being conducted in accordance with RWQCB MRP No. R1-2007-0075. The wells are currently monitored on a quarterly basis.

**“A” Zone Wells.** Long-chain petroleum hydrocarbons—TPHG, total petroleum hydrocarbons as diesel (TPHD), total petroleum hydrocarbons as motor oil (TPHMO), and total petroleum hydrocarbons as Bunker C (TPHBC)—have been detected in groundwater collected from the “A” zone through some site wells. The area impacted by petroleum hydrocarbons appears to be limited in extent, not migrating, and decreasing through natural processes. Petroleum hydrocarbon concentrations found in other site wells have been low or below the method detection limit.

Very few other organic compounds have been found in the groundwater. Acenaphthene was detected at low concentrations (up to 2.1 ug/L) during the January and March 2002 monitoring events. While detected in 1999, phenol has not been detected during any subsequent groundwater-monitoring events. Isolated VOCs were detected at low concentrations during the 1992 sampling event in two wells MW-2A and MW-7A. No other VOCs have been detected in “A” Zone groundwater samples. None of these compounds have been found consistently, and none should be considered to be existing conditions.

Zinc, arsenic, lead, barium, and copper have been the only metals detected in “A” Zone monitoring wells. Zinc and lead concentrations detected in groundwater samples are below their respective Maximum Contaminant Levels (MCLs), which are the levels allowed for drinking water. Arsenic has been detected in groundwater collected from “A” Zone wells at concentrations that are generally below the MCL of 10 ug/L. Barium and copper are also below their respective MCLs.

**“B” Zone Wells.** Contaminant levels detected in “B” Zone groundwater have been minimal, and generally at concentrations below each contaminant’s respective maximum contaminant levels, action levels, or detection limits.

**Conclusions on Groundwater.** Petroleum hydrocarbons are found in “A” Zone wells, but the area affected is limited, not migrating, and decreasing from natural processes. The impact to groundwater by metals is minimal given the low concentrations and the tendency of metals to bind to soil. Likewise, impacts to groundwater in the “B” Zone are minimal, indicating that the

layer of densely compacted bay mud that separates the “A” Zone from the “B” Zone serves as an effective aquitard.

**Stormwater Monitoring.** Much of the rain that falls on the site sinks into the ground and becomes part of the “A” Zone groundwater. Some of the rainwater flows into the ditches, which fill up and act like ponds. Some of the rainwater also ponds in depressions on the site.

Stormwater runoff sampling has been ongoing at the project site since December 2001. Current surface water sampling is conducted at six locations on the eastern and western portions of the project site. Surface water samples are analyzed for TPHD, turbidity, and dissolved and total arsenic, copper, and zinc. Samples have identified the presence of those metals. The concentrations detected are equivalent to metals concentrations found in stormwater and surface waters throughout Eureka. No petroleum hydrocarbons have been detected since 2005.

### **General Conclusions about Level of Site Characterization**

Contamination at the site has been investigated for nearly 20 years. Consultants have reviewed the historical uses of the property, identified those areas most likely to have been contaminated by these uses, sampled at dozens of locations including those where the highest levels of contamination were likely to be found, and obtained laboratory analyses of the substances likely to result from the historical uses. These consultants installed groundwater-monitoring wells throughout the site, sampled these wells regularly for more than fifteen years, and obtained laboratory analyses of the substances of concern. They have sampled and analyzed stormwater for most of this decade. The site has been adequately characterized for all substances related to the historical railroad operations on the property.

The elevated levels of dioxins recently identified on the site have not been attributed to historical railroad operations. In the Eureka area, dioxins are primarily associated with facilities that used pentachlorophenol (penta) to treat wood. Dioxins are also associated with combustion, which releases dioxins into the air and allows them to settle onto properties throughout a large area. In Eureka, large amounts of wood wastes were once burned, and large areas are believed to have elevated dioxin levels. Dioxins found in Clark Slough are believed to have originated offsite at the former penta facility or other offsite sources. Dioxins found in the onsite ditches are believed to have come from offsite sources, either through air deposition or from stormwater flowing onto the site. Dioxins from either source are likely to have been carried into the ditches, where they settled along with other organic material to the sediments at the bottom. The onsite samples analyzed for dioxin were taken from the sediments at the bottom of the ditches where onsite dioxins would likely be at their highest levels.

The levels of dioxin identified onsite are modestly elevated, but within the range of levels recommended as cleanup standards by the California Department of Toxic Substances Control (DTSC) (i.e., 200 to 1000 parts per trillion). DTSC is the primary agency in California with responsibility for cleaning up contaminated soils. Soils that come within cleanup levels need no further action. Nevertheless, the Project Applicant is proposing to remove dioxin-contaminated soils within Clark Slough and the ditches in Phase 1 as part of the SIRAP. Additional sampling

would be performed during the excavation process, and soils with elevated levels would be removed. Post-Phase 1 levels of dioxin would therefore be lower than pre-Phase 1 levels.

No additional data are needed on soils within the Marina Center because contaminated soils have already been identified, and those soils with elevated levels of contaminants would be removed. Furthermore, the project would protect people and the environment by creating barriers – clean cover materials, parking lots, and buildings – that would block exposure to contamination that may remain in the soils that are left in place.

No additional data are needed on existing stormwater because stormwater discharges have been well characterized with monthly sampling during the rainy season and because the existing stormwater discharges would be eliminated as part of the SIRAP. In addition, no additional data are needed on groundwater because years of testing have demonstrated that groundwater contains only low or undetectable levels of substances associated with historical railroad activities, and that there is no “plume” of contamination moving offsite. Dioxins are considered insoluble, and therefore are not likely to move through groundwater.

Phase 1 of the proposed project would therefore improve the environment by taking contamination that is now present on the surface and remove it or cover it with clean material and impervious surfaces that would cut off any contact with people or wildlife. Further sampling would also be conducted to confirm that the remedial measures in the SIRAP have been effective. Therefore, no additional site characterization or other data are needed in order to evaluate the physical environmental effects associated with implementation of Phase 1 of the Marina Center project.

### ***Project Phasing – Interim Remediation and Wetlands Restoration***

A number of comments ask about project phasing generally, and specifically how it would be carried out with the remediation. As stated on Draft EIR pages III-14 and III-15, the project is expected to be constructed in phases:

“The project is expected to be constructed in phases which would also result in implementation of mitigation measures in phases. Because the Project Applicant has not identified the actual construction phasing for the project the impact analysis and recommended mitigation measures listed in Chapter IV of this EIR are for full project build-out. When the Project Applicant has completed a project phasing plan, the specific mitigation measures required for each phase will be determined and a Development Agreement will be entered into to assure full compliance with the recommended mitigation measures. Before the City approves the phasing plan and associated discretionary entitlement (e.g., the Development Agreement), the phasing and mitigation plan will be evaluated to ensure that there are no changes to the project, changes to surrounding circumstances, or other new information that triggers the need for supplemental or subsequent environmental review under Section 21166 of the Public Resources Code.”

The Draft EIR also explains on page III-15 that “Phase 1 . . . would span 12 months and would include the wetland restoration and site remediation.”

Consistent with the foregoing description in the Draft EIR, Phase 1 is proposed to include implementing the SIRAP and carrying out wetland restoration, as outlined in more detail, below. The Project Applicant has not yet proposed a phasing plan for subsequent phases of construction of the proposed project, and those phases remain subject to market and economic considerations as well as the City Council's consideration of future approvals and entitlements.

### ***Supplemental Interim Remediation Action Plan and Wetland Restoration***

Comments ask for more detail on the Project Applicant's plans for remediating the project site, suggest that remediation measures should be spelled out in a plan brought before the City Council and not deferred to a future date and that a RWQCB-approved work plan for final remediation of the site should be incorporated into the EIR as part of the description of the site remediation aspect of the project. (See, e.g., Comments 3-3, 8-7, 23-1, 25-22.) As outlined in the Draft EIR page III-14:

“The project includes the remediation of the existing brownfield site to meet federal and state environmental cleanup and water quality standards. This would include preparing a remedial action plan to be approved by the North Coast Region California Regional Water Quality Control Board. The remedial action plan could require the removal of surface vegetation, the removal of contaminated fill materials, and the placement of clean soils on the property.”

The SIRAP provides further information on how the remediation would proceed. This remediation would resolve two types of concerns related to contamination at the site. First, there has been concern that stormwater is carrying contaminated soils or sediments from the site to Clark Slough. The interim remediation would resolve that issue by eliminating the flow of stormwater that currently flows off the site via ditches and pipes on the south end. This result would be accomplished by increasing the capacity of the property to absorb rainfall. Existing conditions allow rain to soak into the ground, but the capacity is limited. By placing additional porous fill material and re-grading the site, the interim remediation would allow more rain to soak (or infiltrate) into the ground with Phase 1. The interim remedial measures would also eliminate the ditches and pipes that carry stormwater offsite.

Second, there have been concerns that people and wildlife may be exposed to elevated levels of contaminants in surface soils and sediments, particularly in the wetlands. The interim remediation would resolve this concern by excavating hotspots in which there are elevated levels of contaminants, and properly disposing of this material offsite. To be sure that people and wildlife are not exposed to contaminants that are not excavated, most of the site would be covered with clean material excavated from the expanded wetlands area or imported from offsite. The clean cover material would form a protective barrier that prevents people and wildlife from coming into contact with any remaining contaminants underneath.

Following are the steps to be implemented in Phase 1:

- General site clearing and removal of debris consisting of concrete foundations, wooden rail road ties, remnants of rail yard maintenance equipment and fuel storage tanks, and other

abandoned industrial materials which shall be dismantled, tested, recycled, and disposed of, as appropriate;

- Focused soil remediation through limited excavation, field testing, and offsite disposal of soil and sediments in seven specific areas including the former General Petroleum site, areas near existing well MW-10, areas within the eastern and western drainage ditches, and areas within Clark Slough;
- Excavation of areas around Clark Slough to the northeast and southwest, and placement of excavated material on other areas of the site; and
- Importing, placing, and grading clean cover material over most of the site (please see to Figure 9 in Appendix S).

In conjunction with the above remediation activities, and as outlined in the Draft EIR as part of Phase 1, the project would also include the restoration of an 11.89-acre wetland reserve surrounding Clark Slough. This is proposed to be accomplished by excavating and re-contouring a portion of the area surrounding Clark Slough in order to create new seasonal and muted tidal wetlands. Some of the wetland creation work may be conducted in an area where petroleum-impacted soils remain. In the event that petroleum-impacted soils are encountered, the soil would be segregated and tested to evaluate the proper use or disposal method for that soil consistent with Mitigation Measure G-1d.

Mitigation that would apply to Phase 1 would include, for example, Mitigation Measures H-3a, H-3b, and H-4a (water quality and stormwater management during and post-construction), Mitigation Measures D-1a, D-1b, D-3a through D-3d, D-7a, and D-8a (wetlands and biological resources), Mitigation Measures G-1a through -1e (hazards from transport, use, or disposal of materials), and Mitigation Measure O-1a (construction-related traffic measures). With implementation of these measures, the project's impacts arising from Phase 1 would remain less than significant.

Final site remediation will be addressed in future phases when the Marina Center development is approved and the site design is configured. In general, final site remediation is expected to include construction of parking lots and buildings on the site, which would improve the barrier preventing exposure to contaminants remaining below the barrier; testing and confirmation that contamination below the barrier would not move offsite; procedures for protecting workers who may be exposed to soil below the barrier; and restrictions on excavations that might produce exposures to contaminants below the barrier. Because the site plan and footprint of development may change once reviewed and approved by the City Council, it is impractical to develop more specific remedial activities at this time.

### ***Alternative Methods of Remediation***

Several comments ask about alternative methods for site remediation. Some voiced concern and opposition to the placement of clean cover material over the project site as a method of cleaning up the site. (See, e.g., Comments 8-7, 16-162, and 31-3.)

The word “cap” is often broadly used to refer to any type of cover material at a site. It is sometimes used more specifically to refer to a relatively impermeable cover material that restricts the flow of water, such as rainwater, from the surface to the substances below the cap (sometimes referred to as an “impermeable cap”). Placement of clean cover material over project sites is a common and effective remediation technique, and is widely used at remediation sites. Even when placement of clean cover material over the project site is not used, it may be part of the cleanup. When, for example, contaminated soils are excavated and disposed of offsite, they are taken to a landfill that would eventually be capped to isolate the contaminated soils and other materials from the environment.

Placement of clean cover material over project sites can achieve at least two goals. It isolates the contaminated soils below from receptors above. For a toxic substance to have a toxic effect on a receptor, such as people or wildlife, the receptor must be exposed to the toxic substance. If there is no exposure, there is no toxic effect. A barrier is an effective protective technique if it prevents the toxic substance from completing a pathway to the receptor.

An impermeable cap provides the additional feature of limiting the water that comes into contact with the contaminated soil. If the contaminants in soil are soluble, they may dissolve into rainwater percolating through the ground and be carried down into an aquifer. This localized contamination of the aquifer can spread as the groundwater moves downgradient. If it moves far enough, it may reach a well, from which it may be pumped. People and wildlife may come into contact with pumped well water. In this way, placement of clean cover material over project sites can cut off another pathway.

At this site, the clean, permeable cover being proposed as part of the interim remediation would provide an effective barrier between contaminants below the cover and people and wildlife above. Years of groundwater monitoring at the site have established that substances in the soil are not dissolving into the groundwater, and therefore an impermeable cap is not necessary. Groundwater concentrations are decreasing as a result of natural remediation processes (primarily bacterial degradation of petroleum materials). If they were increasing, it would suggest that additional substances were being dissolved from soil into groundwater. Downgradient wells at the site have remained clean over many years, thereby establishing that any dissolved contamination from the property is not being transported offsite. Natural attenuation is a common and accepted practice to remediate dissolved petroleum compounds in groundwater.

Construction of the Marina Center development would ultimately cover much of the site with buildings and paved surfaces (e.g., parking lots). These materials would increase the barrier effect and tend to prevent rainwater from seeping into the soils below. If rainwater is prevented from sinking into the soil, the “A” Zone aquifer would receive less stormwater, thereby providing the added benefit of further isolating contamination in the soil from water.

It should be emphasized, however, that the proposed project does not treat placement of clean cover material over this project site as a substitute or as an alternative to cleanup of the site. Indeed, the interim remediation proposes excavation and proper offsite disposal of those soils

exhibiting more highly elevated concentrations. (See Appendix S; *also see* Draft EIR, Mitigation Measures G-1a and G-1b.)

Testing and characterizations of the site indicate that the above remediation measures and clean cover material would be effective at removing any significant risk to human health or the environment. As noted, long-term groundwater monitoring at the site has shown that (i) metals are not dissolving into groundwater to any significant degree; and (ii) TPH concentrations have naturally attenuated to low or non-detectable levels with limited exceptions. Furthermore, dioxins are insoluble, which means they are not anticipated to be present in groundwater. Because groundwater quality is generally good on the project site, and because there are not significant concerns about additional materials dissolving into groundwater, it is believed that no impermeable cap is needed to protect groundwater quality. Anything that could have entered the groundwater would have entered the groundwater in the many decades since the project site was last “operational,” and certainly in the last 20 years. But in any event, implementation of the project would only help to improve the environment setting, and mitigation measures are in place to ensure that workers and the environment are not exposed during construction and during future use of the site. (See, e.g., Draft EIR, pages IV.G-19 through IV.G-21.) With these measures in place, the project’s potential impacts associated with the first phase of remediation would be less than significant.

Finally, it should be noted that lead agencies have wide discretion in choosing among various mitigation measures and need not analyze every imaginable alternative or mitigation measure, particularly when the adopted project alternative or measure avoids or lessens the project’s effect to a less-than-significant level. (See, e.g., *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 935; Pub. Res. Code, Section 21002.) Placement of clean cover material over the project site is commonly accepted as a feasible and effective method for remediating contaminated properties for any number of future land uses. The ultimate methods for site closure, however, would also be subject to approval by the Regional Water Quality Control Board and in accordance with federal and state laws governing contaminated properties and clean water.

## Master Response 5: Coastal Commission Wetland Fill Policies

This master response addresses the issues comments raise with respect to the proposed project's compliance with the California Wetlands Conservation Policy, as well as the proposed project's uses and their compliance with the California Coastal Commission's policies (Public Resources Code Section 30000 et seq.) regarding the filling of and/or impacts to wetlands for land uses that are not coastal dependent or otherwise permitted. The Coastal Commission staff comments that despite inconsistencies of the project with section 30233 of the Coastal Act, which authorizes filling of wetlands for particular uses, "the Draft EIR concludes that the project is nonetheless consistent with the Coastal Act because the project would purportedly attain the overall objective of the Coastal Act to enhance and preserve coastal resources, presumably because wetland enhancement would be performed at Clark Slough and the project would not result in a net loss of wetlands." The staff further questions the Draft EIR's reference to the conflict resolution provisions of section 30007.5, stating that that section "does not provide a basis of overcoming the inconsistencies of the project with the wetland fill policies in the manner suggested by the Draft EIR."

The Draft EIR addresses potential impacts to wetlands and other sensitive biological resources in Chapter IV.D, Biology and Chapter IV.I, Land Use and Planning. See especially Impact D-1 (the potential for the proposed project to have a substantial adverse effect on any species identified as a candidate, sensitive, or special status species), Impact D-3 (the potential for the proposed project to have a substantial adverse effect on federally protected wetlands) and Impact D-5 (the potential for the proposed project to conflict with any local policies or ordinances protecting biological resources), as well as their associated mitigation measures. In addition, see Impact I-2 (the potential for the proposed project to conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect).

The Draft EIR also references analyses and findings of the following appendices:

- Appendix G: Biological Assessment the Marina Center Project Balloon Track Property, Eureka, California
- Appendix H: Investigation of the Presence of Wetlands Subject to Regulation under the California Coastal Act, Balloon Track Property, Eureka, Humboldt, California
- Appendix I: Balloon Track Coastal Zone Wetland Delineation Coastal Commission Methodology

This master response addresses in whole or in part the following comments: 3-1, 3-22, 3-23, 3-24, 3-25, 3-26, 9-15, 9-16, 13-3, 16-61, 16-143, 17-4, 17-16, 24-1, 24-3, 24-4, 24-7, 25-28, 25-30, 25-31, 31-5, 31-11, 37-1, 50-5, 52-38, 52-39, 52-40, 58-16, 66-9, 83-1, 84-7, 87-2, 87-3, 88-14, 95-16, 95-17, 113-1, 117-8, 122-22, 142-5, 148-8, 151-11, 151-12, 173-3, 174-4, 179-13, 179-14, and 179-22.

The comments express concern that the proposed project's filling of wetlands is not in compliance with the Coastal Act and that the proposed uses are inconsistent with, or are not authorized uses under the Act. The comments specifically state that:

- The proposed project's filling of wetlands conflicts with the California Coastal Commission's Allowable Use Analysis, which states, "To even allow partial filling of any wetland in exchange for restoration can result in a net loss of both wetland acreage and function."
- The proposed project's uses are inconsistent with the uses permitted by Section 30233 for fill in wetlands—the filling of wetlands for the purpose of mitigation is not listed as a permissible use. However, the Draft EIR concludes that the project is nonetheless consistent with the Coastal Act through the erroneous logic: that the conflict resolution provisions of Section 30007.5 of the Coastal Act could be used to override the acknowledged inconsistency with Section 30233.
- Due to the limitations on the overall amount of permissible coastal development in the area, the proposed project has an opportunity cost that is not discussed in the Draft EIR: It could foreclose future opportunities for coastal development in the area, despite the fact that there are no coastal-dependent developments competing for the project site or similar parcels nearby. Therefore, the Draft EIR could instead analyze potential future demand for coastal uses on the Bay, such as the Port of Humboldt Bay Revitalization Plan.
- The 1:1 mitigation ratio for replacement of wetlands is not adequate. The ratio should be based on more than just total acreage, and instead should factor in wetland function and value. This information can be gleaned from a full ecological assessment. Given that the Draft EIR does not include a full ecological assessment and that one has not been prepared, all conclusions regarding the benefit of the one-to-one (1:1) wetland replacement are unsubstantiated.
- The EIR should include a separate consistency analysis that would be required by the Coastal Commission in assessing the proposed changes to the Local Coastal Plan for purposes of certification. The City should have had these discussions prior to publication of the Draft EIR, and their conclusions should have been included in the Draft EIR.

## Response

The CEQA Guidelines call for an EIR to discuss and evaluate any inconsistencies between a proposed project and applicable plans and policies. In keeping with the Guidelines, the Draft EIR analyzes in Chapter IV. I, Land Use and Planning, the project's consistency with the City of Eureka adopted General Plan and the Land Use portion of its certified Local Coastal Program, including policies pertinent to the filling of wetlands on the project site (also see Master Response 3 of this Final EIR). The Draft EIR on page IV.I-14 notes that the project is not fully consistent with certain policies in the California Coastal Act (specifically Section 30233) related to wetlands and what uses or purposes constitute permissible fill of wetlands in the coastal zone. Some parts of the proposed project, it should be noted, are consistent with Section 30233. The list of permissible uses under Section 30233 includes restoration and incidental public service purposes, as described in the Draft EIR and further clarified in this Final EIR (see Master

Response 4), the first phase of development proposed for the site would be limited to wetland restoration and site remediation activities only. As also noted in Master Response 4, the Project Applicant is requesting approvals and entitlements for Phase 1 only.

The Draft EIR goes on to state that the Legislature anticipated situations where strict adherence to one section of the Coastal Act might impede attainment of the Act's broader goals and in Section 30007.5 provided a mechanism for resolving policy conflicts. The mechanism specifically included balancing considerations of policy inconsistencies with what is most protective of significant coastal resources and recognizing that "broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resources policies," (which certainly seems applicable to this project). Because the project, particularly given that the wetlands restoration component would be incorporated into Phase 1, would attain a key goal of the Coastal Act [30001.5(a)] to "[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources," the EIR concludes that the project's non-compliance with Section 30233 would not constitute a significant adverse environmental impact, pointing to Chapter IV.D, Biological Resources for a discussion of the physical effects on wetlands that would be associated with the project's inconsistencies with Section 30233.

The EIR supports this judgment because the existing wetlands on the site were largely created incidental to, and as a result of, past human activities on the site; are contaminated with elevated levels of substances harmful to human health and wildlife; are usually dry, subject to vegetation removal to protect against fires; and are scattered, such that they have limited habitat value. The project proposes to restore wetlands onsite in a quantity slightly greater than that which presently exists and to enhance their value by not only consolidating them but also by improving their hydrologic connectivity with Humboldt Bay and providing them with an upland buffer. The project would also provide a trail along the northwestern and eastern flanks of the wetland reserve, consistent with another basic Coastal Act goal [Section 30001.5 (c)] to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners."

Most importantly, the project proposes as its first phase of development a comprehensive remediation of the site and restoration of wetlands in a manner that would substantially reduce any potential for adverse water quality and/or ecological effects on receiving waters, such as Humboldt Bay, as a result of surface flows containing legacy contaminants on the site as described in Chapter IV.G of the Draft EIR. Consequently, the proposed project is in fact fully consistent with the California Wetlands Conservation Policy of 1993 ensuring no overall net loss of wetlands and to "achieve(ing) a long-term net gain in the quantity, quality and permanence of wetlands acreage and values in California."

In applying the Section 30007.5 conflict resolution provision of the Coastal Act to its review of projects, Coastal Commission staff have developed a discretionary practice of following a multi-step process to evaluate how each step applies to a given project as follows:

- 1) The project, as proposed, is inconsistent with at least one Chapter 3 policy;
- 2) The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources;
- 3) The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement;
- 4) The project, if approved, would result in tangible resource enhancement over existing conditions;
- 5) The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to “create a conflict”; and,
- 6) There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

An interpretation of how the proposed project would relate to each of these steps is provided below.

**The project, as proposed, is inconsistent with at least one Chapter 3 policy.**

The project is inconsistent with Section 30233 because site remediation and other project uses are not explicitly included in the list of permitted uses for filling of wetlands.

**The project, if denied or modified to eliminate the inconsistency, would affect coastal resources in a manner inconsistent with at least one other Chapter 3 policy that affirmatively requires protection or enhancement of those resources.**

Denial of the project would be inconsistent with Section 30230, which requires, in part, that “marine resources shall be maintained, enhanced, and where feasible, restored.” Restoring and enhancing the remnants of Clark Slough on the project site would have a direct benefit to the marine resources of the Clark Slough and the adjoining Humboldt Bay. Denial of the project would also be inconsistent with Section 30231, which requires, in part that “the biological productivity and the quality of coastal waters, streams, wetlands, estuaries and lakes...shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and...controlling runoff.” The project would, as its first phase of development, provide a comprehensive remediation of the site and restoration of its degraded wetlands in a manner that would substantially reduce any potential for continuing adverse effects on water quality and/or biological productivity in Humboldt Bay as a result of surface flows containing legacy contaminants on the site.

**The project, if approved, would be fully consistent with the policy that affirmatively mandates resource protection or enhancement.**

Phase 1 of the development plan for the proposed project is designed to remediate and enhance the value of wetlands on the site and therefore is fully consistent with Coastal Act Sections 30230 and 30231.

**The project, if approved, would result in tangible resource enhancement over existing conditions.**

The wetlands in their current condition on the site provide limited habitat value. Consolidating and restoring the wetlands as proposed would greatly, and tangibly, enhance their ecological value.

**The benefits of the project must result from the main purpose of the project, rather than from an ancillary component appended to the project to “create a conflict”.**

The proposal to remediate as well as to restore and enhance wetlands on the site as the first phase of site development fulfills a basic objective of the project, namely to facilitate brownfield development and urban infill development within the redevelopment area of the City.

**There are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.**

The Draft EIR addresses and evaluates an “Off-Site Shoreline Property Alternative” which is approximately 30 acres in size and is, for the most part, zoned and planned for Commercial Waterfront uses with some Natural Resources zoning. The property is located adjacent to Humboldt Bay in the coastal zone and has about 16.5 acres of wetlands primarily around the outside edges of the property. The “Off-Site Shoreline Property Alternative” is discussed on pages VI-29 to VI-33 of the Draft EIR. The discussion concludes on the basis of a more general assessment that this alternative would be feasible. However, an amendment to the Local Coastal Program would also be required for this alternative and the need for wetland fill would also likely not be avoided, although a specific wetland delineation for that property has not been completed. Consequently, this alternative would not likely be able to achieve the objectives of the project without also violating Chapter 3 policies in the Coastal Act.

The Coastal Commission has employed balancing under Section 30007.5 to approve projects in circumstances analogous to those presented by this project on many occasions. For instance, in 2002, the Commission approved a Local Coastal Plan amendment of the City of Oxnard to annex a 91-acre site to the City and authorize a project providing remediation of contamination on the site, development of residential uses, and open space and habitat areas. The site was contaminated as a result of 30 years of use as an oil field waste disposal facility. The project proposed to remediate the contamination and pay for it from the proceeds of the residential development. Because the project required filling about 4.2 acres of wetlands, it was inconsistent with Section 30233, which limits development in wetlands to certain uses that do not include residential uses. The Commission found a conflict between this policy and the policies of Sections 30230, 30231, and 30240 calling for maintenance and improvement of the quality of sensitive coastal resources and water quality. The

Commission resolved the conflict by finding that remediation of the site contamination together with mitigation of impacts on wetlands and sensitive resources was most protective of coastal resources. [Spinosa, 2006. California Coastal Commission Staff Report. Regular Calendar. Applicants Bill and Sherry Tilch. Application No. 1-06-033]

The proposed project presents a similar policy conflict to the Oxnard case in that the site's contamination, resulting from years of use of the site as a railroad yard, calls for remediation to benefit human health, wildlife, and the environment and, without remediation, the existing degraded conditions would persist. Remediation of the site contamination entails permanently filling approximately 6.15 acres of wetlands and construction of the wetland reserve as delineated under the Coastal Act; remediation, though, is not among Section 30233's list of allowed purposes for filling wetlands.<sup>7</sup> The project would create, restore, and preserve a total of approximately 9 acres of higher quality wetlands on the site. Under section 30007.5, the City and the Commission may resolve this policy conflict by determining that on balance it is more protective of significant coastal resources to remediate the site contamination as proposed in the project while mitigating resulting impacts on wetlands.

Other examples where the Coastal Commission has employed balancing under Section 30007.5 to resolve policy conflicts in other analogous circumstances, all within the last five years, include:

- CDP No. 1-08-017 (Wiyot Tribe) (Staff report June 27, 2008; approved July 11, 2008), balancing conflict between policies on protecting wetlands and policies on protecting water quality with respect to remediation of site contamination.
- LCP Amendment No. 2-06B (City of San Diego, Creekside Villas) (Staff Report June 5, 2007; approved Jan. 9, 2008), balancing conflict between policies on protecting ESHA and policies on concentrating development with respect to residential uses.
- Consistency Certification No. CC-008-07 (North County Transit District, San Diego County) (Approved June 15, 2007), balancing conflict between policies on protecting wetlands and policies on protecting water quality and air quality, promoting energy conservation, maximizing public access, and reducing vehicle miles traveled with respect to extension of a railroad line.
- LRDP Amendment No. 1-06 and CDP No. 4-06-097 (U.C. at Santa Barbara) (Staff Report Nov. 3, 2006; approved Nov. 17, 2006), balancing conflict between policies on protecting wetlands and ESHA and policies on protecting water quality, maximizing public access, and concentrating development with respect to university residential uses.
- LCP Amendment No. 3-03B (City of San Diego, Crescent Heights) (Staff Report Feb. 16, 2005; approved Mar. 16, 2005), balancing conflict between policies on protecting ESHA and policies on concentrating development with respect to residential uses.
- Revised Findings on City of Oxnard LCP Amendment No. OXN-MAJ-1-00, North Shore at Mandalay Bay (May 22, 2002; approved June 10, 2002).

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<sup>7</sup> The wetland impact numbers have been updated since the Draft EIR. Please see response to comment 1-2 on page 5-3 of the Final EIR for further explanation.

Finally, to the extent that remediation of site contamination may be inconsistent with the policy of Section 30233, that inconsistency may be resolved in keeping with the Coastal Act by the City exercising its authority to abate a nuisance (Pub. Res. Code Section 30005) and/or the Regional Water Quality Control Board exercising its authority to make determinations relating to water quality (Pub. Res. Code Section 30412(b)).

In summary, the Draft EIR's conclusions that some parts of the proposed project are potentially inconsistent with some provisions of the Coastal Act and that, given the nature of the site and the proposal to compensate for the filling of wetlands through onsite wetland restoration of at least equal quantity and of greater quality, the environmental impact of that inconsistency is less than significant, is well-supported by the evidence. The slightly greater than 1:1 replacement ratio for wetland mitigation in this case is also justified because of the low quality of the existing wetlands on the site, due to their degraded character and scattered presence on the site, and the fact that the wetland restoration component would occur as part of the first phase of site development.

Note as well that an inconsistency with a land use plan or coastal policy, in and of itself, is an analytical conclusion regarding the project's conformity to a plan but is not necessarily a physical impact on the environment. (*See Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170.) Potential physical impacts caused by the project's potential inconsistencies with particular land use plans or policies are addressed in other sections of the Draft EIR (e.g., Chapter IV.D, Biological Resources).

## Master Response 6: Cumulative Conditions on Broadway

This master response addresses the issues comments raise with respect to cumulative traffic conditions on the Broadway corridor analyzed in the Draft EIR and the corresponding Traffic Impact Study.

The Draft EIR addresses this topic area in Chapter IV.O, Transportation; see especially the discussions under Impact O-1 (traffic increases on the street system) and Impact O-8 (cumulative increases in traffic). This master response addresses all or part of the following comments: 16-22, 16-78, 16-106, 16-109, 16-111, 16-279, 16-306, 47-2, 52-8, 84-1, 95-10, and 125-8

Comments state that traffic congestion on Broadway is already an issue and that the roadway is operating at capacity. They suggest that project-generated traffic would substantially degrade traffic conditions on Broadway. In addition, comments request additional information related to the implementation of mitigation measures on Broadway, especially related to financing and phasing. Comments specifically state that:

- The identified mitigation measures work in conjunction with each other, improving traffic flow up and down U.S. 101 as a coordinated system. Therefore, they cannot be implemented piecemeal.
- Two-way traffic entering and leaving the proposed project in reduced or full configuration would do nothing but snarl traffic both ways on Broadway.
- Broadway was not planned for intense, high-frequency access. The proposed project would generate traffic congestion with automobiles and truck traffic.
- The project would only be liable for its “fair share” of costs for identified mitigation on Broadway, and no other funding sources are identified, leaving unmitigated traffic impacts on Broadway.

### Response

As presented under Cumulative Impacts on page IV.O-48 of the Draft EIR, traffic volumes on Broadway are projected to increase significantly over existing levels. Traffic since 1980 has increased, on average, approximately 1.5 percent per year, and would likely continue to do so with or without the proposed project. In addition, historical traffic count data collected between 1994 and 2004 on Broadway were also consulted, which identified little growth. Although year to year the growth is uneven, the annual average growth is 1.5 percent per year. Compounded over the 19 years for this analysis (2006 to 2025), a 33 percent increase in traffic would be expected by 2025 with or without the proposed project.

Much of the cumulative traffic increases that are anticipated in the traffic impact study would occur from development at various locations along Broadway (U.S. 101) in Eureka. Cumulative volumes were estimated by adding trips from other known development projects to the study intersections. Known projects were defined as currently identified projects in various stages of the

entitlement process, and are illustrated on Figure IV.O-13 of the Draft EIR, and their estimated trip generations are shown in Table IV.O-9.

Further, as stated on page IV.O-51 of the Draft EIR, the analysis of future traffic also examined the correlation between the growth in population and the growth in traffic from 1985 through 2000. The correlation is statistically significant, and the forecast increase in population of the Arcata-Eureka-Fortuna developed area also supports the analytical assumption that traffic on Broadway would increase by approximately 33 percent by 2025.

As stated on page IV.O-54 of the Draft EIR, the analysis identified Mitigation Measures O-8a and O-8b that would implement circulation improvements within the Caltrans right-of-way. However, the Project Applicant would only be required to pay the project's fair share, and there is no program in place or funding otherwise identified to ensure completion of the mitigation measures within the time period necessary to avoid the impacts. Mitigation Measures O-8a and O-8b are necessary to address full build-out of the project along with cumulative projects in the region under traffic conditions anticipated in 2025.

As noted on page IV.O-54 of the Draft EIR, there is no program in place or funding otherwise identified at this time to ensure completion of the mitigation measures within the time period necessary to avoid significant cumulative impacts, including those on Broadway. However, these improvements are not necessary for some time in order to avoid the impact. Consequently, it is impractical to develop a precise calculation of the project's fair share at this time. For example, the capital costs of undertaking the improvements and regional transportation needs could change dramatically between now and when the fair share contribution must be paid.

In any event, this limit arises from the constitutional principle of "rough proportionality," and the inability of the City to impose mitigation beyond the project's fair share. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.Fourth 342 ("Any mitigation measure must be 'roughly proportional to the impacts of the project.'") (citing CEQA Guidelines Section 15126.4(a)(4)(B)).) Here, the project's fair share contributions to the traffic improvements would be derived based on the percentage of vehicle trips through a given intersection or roadway segment resulting from the project. And despite the proportional share limitation, the Project Applicant has agreed to install many of the improvements for which the project is not solely responsible, subject to credit or reimbursement towards future transportation or other fees. Consequently, the project-level measures are enforceable and would be installed by the Project Applicant with construction of the project. (See, e.g., Mitigation Measures O-1c through O-1k.) CEQA does not require that the Project Applicant or Lead Agency specify the precise, fair share amounts at the EIR stage. It is enough to show the commitment to mitigate the impact or, if mitigation is not feasible, to make the finding that the impact is significant and unavoidable.

While the Project Applicant is only required to pay its fair share, and there is no program in place or funding otherwise identified to ensure completion of all mitigation measures, to ensure that the improvements are completed within the necessary time period to reduce or avoid impacts that can be reduced or avoided, mitigation measures would be installed by the Project Applicant under a

reimbursement agreement with the City or other method for receiving credit against future improvements. The reimbursement agreement would fully address how the developer would be compensated for providing more than the developer's fair and equitable share of mitigation costs. These can include establishing a traffic impact fee program based upon the type and size of future development or other financing mechanisms for fronting the costs of mitigation for which the developer is only partially responsible. Please see response to comment 52-29 in Chapter 3 of the Final EIR for further discussion of fair share contributions.

## Master Response 7: Trip Distribution

This master response addresses the issues comments raise with respect to the trip distribution analyzed in the Draft EIR and corresponding Traffic Impact Study prepared by TJKM Associates.

The Draft EIR addresses this topic area in Chapter IV.O, Transportation; see especially page IV.O-25, Project Trip Distribution and Impact O-1 (traffic increases on the street system). This master response addresses all or part of the following comments: 9-4, 16-78, 16-106, 16-109, 16-121, 16-199, 16-214, 16-261, 16-279, 24-17, 24-18, 24-22, 25-38, 47-2, 48-2, 54-1, 95-13, 103-6, 105-1, 148-15, 151-9, and 157-1.

Comments note that additional roadways that could be used to access the project site are not analyzed in the Draft EIR. Comments specifically state that:

- Because of the poor level of service for traffic on Broadway, it is anticipated that there would be increased usage of alternative routes throughout the City and County; for example along F Street from Fairway Drive to Herrick Avenue.
- The traffic analysis is too focused and does not include sufficient number of intersections in the analysis.
- Traffic along the 6th and 7th Street corridors should be analyzed because drivers use those corridors to avoid long delays on Broadway near the project site.
- The Draft EIR omits transportation corridor effects outside the immediate vicinity of the project area.

### Response

As described on page IV.O-25 of the Draft EIR, the project trip distribution was based on the Humboldt County Greater Eureka Area Traffic Model, also referenced as the new Humboldt County countywide travel model. The model was made project-specific by calibrating to segment and intersection counts. The origin and destination functions of the traffic model were further verified by an independent origin-destination study for the nearby Costco. Although, the figures presented in Chapter IV.O, Transportation, only illustrate vehicle turning movements at the 27 selected study intersections, the model plots present in Appendix P of the Draft EIR illustrate project trip distribution throughout Eureka.

As shown on the output plots, project trips were distributed throughout the city, although the vast majority of project trips were assigned to Broadway (U.S. 101) east and south of the project site, a few other arterial routes, such as 6th and 7th Streets east into Downtown. The model results demonstrate that intersections beyond the study intersections are anticipated to operate at acceptable levels of service. Therefore, the project would have a less-than-significant impact on those additional segments and intersections and there was no need to extend the analysis further. The project-generated traffic was distributed onto all streets within the Greater Eureka Area

Traffic Model, and the volume and location of those trips are portrayed in Appendix H of the Traffic Impact Study (Appendix P of the Draft EIR).

The list of 27 study intersections was developed through consultation with the City of Eureka and Caltrans District 1. As outlined on page IV.O-10 of the Draft EIR, it was determined that the intersections of Fourth and H Streets, Fourth and I Streets, Fifth and H Streets, and Fifth and I Streets were the busiest in Downtown, so that if project impacts were insignificant at these intersections, intersections farther east would have even less effect and need not be studied. And, to the south on Broadway, the intersection of Harris Street/North Bayshore Mall access drive and Broadway was determined, during consultation, to be the most likely southern intersection to be affected. There are several intersections located between these study intersections, most of which are secondary (i.e., Broadway and Grant Streets, Broadway and Cedar Streets, and Fifth and A Streets), meaning that they are local access streets with relatively low traffic volumes. The study intersections fairly represent the “worst case” for such minor intersections, and if the study intersections were shown in the modeling results to continue to perform adequately, the secondary intersections would be anticipated to perform adequately as well. On this basis, not all intersections along U.S. 101 were included as study intersections. Consequently, the project would have a less-than-significant effect on these other intersections on the U.S. 101 corridor.

Comments point to specific corridors and intersections that are not expressly identified for analysis in the Draft EIR, such as the 6th and 7th Streets couplet, F Street, Herrick Avenue, and Myrtle Avenue. A review of the 2030 traffic model results, in which proposed project traffic zones and trips were added, shows that relatively few project-generated trips would be expected to use those identified routes and intersections, and none would be expected to experience greater than 50 additional trips per peak hour (in the City of Eureka). In addition, the added trips would not result in significant changes in levels of service for any of the identified intersections. Consequently, the project impact to other intersections beyond those studied would be less than significant and no additional mitigation is warranted. It should also be noted that the expected volume increases are all within the existing capacity of local streets.

## Master Response 8: Visual Impacts from Humboldt Bay and Waterfront Drive

This master response addresses the issues comments raise with respect to visual viewpoints of and through the project site from Humboldt Bay and Waterfront Drive.

The Draft EIR addresses this topic area in Chapter IV.A, Aesthetics; see Impact A-3 (existing visual character of the site and its surroundings), specifically page IV.A-11 and Figures IV.A-6a and -6b, Site Photo and Simulation from Viewpoint 5 of the existing and proposed view from the Second Street extension on Waterfront Drive looking southeast. This master response addresses all or part of the following comments: 9-1, 9-7, 15-4, 16-11, and 17-9.

Commenters note that views through and of the project site from Humboldt Bay and Waterfront Drive are not analyzed in the Draft EIR. Comments specifically state that:

- The Draft EIR should include discussion of the effects on views to the project from coastal resources.
- The proposed project would block much of the vista across the site of the City and the mountains from the marina area.
- The project site, as currently primarily undeveloped, allows views into the City and the mountain skyline behind it. These views would be largely obstructed by the construction of the project.

### Response

As discussed on page IV.A-11 of the Draft EIR, the existing view of the project site from Waterfront Drive comprises low-lying vegetation with slight variations in elevation on the project site. Current views through the site are obstructed by a six-foot chain-link fence and vegetation, largely dominated by non-native pampas grass and phragmites. Views beyond the project site include existing buildings that are generally warehouse/light industrial structures with little articulation and few windows. Long-range views include development in the urban core and the forested ridgeline east of the City.

As depicted in Figure IV.A-6a and -6b, Site Photo and Simulation from Viewpoint 5, of the existing and proposed view from the Second Street extension on Waterfront Drive looking southeast, the proposed project would substantially alter the view of and across the project site. The immediate view would be altered by the construction of the Second Street extension and the proposed buildings that would range in height from one to five stories. As suggested in Figure IV.A-6b, the short-range view would include wide, textured sidewalks; low-lying landscaping; street trees; and two- and three-story structures. Long-range views would be interrupted by new structures.

The offshore waters in the vicinity of the project site are part of Humboldt Bay. Public views from the offshore area near the project site are of urban development, largely comprising one- to four-

story structures of varying masses, low-lying vegetation, and a small boat marina. Like the view from Waterfront Drive, long-range views from the Bay include development in the urban core and the forested ridgeline farther to the east. See photo of the shoreline below; the project site is the undeveloped parcel on the far side of Humboldt Bay (Adelman, 2002).

The view of the project site looking southeast toward the project site from Humboldt Bay is obscured by the City marina, which comprises marine-oriented recreation



*A view of the project site from the west. (Adelman, 2002)*

and municipal uses, including the City-owned, two-story marina building—known as the Wharfinger Building—and its adjacent public marina of 140 boat slips, boat-launching ramps, and surface parking. Views of the project site looking directly east into the site from Humboldt Bay are across vacant parcels owned by the City of Eureka Redevelopment Agency.

Figure 3-3 depicts the location of two new renderings of the proposed Marina Center development, one from inside the site looking towards the proposed Home Depot (Figure 3-4) and the second from the public marina to the west (Figure 3-5).

The California Coastal Act of 1976 made permanent the Coastal Commission and established the conservation and use policies guiding planning and regulation of land and water areas in the new coastal zone established by that law. Specifically, relative to the protection of scenic values, the Act provides that:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, [emphasis added] to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas....*

The Coastal Commission has implemented scenic resource protection policies primarily by focusing on land-based scenic views from public parks, trails, roads and vista points. Over the years, however, and in recognition of changing recreational use patterns and input from the boating community, the Commission began calling for protection of landscape views from state ocean waters (three miles) in rural areas of the coast that are essentially devoid of development, as well as other areas having unique landforms even in built environments. (The City's certified Local Coastal Program includes numerous viewshed protection policies related to urban development and visual resources. However, they do not specifically identify Humboldt Bay waters as vantage points.) This position takes into account the fact that boating is, and would continue to be, an increasingly important form of coastal recreation that is called out for



SOURCE: Baysinger Partners Architecture PC, 2009

Marina Center Mixed-Use Project EIR . 205513

**Figure 3-3**  
Additional Views of the Proposed Project



HOME DEPOT SITE VIEW BEFORE



HOME DEPOT VIEW AFTER

SOURCE: Baysinger Partners Architecture PC, 2009

Marina Center Mixed-Use Project EIR . 205513

**Figure 3-4**  
Internal View of the Proposed Project



MARINA VIEW BEFORE



MARINA VIEW AFTER

SOURCE: Baysinger Partners Architecture PC, 2009

Marina Center Mixed-Use Project EIR . 205513

**Figure 3-5**  
View of the Proposed Project from the Marina

protection in the Coastal Act. (See section 30224 PRC.) The conceptual basis for this position is that, like scenic vistas from upland public places, the enjoyment of uncluttered views from the ocean to and along California's magnificent coastline is a public resource and aesthetic value of importance to substantial numbers of current and future coastal users. It is an important public interest and a coastal resource worthy of protection.

Section 30250(a) of the Coastal Act provides that "new development, except as otherwise provided in this division, shall be located within, contiguous, with, or in close proximity to, existing developed areas able to accommodate it..." The basic purpose of Section 30250(a) is to promote infill development in existing urban areas along the coast. The development would not impair coastal resources or public access to the coast because the project site sits back from Humboldt Bay, separated by Waterfront Drive, a public roadway. The presence of an expanded and restored wetland area in the southwest portion of site would further enhance views from Humboldt Bay and other waterfront locations. Finally, although the proposed project would be visible from offshore areas, the project would be located in and among existing commercial and industrial development, and therefore, would be consistent with visual character in the vicinity.

While the proposed project structures would alter the visual character of the site, this effect is not considered significant, given the existing conditions of the property and the surrounding urban context of varying building height, bulk, mass, and scale. Nearby views of the site, including views looking east across the site, would be compatible with other buildings in the project vicinity with similar building materials and colors. Furthermore, the proposed project would be subject to design review by the City's Design Review Committee, which would review the exterior design, materials, textures, and colors in the interest of helping ensure the project's visual compatibility with its surroundings.

## Master Response 9: Wiyot Cultural Resources

This master response addresses the issues comments raise with respect to archaeological investigations of Wiyot Tribe ethnographic villages and burial sites potentially present on or near the project site.

The Draft EIR addresses this topic area in Chapter IV.E, Cultural Resources. The Ethnographic Setting is described on page IV.E-1 of the Draft EIR, and more specifically under Impact E-2 (archaeological resources). This master response addresses all or part of the following comments: 9-12, 11-1, 11-2, 16-142, 25-15, 27-1, 27-2, 27-3, 27-4, 27-5, 27-6, 27-7, 27-8, 27-9, 31-6, 32-8, 33-7, 36-3, 40-8, 50-6, 58-17, 58-18, 62-2, 62-3, 68-11, 69-1, 69-2, 69-3, 69-4, 69-5, 69-6, 69-7, 69-8, 69-9, 69-10, 69-11, 69-12, 69-13, 69-14, 69-15, 69-17, 75-9, 84-11, 84-15, 95-20, 97-1, 97-3, 102-2, 104-4, 109-9, 110-16, 113-4, 117-13, 126-14, 127-1, 127-2, 127-3, 127-4, 127-5, 134-4, 148-4, 150-1, 155-2, 156-1, 159-1, 160-4, and 162-3.

Comments suggest that an archaeological investigation should be performed prior to project approval and that mitigation in the Draft EIR are not sufficient. Comments specifically state that:

- Due to the high sensitivity of buried resources, it is imperative that all appropriate measures be taken to locate these resources prior to project implementation.
- While monitoring and data recovery may be acceptable as mitigation for potential inadvertent discovery of unknown sites, it would not necessarily be an acceptable method for mitigation of the potential impacts to known sites.
- Subsurface investigation for the presence of cultural materials should occur before any project-related ground-disturbing activity.
- The EIR should address what is being done to protect the Wiyot artifacts and villages.

### Response

This master response addresses the issues raised by comments regarding potential impacts to prehistoric (i.e., Native American) archaeological resources on the project site. As discussed in the Draft EIR Chapter IV.E, two Native American ethnographic villages are reported to be within or near the project site.

As noted in the Draft EIR, page IV.E-10, the Marina Center project would have a significant effect on archaeological resources if the project would:

- Cause a substantial adverse change in the significance of a “historical resource” or a “unique archaeological resource,” as those resources are defined in Section 15064.5 of the CEQA Guidelines and Section 21083.2(g) of the Public Resources Code; or
- Disturb any human remains, including those interred outside of formal cemeteries.

A prehistoric archaeological resource is presumed to be “historically significant” if the resource is either listed, eligible for listing, or otherwise meets the criteria for listing in the California

Register of Historical Resources (e.g., it is archaeologically significant and is “associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage” or “[h]as yielded, or may be likely to yield, information important in prehistory or history,” among other criteria). (CEQA Guidelines Sections 15064.5(a)(1)-(a)(3).)

“Unique archaeological resources,” on the other hand, are separately classified and are considered significant if those resources satisfy the criteria under Section 21083.2(g) of the Public Resources Code (e.g., it is an “artifact, object, or site about which it can be clearly demonstrated . . . there is a high probability that it . . . [c]ontains information needed to answer important scientific research questions,” among other criteria.) (CEQA Guidelines Sections 15064.5(c)(1)-(c)(3).)

CEQA and the Guidelines specify measures that can be taken to investigate and mitigate the discovery of human remains or “historically significant” or “unique” archaeological resources. (See, e.g., Pub. Res. Code, Section 21083.2(b)-(f); CEQA Guidelines Sections 15064.5(b)(3)-(4), (e)(1)-(2), (f).) Aside from those measures and the general obligations to evaluate impacts and adopt effective mitigation, however, further subsurface investigation is not required prior to certification of the EIR.<sup>8</sup> Indeed, without final site design, further subsurface investigations could potentially disturb areas that would not otherwise be disturbed by the proposed project.

For this EIR, Roscoe & Associates conducted a cultural resources investigation for the project site, which identified one, and perhaps two, Wiyot village sites within or near the project site. As noted in the Draft EIR, much of the past reporting and documentation on these village sites was spotty and imprecise, and changes in the physical landscape have made it difficult to confirm whether both villages existed in the immediate project area, and whether they were entirely within or entirely outside of the project boundary. No evidence of the villages or other prehistoric indicators were found on the surface of the project site during onsite field assessments, although such evidence was difficult to discern because the site is highly disturbed. Since the existence and precise location of these village sites could not be ruled out, discrete areas within the project site were identified as highly sensitive for prehistoric occupation. The Draft EIR also notes that there “remains a possibility that previously unknown significant deposits may be encountered during development especially at depths below approximately 5 to 8 feet.” Thus, while the two village sites have been documented in the general area, it is entirely uncertain whether those sites or related archaeological materials occur within the project site. It is also uncertain whether, if found, the materials would be deemed archaeologically significant.

Not all project activity has the potential to effect archaeological resources, particularly since most of the site – including the area delineated as culturally sensitive – contains as much as 5 to 8 feet of fill material overlying the historical, natural ground level. Depending on the specific area, any ground disturbing activities limited to the first 4 to as much as 7 feet in some areas would have no likely affect whatever on prehistoric archaeological resources. For example, the Supplemental Interim Remedial Action Plan (SIRAP) for Phase 1 proposes to excavate and remove soil and

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<sup>8</sup> See, e.g., *Society for California Archeology v. County of Butte* (1977) 65 Cal.App.3d 832, 838 (rejecting the notion that a lead agency must conduct every archaeological test and perform all research, study and experimentation recommended to it – including recommended “test excavations” or “sub-surface reconnaissance and laboratory analysis” – before the agency can approve the project).

dispose soils off-site. Generally, the SIRAP excavation activities would entail scraping the top six inches of soil within the existing ditches onsite; excavation to a depth of approximately 7 feet would only occur within a small and discrete location within the area identified as highly sensitive in the northeast corner of the site. Clean material would be imported to the site and placed over most of the site. So for the majority of the site, Phase 1 of the project is not anticipated to impact archaeological resources. Special considerations would be given to those discrete areas designated for excavation below the fill level, and within the limited areas already identified as “culturally sensitive.”

Several comments state that monitoring is the sole mitigation strategy for the project. To clarify, monitoring is not the sole mitigation strategy for the proposed project. Mitigation Measure E-2a, for example, dictates a number of steps that the Project Applicant must follow if archaeological materials are found, including ceasing construction activities, conducting an independent review of the find by a qualified archaeologist, and then implementing one or a combination measures (e.g., “removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.”). (Draft EIR, pages IV.E-17 and -18.) Given the possibility that no archaeologically significant materials will be found during project construction or monitoring, as well as the fact that any materials found would be protected through the treatment measures required under Mitigation Measures E-2a and E-2b, no further mitigation is required and the project is expected to have a less-than-significant impact on archaeological resources. In consideration of suggestions by commenters, Mitigation Measures E-2a and E-2b on Draft EIR pages IV.E-17 and -18 have been revised to clarify and strengthen the protections for archaeological resources during all phases of the project. Please also see Chapter 2, Errata, under Staff-Initiated Changes to the Draft EIR.

**Mitigation Measure E-2a:** The following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as “highly sensitive” in the reported entitled *A Cultural Resources Investigation of the Proposed Balloon Tract Development* (May, 2006) prepared by Roscoe & Associates:

- (i) Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s) to determine the presence or absence of archaeological resources in those specific locations predetermined to be culturally sensitive (Roscoe et al., 2006). The investigation shall be conducted based on a subsurface strategy prepared by the archaeological consultant, which shall prescribe the trenching and/or boring locations and expected depths of exploration reasonably necessary to discover significant archaeological resources if present. The subsurface strategy, in turn, should rely on an examination of extant soil boring logs and other data from the project area by a qualified geoarchaeologist for an analysis of depths of artificial fill and other information that may be pertinent to the discovery of significant archaeological resources. In Phase 1 of the project (remediation and wetland restoration), this investigation may proceed in conjunction with the soils excavation

conducted for the remediation plan. An archaeological consultant shall be present at all times during the subsurface investigation.

- (ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed “historically significant” or “unique” under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented by the Project Applicant to avoid or mitigate any significant adverse affects to the resource. A treatment plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: (a) recovery of the object or feature and the preservation of any data available for scientific study; (b) modification to the land-use plan or construction methods to avoid the object or feature; (c) placement of soil sufficient to protect the integrity of the feature or object; and/or (e) permanent protection of the feature through the conveyance of a conservation easement. The archaeologist shall determine the extent of monitoring based on the findings of the investigation. The treatment and monitoring plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment plan.
- (iii) If no “historically significant” or “unique” archaeological resources are discovered during excavation monitoring or pre-construction investigations, the Project Applicant shall implement Mitigation Measure E-2b for ground-disturbing activities within the areas specifically delineated as “highly sensitive” in the above-referenced Cultural Resources Investigation.

**Mitigation Measure E-2b:** Except for monitoring that is required under the treatment and monitoring plan in Mitigation Measure E-2a(ii), the following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site but outside the geographic areas specifically delineated as “highly sensitive” in the above-referenced Cultural Resources Investigation:

- (i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.
- (ii) If archaeological artifacts or other archaeological materials are discovered onsite during construction, all construction activities within 100 feet of the find shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review to evaluate whether or not the archaeological materials would be considered “historically significant” or “unique” under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3).

- (iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.
- (iv) If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a determination that the archaeological material is not significant or unique or a treatment or protection plan is prepared and initiated.

~~**Mitigation Measure E-2a:** For construction in the geographic areas described below workers involved in ground disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources. In addition, a Native American representative shall be present to monitor coring activities. If an archaeological artifact or other archaeological remains are discovered on site during construction, all construction activities shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review of the site. If the find is determined to be significant, adequate time and funding shall be devoted to conduct data recovery excavation.~~

~~Protection plans for either unique archaeological resources or culturally important archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.~~

~~Geographic areas subject to this mitigation measure are:~~

- ~~1. East of Commercial Street.~~
- ~~2. Within 100 feet of the common property line between the Balloon Track and those properties fronting Broadway that are not a part of the project (e.g., Nilsen's and Bob's Fine Cars).~~
- ~~3. The southeast corner of the property east of the proposed garden area of Anchor 1 and south of Bob's Fine Cars.~~

~~**Mitigation Measure E-2b:** If human remains are discovered during project construction, all work shall cease within the area until the coroner for Humboldt County is informed and determines that no investigation of the cause of death is required and, if the remains are~~

determined to be of Native American origin, the descendants of the deceased have made a recommendation to the landowner on how they would like to proceed in handling the deceased and the accompanying grave goods. If there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the California Native American Heritage Commission. If human remains will be removed from the site, the removal shall be done by archaeologists working by hand.

**Mitigation Measure E-2c:** If human remains are discovered during project construction, all work shall cease within 100 feet of the find until the coroner for Humboldt County is informed and determines that no investigation of the cause of death is required and, if the remains are determined to be of Native American origin, the coroner shall notice the California Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall assign the most likely descendant. The most likely descendent shall be consulted and provided the opportunity to make recommendations to the landowner concerning the means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods, all in accordance with Health & Safety Code section 7050.5, CEQA Guidelines section 15064.5(e), and Public Resources Code section 5097.98. If the human remains are determined to be of Native American origin, a qualified archaeologist shall be summoned within 48 hours to conduct an independent review to evaluate whether the remains belong to a single individual or multiple individuals. If the latter, and if there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the NAHC.

In addition, references to Mitigation Measures E-2a and E-2b on Draft EIR pages IV.E-19 and IV.E-20 (twice on each page) have been revised as follows:

...Mitigation Measures E-2a and ~~E-2b~~ through E-2c...

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