

Comment Letter 1

Sidnie Olson

From: Reid, Kelley E SPN [Kelley.E.Reid@usace.army.mil]
Sent: Tuesday, December 02, 2008 8:03 AM
To: Sidnie Olson; DEIRcomments
Subject: 301570: Marina Center - Balloon Tract

These are the first round of comments from the Corps.

From: Ammerman, David A SPN
Sent: Monday, December 01, 2008 3:56 PM
To: Reid, Kelley E SPN
Cc: Heidsiek, Carol A SPN; Shirley, Michael D SPN
Subject: Marina Center - Balloon Tract

Kelley -

After a quick review of elements of the City of Eureka's EIR draft for the Marina Center Project by Cue VI, LLC at what is locally known as the Balloon Tract between Broadway and Waterfront Drive, these are my comments which can be added or incorporated as part of official Corps comments to the EIR:

Biological Resources, Page 6 and also Page 19 - Tidewater Goby critical habitat was expanded January 2008 in the Federal Register to parts of Humboldt Bay, although critical habitat does not appear to be included on the maps immediately adjacent to the Eureka Marina, Clark Slough or adjacent to PALCO Marsh. For specific projects like the city's PALCO Marsh, I believe the U.S. Fish and Wildlife Service previously stated that tidewater goby is not present in this vicinity but the U.S. Fish and Wildlife Service (Greg Goldsmith) should be contacted anyway to confirm specific to this project and Clark Slough.

Page 11 - It says the Corps has not yet verified the Huffman GB wetland delineation. Is this still the case?

Paage 13 - ESA consultations - it correctly indicates how Corps would determine no effect or formal consultation if adversely affect but omits an in between process where the Corps may also determine "may effect but not likely to adversely affect" or NLAA during informal consultation. I also didn't see any mention of Essential Fish Habitat, probably no adverse affect with EFH anyway.

Pages 15-16 - citation of Section 404 in regs appears correct

Pages 25 and 29 - Regulatory Guidance letters are mentioned about wetland mitigation, however I see no reference to recent new Corps/EPA Compensation and Mitigation Rules, these should supercede what city has regarding wetland mitigation Corps processes now.

Regarding Hazardous Materials, contamination of hazardous materials or toxic substances on site, the city appears thorough on this issue. But due to the high profile of this controversial project and scrutiny by environmental groups such as Baykeeper and EPIC, the city, RWQCB, project proponent and consultants need to keep the review process transparent, keep people informed in regards to environmental remediation of the site. Remediation plans, processes and time lines need to be well documented, as public agencies and local environmental groups are often in disagreement and litigious regards to the level of contamination and how to deal with it.

Page IV/H-10 under "Hydrology and Ground Water" - Take a note about reference to FEMA FIRM maps regarding 100 year flood elevation. 6 feet baseline flood elevation, is that correct? Humboldt Bay tides can get up as high as 8.8 feet MLLW in certain times of the year.

12/15/2008

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1-1

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1-7

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Transportation Systems - I ride city and county local transit buses on a semi-regular basis and I know the routes as of this date. All buses run 6 days a week and not 7 days a week, there is no Sunday service from any transit company although it probably should be considered if the Marina Center plans are approved eventually. The Red Route serves parts of Fourth Street but does not run along Fifth Street. City planners need to take the bus once in awhile to be savvy to the current schedules. The map in the EIR has some errors. The City Red Route both on weekdays and Saturdays goes southbound from Third and H, onto Fourth Street, stops at Fourth and D, then makes a turn west onto A Street, then onto Commercial, turns left in front of Englund Marine, and goes southbound on Waterfront Drive. On weekdays, the Red Route makes a left on Washington and a right stopping at Koster and Washington, then continues to Costco, then re-enters South Broadway at Wabash and stops at Del Norte Street stop. On Saturdays the bus takes a similar route, going past the Eureka Marina and then straight to Del Norte Street. This bus diversion on Saturdays and weekdays when it passes Englund Marine and the Eureka Marina, does not a stop at any of those locations. The only reason for the diversion is to keep the bus conform to a time schedule when it reaches Bayshore Mall.

1-8

I proposed that City Transit, if the Marina Center gets built, place a stop at the Wharfinger Building, where riders can walk right onto the Marina Center property, they have to cross Waterfront Drive to do so, which with a cross walk shouldn't be too hard. Koster and Washington is also close by but should add another stop like at the Wharfinger further north or at Englund Marine.

1-9

I am in favor of the reduced Marina Center alternative or use of the Shoreline alternative near the Samoa Bridges. I support development at either site, but combining residential units with office and retail space including a museum is putting too many eggs in one basket. Site remediation is imperative.

1-10

Thanks - Dave

12/15/2008

Letter 1: US Army Corp of Engineers (USACE) (David Ammerman)

- 1-1 The comment relates to the tidewater goby. The Draft EIR correctly deems the species as potentially present on page IV.D-5. The critical habitat statement on Draft EIR page IV.D-19 (first and second line of third paragraph) is revised as follows:

~~...the nearest critical habitat for the tidewater goby is in Southern California.~~ the USFWS expanded critical habitat in January 2008 to include parts of Humboldt Bay.

The project site does not have the essential elements of critical habitat for tidewater goby, and the proposed project would not destroy or adversely modify the expanded critical habitat.

- 1-2 The comment states that there has been no verification of the wetland delineation by the Army Corp of Engineers. A wetland delineation prepared by HBG pursuant to the California Coastal Act (CCA) definition of wetlands was submitted to the California Coastal Commission (CCC) in 2008. Wetlands were found within the Clark Slough muted tidal drainage, non-tidal drainages and manmade depressions, and compacted low-lying areas created by previous industrial activities within the rail yard and industrial areas. Wetlands included 1.06 acres of estuarine emergent wetlands (Clark Slough remnants) and 7.61 acres of palustrine emergent wetlands, for a total of 8.67 acres of wetlands. A wetland delineation using Corps of Engineers Clean Water Act Section 404 criteria has been submitted to the Corps. The delineation confirms the information provided in the Draft EIR that a portion of the wetlands identified according to the CCA criteria would be subject to the jurisdiction of the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. The Draft EIR indicates that areas subject to Corps jurisdiction would include 4.54 acres of palustrine emergent wetlands (a subset of the 7.61 acres of palustrine emergent wetlands found in the CCA delineation), in addition to the 1.06 acres of muted tidal wetlands of Clark Slough, for a total of approximately 5.60 acres of Corps jurisdictional wetlands and waters.

It should be noted that after circulation of the Draft EIR, additional site engineering and project planning revealed that while the overall acreage of wetlands and other waters to be filled or disturbed would remain the same (e.g., 5.6 and 8.66 acres under the Corps and CCA delineation methods, respectively), the ratio of wetlands to be permanently filled versus wetlands to be temporarily filled was adjusted slightly. For example, permanent fill of wetlands would increase to about 4.07 and 6.15 acres under the Corps and CCA methods, respectively; whereas, temporary fill of wetlands would be reduced to 0.47 and 1.45 acres under the Corps and CCA methods, respectively. The wetland reserve and mitigation ratios would continue to provide mitigation for these adjusted impact calculations at the levels outlined in the Draft EIR. For example, the wetland reserve is proposed to create, enhance, and preserve a total of about 8.98 acres. The wetland reserve

would create about 6.46 acres of new wetlands, which would mitigate for the permanently filled CCA wetlands at an approximate 1.05:1 (created:impacted) mitigation ratio. (The mitigation ratio for wetlands delineated under the Corps methodology would be much higher – 1.59:1.) Another 2.52 acres of wetlands and waters would be enhanced and permanently preserved which, when combined with the other wetlands to be restored, would amount to an overall preservation mitigation ratio of 1.46:1 (preserved:impacted) for CCA delineated wetlands. (Again, the preservation mitigation ratio for wetlands delineated under the Corps methodology would be much higher – 2.21:1.) In any event, the Draft EIR’s calculations of wetlands acreage were approximate. Consequently, the Draft EIR’s analysis and mitigation measures remain the same, and the project is anticipated to have a less-than-significant impact on wetlands and waters. So as to include the most recent and most conservative data, this Final EIR references these updated permanent and temporary wetland impact numbers, and not the numbers listed in the Draft EIR.

- 1-3 The comment asks that the EIR explain the steps the Corps may take regarding consultation. Under Section 7 of the federal Endangered Species Act, the Corps must consult with the USFWS or NMFS on any federal action that “may affect” listed species or designated critical habitat. If the action is not likely to adversely affect the species or critical habitat, the Corps, USFWS, and/or NMFS may conclude the consultation by making the not likely to adversely affect (NLAA) finding. Here, the project is anticipated to have “no affect” on listed species or designated critical habitat, although the federal agencies must ultimately decide that question for purposes of satisfying their duties under Section 7.

The comment also states that the Draft EIR does not mention Essential Fish Habitat, but that adverse effects on Essential Fish Habitat are unlikely. As discussed on page IV.D-6 of the Draft EIR concerning fish habitats, the comment is correct that no adverse affect on Essential Fish Habitat would be expected from the proposed project.

- 1-4 The comment states that the citation of Section 404 appears correct. The comment is noted.
- 1-5 The comment notes correctly that there is a new version of the Corps/EPA compensation and mitigation rules which should be cited on Draft EIR, page IV.D-29. The text on page IV.D-29 is edited as follows:

Mitigation Measure D-3b: Prior to site grading, the Project Applicant shall prepare a detailed Restoration Plan in accordance with the U.S. Army Corps of Engineers (Corps) *Habitat Mitigation and Monitoring Proposal Guidelines* and Regulatory Guidance letters 02-02 and 06-03; Federal Register, 2008. *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule. Department of Defense, Department of the Army, Corps of Engineers 33 CFR Parts 325 and 332; and U.S. Environmental Protection Agency 40 CFR Part 230. April 10, 2008;* as well as the California Coastal Commission’s *Procedural Guidance for the*

Review of Wetland Projects in California's coastal zone: Chapter 2 Enhancement and Restoration....

Please note that another portion of Mitigation Measure D-3b is revised in response to comment 4-5. Please see Chapter 2, Errata, for the complete revised Mitigation Measure.

- 1-6 The comment states that the remediation plans, process, and timelines need to be well documented. The comment is noted. For further discussion of site remediation, please see Master Response 4 and Appendix S.
- 1-7 The comment requests confirmation of the flood elevation. As referenced on page IV.H-10, Chapter IV.H, Hydrology and Water Quality, the flood elevation is listed and confirmed as 6 feet. This is based on the most current and publicly available FEMA FIRM map.
- 1-8 The comment describes errors in the description of Transit Systems (text and figure) on pages IV.O-5 and IV.O-6 of the Draft EIR. The comment is correct; the Red Route, operated by Eureka Transit Service was altered to operate along Waterfront Drive to serve the Wharfinger Building. Mitigation Measure O-7d on page IV.O-47 of the Draft EIR is revised as follows:
- Mitigation O-7d:** The Project Applicant shall work with the Eureka Transit Authority to reinstate the bus stop at Koster and Washington Streets and improve the bus stops in front of the Wharfinger Building and at Seventh and California Streets, including paying their fair share to enhance the amenities of the stop (i.e., shelter, beach, and signage).
- 1-9 The comment recommends placement of a bus stop at the Wharfinger Building. Per response to comment 1-8, Mitigation Measure O-7d, is revised to reflect improvements to the existing transit stop in front of the Wharfinger Building.
- 1-10 The comment states a preference for the Marina Center Reduced Footprint Alternative or other off-site alternatives. Comment is noted. Alternatives are discussed in Chapter VI. Mitigation of hazards and hazardous materials are discussed in Chapter IV.G. Please also see response to comment 29-1, which discusses the benefits of the mix and intensity of uses in the proposed project.

Marina Center and greetings.

Sidnie Olson

From: Reid, Kelley E SPN [Kelley.E.Reid@usace.army.mil]
Sent: Friday, December 12, 2008 11:38 AM
To: Rganz@sns.com; DEIRcomments
Subject: Marina Center and greetings.

It's been several days, and a virus, since I browsed through the Draft EIR; however, I recall that the DEIR mentioned that a wetland delineation had not been confirmed by the Corps of Engineers.

As I recall, that statement is both accurate and misleading. A wetland report -as I recall- was only provided for the road network on the property in advance of requesting a NWP. Instead of confirming the jurisdiction of the roads without the data for the surrounding vegetated lands and instead of granting/confirming the NWP, the Corps noted the maintenance exemption was appropriate to the situation.

So, with respect to the DEIR, I really haven't had a complete wetland report to review. At least I don't recall it, and I don't find it in my files. Although the Corps strives to review permits within 120 days, I observe that it typically takes much longer. So, I should think that a wetland report and application should be submitted to the Corps soon so that we can begin the process. If the Corps' regulatory review requires changes to the project, those changes should--I would imagine--occur before the EIR is finalized.

I look forward to progressing on this project.

2-1

Letter 2: US Army Corp of Engineers (USACE) (Kelley Reid)

- 2-1 The comment states that there has been no wetland delineation for the entire project site submitted to the U.S. Army Corp of Engineers and that one should be submitted before the EIR is finalized. A wetland delineation (or assessment) at the CEQA stage needs only to provide the Lead Agency with sufficient information to determine the significance of potential impact to wetlands and develop appropriate mitigation measures, which is the case in this Draft EIR.

With respect to what has been submitted, Huffman-Broadway Group (HBG) on behalf of the Project Applicant submitted a Nationwide 3 (Maintenance) Pre-Construction Notification for the Balloon Tract Road Maintenance Project on October 2, 2006. The permit request was to repair and rehabilitate currently unserviceable access roads by repairing large potholes that impede emergency and maintenance vehicles from accessing the project site. The maintenance work projected fill impacts into 0.74 acres of potholes that may be regulated by Section 404 of the Clean Water Act. Accompanying the Pre-construction Notification was a request for the Corps to determine whether the subject potholes would be considered water filled depressions created in dry land and incidental to ongoing and continuous construction activity associated with maintaining access to the project site. As discussed in response to comment 1-2, a wetland delineation for the entirety of the project site has recently been submitted to the Corps. A Pre-Construction Notification for the environmental cleanup is being prepared and will be submitted to the Corps.

CALIFORNIA COASTAL COMMISSION

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Comment Letter 3

ARNOLD SCHWARZENEGGER, GOVERNOR



January 31, 2009

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

SUBJECT: Request for Comments on Draft Environmental Impact Report for *Marina Center* Mixed Use Project, Former Union Pacific Railroad Switching & Maintenance Yard, City of Eureka, Humboldt County, California (APNs 001-014-002, 002-021-009, 003-031-003, -007, -008, -012, -013, 003-041-005, -006, -007, & 003-151-001); CUE VI, LLC, Petitioner/Applicant; SCH # 2006042024

Dear Ms. Olson:

Thank you for the opportunity to comment on the draft environmental impact report (DEIR) for the above-referenced project. The Commission itself has not had the opportunity to review the document, but Commission staff has prepared the following comments.

The project entails the reclassification of property currently planned and zoned Public/Quasi-Public (PQP), and Light Industrial (LI) to Waterfront Commercial (WFC), General Services Commercial (GSC), Professional Office (PO), Light Industrial (LI) and Water Conservation (WC), with corresponding changes in zoning from Public (P) and Limited Industrial (ML) to Waterfront Commercial (CW), Commercial Services (CS), Office and Multi-Family Residential (OR), Limited Industrial (ML), Conservation Water (WC) districts over the majority of the approximately 43-acre property, consisting of a former railroad switching and maintenance yard and adjoining commercial-industrial sites in northwest Eureka. No amendments to the text policies and standards of the City's planning and zoning program are proposed.

Given their location within the California Coastal Zone, the proposed changes to land use and zoning designations of the property will require certification by the Coastal Commission of the changes as part of a Local Coastal Plan (LCP) amendment. The Commission's standard of the review for the amendments to the land use plan designation is whether the proposed changes meet the requirements of, and are in conformity with, the policies of Chapter 3 of the California Coastal Act (PRC §30200 *et seq.*). The Commission's standard of review for the amendments to the zoning designations is whether the proposed changes conform with, or are adequate to carry out, the provisions of the certified land use plan (as amended).

Once the changes to planning and zoning designations are presumably certified by the Commission, proposed physical development at the site would consist of the remediation of the petroleum hydrocarbons-, metals-, and volatile organic compounds-contaminated rail yard "brownfields" site and subsequent development of a mixed-use complex comprising over 500,000 square-feet of retail commercial, professional office, light industrial, multi-family

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residential, and quasi-public (museum) uses, and related onsite and offsite road way, off-street parking, landscaping, lighting, and signage improvements. The project would also include development of a ±12-acre wetland restoration and enhancement area as well as perimeter pedestrian and bicycle pathways, and natural resources interpretative kiosk amenities.

The subsequent site improvements under the new designations will require the issuance of conditional use and coastal development permits, and other authorizations by the City of Eureka. Pursuant to Coastal Act Section 30603(a)(2), any site developments approved by the local government located within 100 feet of any wetland would be appealable to the Commission. The Commission's standard of review for hearing any such appeal, should one be filed, would be whether the development conforms to the standards set forth in the certified LCP and the public access policies of the Coastal Act.

Scope of Agency Comments

Pursuant to Section 15082(b) of the California Environmental Quality Act (CEQA) Guidelines (14 CCR §§15000 *et seq.*), the Coastal Commission as a consulted agency is to provide the lead agency with "...specific detail about the scope and content of the environmental information related to the ... agency's area of statutory responsibility." In addition to providing this information, the consulted agency must identify if it will be a "responsible" or "trustee" agency (or both) for the project. This designation will depend upon the physical location of the project site being studied and the types of entitlements involved in authorizing the development.

The entirety of the project site is located within the California Coastal Zone as defined in Chapter 2.5 of the California Coastal Act (Public Resources Code §30150 *et seq.*) and within the City of Eureka's certified coastal development permit jurisdiction and is subject to the policies and standards of the City's LCP. Accordingly, the Commission will function as both a trustee and responsible agency. The role of trustee agency is based upon the Commission's explicit jurisdiction by law over natural resources held in trust for the people of the State of California that could be affected by the project. The function of responsible agency derives from the role of the Commission in: (a) certifying LCPs for areas within the coastal zone under local governments' jurisdiction; (b) issuing coastal development permits (CDPs) within areas of Commission jurisdiction; or (c) hearing appeals on CDPs issued by local governments for certain classes of development in specified areas.

Organization of Comments

Under Sections 15251(c) and (f) of the CEQA Guidelines, the Secretary of Resources has certified the California Coastal Commission's regulatory program as a "functionally equivalent process" to CEQA. Accordingly, the adopted final EIR would be used as a technical background document in assessing the project's environmental effects and conformance with applicable policies and standards within City's LCP and/or the Coastal Act. The document would first be used in the review of the LCP amendment requested by the City, in terms of the changes in ultimate development potential the program modifications would afford. Secondly, assuming the requested changes to the City's coastal land use plan and zoning facilitating the proposed project are certified, the analysis within the environmental document would be considered in hearing any

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future appeal of the coastal development permit for any development project undertaken at the site under the revised land use and zoning designations and/or changed plan policies and development regulations, should any such appeal be filed.

The comments provided below have been primarily directed to the evaluations pertaining to the potential effects relating to the LCP amendment portion of the project rather than those regarding the Marina Center development proposal proper. Although many of the comments relate to conformance with specific Coastal Act and LCP policy and standards, in keeping with the primarily “CEQA checklist” layout of the DEIR, the comments have been organized, where possible, consistent with the thematic format of the draft EIR with respect to the various classes of environmental effects. Pertinent LCP and Coastal Act sections (*italicized*), and general plan policies are cited, quoted or paraphrased accordingly.

The following comments are provided for lead and responsible agency consideration for reviewing the draft EIR:

Format and Scope of Analysis

As described in Chapter III, the Marina Center development project comprises two independent and consecutive sets of authorizations: (1) City-adoption of amendments to its LCP’s land use plan and zoning designations for the Balloon Track and adjoining properties (and any related textual plan policies or development regulations) and subsequent certification of these amendments by the Coastal Commission; and (2) issuance of a coastal development permit by the City (or the Coastal Commission on appeal) for remediation of hazardous materials contamination, subsequent construction of the site improvements, and sanctioning the uses therein. Action on any discretionary permit which is inconsistent with general plan and/or zoning provisions may not be acted on until requisite changes to such policies and standards have first been formally adopted by the City and certified by the Commission. As a consequence, processing the entitlements for such projects must be administered in a legally bipartite fashion: Concurrent processing of the conditional use and coastal development permit requests by the City conditioned upon the presumed future certification of an LCP amendment by the Coastal Commission would not be appropriate.

We fully acknowledge that it is the City’s intent to prepare an analysis that comprehensively assesses the specific environmental effects of the regulatory programmatic changes together with those associated with the physical construction, and land uses to be conducted at the Marina Center project site. However, there is no firm guarantee at this time that: (a) the City will adopt the amendments to its LCP; and (b) the Commission would certify those changes, such that the second component of the overall described project—the Marina Center development proper—could be legally authorized. In addition, plans for the project could be abandoned, substantially revised, and/or alternative development undertaken by others whether the plan and zoning provisions are amended or not. Thus, our comments are focused primarily on the proposed changes to the City’s LCP.

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LCP Certification Review Process

As directed by Coastal Act Section 30510(b) and detailed within the Commission’s administrative regulations (14 CCR 13551 *et seq.*), an amendment to the City’s local coastal program must include “materials sufficient for a thorough and complete review,” including a “...discussion of the amendment’s relationship to and effect on the other sections of the certified LCP...” Typically, where not otherwise statutorily exempted, many local governments choose to include this analysis within their CEQA documentation.

The policy analysis within the DEIR does not adequately provide for a thorough and complete review of the proposed LCP amendment, neither in terms of the land use plan designation changes with Coastal Act Chapter 3 policies, nor with respect to the proposed zoning designation changes in terms of their consistency with and adequacy for carrying out the policies of the land use plan (as amended). We suggest that the City supplement the DEIR coverage within Chapter IV-I to include the consistency analyses that will be required by the Coastal Commission in assessing the proposed changes to its LCP for purposes of certification. To this end, the analysis should be augmented to first focus on, under a generic “ultimate build-out” scenario, the environmental effects the plan and zoning designation changes would have on: (1) the range and types of principally- and conditionally-permissible land uses; (2) the permissible intensity of development (e.g., minimum lot dimensions; maximum heights, coverage, floor-area, and residential densities; yard requirements and setbacks, etc.); and (3) the consistency of the changes in land use plan with the Chapter 3 policies of the Coastal Act (i.e., Public Resources Code Sections 30200 through 30265.5, inclusive); and (5) the amended zoning regulations’ (i.e., CZR §§10-5.2901 through 10-5.29316, inclusive)¹ consistency with, and adequacy to carry out, the land use plan as amended (i.e., *City of Eureka General Plan Policy Document* Policies 1.A.4-6, 1.D.1-6, 1.E.3, 1.G.3, 1.I.1, 1.L.11, 1.M.2-7, 3.A.7-8, 3.G.1-2, 4.A.4-7, 4.B.1, 5.B.1-11, 6.A.1-24, 6.B.2-5, 7.B.2-5, and 7.D.1, as applicable.)

3-1

Once, this primary LCP amendment analysis is completed, then the EIR should evaluate the environmental implications of specific development projects, such as the Marina Center, together with an appropriate set of feasible alternatives.

3-2

Additional further detail as to the scope of this supplemental analysis is provided under each effects heading section below.

III. Project Description

Site Remediation: From past discussions with the project proponents, it is the Commission’s understanding that most of the petroleum and other hazardous materials at the project site will not be removed to disposal facilities, but instead “capped” beneath buildings, parking lots, and other impervious surfaces, and effectively confined *in situ*, consistent with state and federal standards for sites intending to be developed with commercial and industrial land uses. However, although alluded to in several sections of the DEIR (e.g., Table 1-1), no specific details

3-3

¹ Alternately cited as: “Title XV, Chapter 156 of the Eureka Municipal Code” (EMC).

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have been provided with regard to the extent and scope of the hazardous materials remediation to be undertaken at the project site, and the full array of types and levels of contaminants to be either removed or retained/confined. The particular remediation methodologies to be used, the types and concentrations of contaminants, and the end-points to which clean-up would be taken significantly affect the overall extent of excavation, filling, and grading at the site, the degree to which environmentally sensitive habitat areas would be impacted, the traffic and air emissions generated during that project phase, and the permissible land uses that may subsequently be developed at the remediated site. As previously commented upon in their scoping letter of April 25, 2006, the Department of Toxic Substances Control (DTSC), a potential oversight responsible agency, observed that any such remedial actions to be undertaken as part of the project should be discussed within the EIR.

3-3
cont.

We acknowledge that an approved remedial action plan has yet to be secured from the North Coast Regional Water Quality Control Board, the apparent responsible oversight agency. Nonetheless, the information contained in such a plan, prepared consistent with the standards of Division 20, Chapter 6.8 of the California Health and Safety Code, and the alternatives evaluation criteria within the U.S. Environmental Protection Agency’s National Oil and Hazardous Substances Pollution Contingency Plan, will be crucial to the Commission for conducting a full assessment of the project’s effects on coastal resources, especially as relate to the proposed changed land use and zoning designations, for determining the feasible least environmentally-damaging alternative, and for ensuring that the Commission does not modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality, as required by Coastal Act Section 30412(b).

3-4

Undergrounding Utilities: Several of the project rendering and photo visual simulations imply that some of the above-ground electricity and telephone utility poles and transmission lines would be removed as part of the project site improvements, presumably to be relocated into underground vaults. Although the DEIR states in several places that new utilities will be placed underground, there is no similar statement with respect to the applicant’s intentions regarding existing utilities. Please clarify if the project would include the undergrounding of these structures.

3-5

IV. Environmental Setting, Impacts, and Mitigation Measures

IV. A. Aesthetics

Applicable Coastal Act and LCP Policies and Standards

Coastal Act Section 30251 requires that “... the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance.” Permitted development is to be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize alteration of natural landforms, to be compatible with surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

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The City’s General Plan View Corridors and Architectural / Landscape Character policies include the following applicable provisions:

- 1.H.1. The City shall promote unobstructed view corridors to the waterfront from public streets and other public spaces through careful building siting and effective street tree maintenance.

Moreover, LUP Coastal Recreation and Access Policy 5.B.1, states, in applicable part:

The City shall provide public open space and shoreline access throughout the Coastal Zone, particularly along the waterfront... through all of the following: ...

- d. Consider and protect the scenic and visual qualities of coastal areas that are visible from scenic public vista points and waterfront walkways...

In addition, Section 10-5.2944 of the Zoning Regulations of the City for the Coastal Zone (herein “Coastal Zoning Regulations” or “CZR”) establish numerous criteria for reviewing the potential effects of new development on visual resources. Development occurring in and near coastal scenic areas may be approved or conditionally approved only where it is established that: (1) alteration of natural landforms is minimized; (2) the project will be visually compatible with the character of the surrounding area; (3) the project is sited and designed to protect views to and along the ocean and scenic coastal areas; and (4) visual quality in visually degraded areas will be restore and enhance, wherever feasible. [Emphasis added.]

Comments

The DEIR coverage of visual resources impacts is limited to an assessment of the physical ramifications of the Marina Center site improvements, primarily in terms of the qualitative similarities and differences with surrounding buildings. No separate discussion of the potential impacts the stand-alone programmatic changes—namely the imposition of the various requested plan and zoning designations— would have on the siting and design of subsequent site improvements and whether such improvements could conditionally comply with the above-cited criteria. The DEIR should be supplemented to provide such analysis.

3-6

The DEIR should be supplemented to include a quantitative evaluation of the bulk and scale of development in the surrounding area, comparing and contrasting structural square-footages, heights, floor-area, and lot coverage with that for the proposed development project. Mitigation measures should be revisited, as necessary, to identify additional means to reduce any significant adverse effects to less-than-significant levels, including height and size restrictions, exterior treatments to the structures, landscaping, and creation of view corridors. Such information will be critical for determining whether the proposed big-box commercial buildings and other large structures are visually compatible with the character of the surrounding area as required by Section 30251 of the Coastal Act and by Section 10-5.2944 of the City’s Coastal Zoning Regulations.

2 Alternately cited as: EMC Section 156.054.

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IV. C. Air Quality

Applicable Coastal Act Policies and Standards

Coastal Act Section 30253 directs, in applicable part:

New development shall: ...

- (3) *Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.*

Section 30414 states, in applicable parts:

*(a) The State Air Resources Board and air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. **The provisions of this division do not authorize the commission or any local government to establish any ambient air quality standard or emission standard, air pollution control program or facility, or to modify any ambient air quality standard, emission standard, or air pollution control program or facility which has been established by the state board or by an air pollution control district.**...*

*(c) The State Air Resources Board and **any air pollution control district may recommend ways in which actions of the commission or any local government can complement or assist in the implementation of established air quality programs.** [Emphases added.]*

Comments

The final EIR should discuss how the proposed LCP amendment and development project, with the attachment of specified mitigation measures would be consistent with requirements imposed by the North Coast Unified Air Quality Management District once that agency promulgates such standards. The mitigation and monitoring program should be augmented to include a robust set of measures, including but not limited to, market-based provisions for purchasing carbon offsets, exchanges, banking credits, and/or other transactions for inclusion within the project design towards achieving significant, incremental reduction in greenhouse gas emissions by the years 2020 and 2050, as set forth in the California Global Warming Solutions Act (AB32).

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IV. D. Biological Resources

Applicable Coastal Act and LCP Policies and Standards

Section 30121 of the Coastal Act defines “wetlands” as:

‘Wetland’ means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 13577 of the Commission’s administrative regulations (14 CCR 13001 *et seq.*), in applicable part, further defines “wetlands” as:

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(1) ...Land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; **or***
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.*

(2) For the purposes of this section, the term “wetland” shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where:

- (A) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; **and***
- (B) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that wetland habitat pre-dated the existence of the pond or reservoir. Areas with drained hydric soils that are no longer capable of supporting hydrophytes shall not be considered wetlands. [Emphases added]*

Section 30233 of the Coastal Act states, in applicable part

*(a) **The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted** in accordance with other applicable provisions of this division, **where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:***

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*

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(7) Nature study, aquaculture, or similar resource dependent activities...

(e) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary... [Emphases added.]

Coastal Act Section 30240 directs:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The central precepts of these policies and standards are iterated as Policies 6.A.1 through 6.A.14 within LUP Part II, Section 6 – Natural Resources, and in CZR Section 10-5.2942.3 In addition, Section 10-5.29104 directs:

No diking, filling, or dredging shall be permitted in the coastal zone, unless determined to be consistent with the provisions of all applicable Coastal Zone Development Standards, Part 3 of this Article, and all applicable policies of the land use plan of this LCP.

Comments

The two wetland delineations independently conducted have been reviewed by the Commission's staff biologist who provides the following observations:

Both delineators appropriately included a delineation utilizing the one-parameter definition in the Coastal Commission's administrative regulations (as contrasted with the U.S. Army Corps of Engineer's requirements that three wetland parameters be present). Similar wetland areas were identified by both delineators. The maps produced by the Huffman-Broadway Group were based on surveys using global positioning satellite (GPS) coordinates and are probably the more accurate. The wetlands that are present fall into two categories: seasonally wet depressions (i.e., palustrine emergent wetlands) that were created by human activities, and a remnant of Clark Slough (i.e., estuarine emergent wetlands) that is still connected to Humboldt Bay and receives muted tidal flows. The Clark Slough remnant covers about 1.06 acres (based on either CCC or ACOE definitions). There delineation discloses that are approximately 7.61 acres of CCC palustrine emergent wetlands, of which the proposed project would result in the permanent fill of about 5.54 acres of this ESHA. The project applicant proposes to create

3 Alternately cited as: EMC §156.052.
4 Alternately cited as: EMC §156.015.

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additional tidal estuarine wetlands as mitigation for the proposed wetland fill5. A mitigation ratio of at least 1:1 is proposed. The possibility of additional mitigation in the form of off-site creation, restoration, or preservation is also suggested. A 50-foot buffer around the created and restored wetlands is proposed.

Only a portion of the wetlands that are present are proposed to be dredged or filled — it apparently is not necessary to remediate soil contamination throughout the site. To analyze the impacts of the project and the project's consistency with land use policies, it is important that each wetland be individually characterized with respect to contamination and proposed remediation. The DEIR should be supplemented to provide this information.

With respect to the proposed 1:1 compensatory replacement ratio, were the proposed development a permitted use under the LCP or otherwise allowable, the mitigation that has been proposed would be qualitatively appropriate. In this landscape setting, a well-constructed, relatively large tidal wetland would have a greater natural resource value than the existing small, scattered, and degraded seasonally wet depressions. However, since there would be temporal losses of habitat functions during restoration and creation activities and since there would be uncertainty concerning the success of the mitigation, a mitigation ratio greater than 1:1 would be appropriate.

As regards the project proposal to include a 50-foot buffer around the restored wetlands, Policy 6.A.19 of the Land Use Plan and CZR Section 10-5.2942.156 require that the minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of the type and size of the adjacent development, and/or proposed mitigation measures, that a smaller buffer will protect the resources of the habitat area. Technical Services biological staff find that it is unlikely that a buffer of 50 feet would be sufficiently protective of wildlife, especially given the probable high level of use of the proposed trails around the restored wetlands.

The DEIR should be supplemented to address the above-described permissible use and adequate mitigation inconsistencies.

Comments addressing Coastal Act and LCP consistency of the proposed dredging, diking, and filling of wetlands follow under the Land Use and Planning sub-heading, below.

IV.F/G. Geology and Soils / Hazards and Hazardous Materials

Applicable Coastal Act and LCP Policies and Standards

Section 30253 of the Coastal Act states:

5 Although Figure IV.D-3 suggests two categories of mitigation wetlands (2.68 ac Clark Slough Channel and adjacent tidal wetlands and 6.3 ac merely captioned "wetland"), Table IV.D-3 specifies that both areas will be muted tidal wetlands.
6 Alternately cited as: EMC §156.052(O).

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New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Act Section 30232 directs:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Parallel provisions to these policies and standards are incorporated in the LCP as Policies 4.A.4., 7.B.2., 7.B.3.-5, 7.D.1, through 7.E.4 within LUP Part II, Section 4 – *Public Facilities and Services* and Section 7 – *Health and Safety*, and in CZR Section 10-5.2943.⁷

Comments

In addition to echoing the hazards avoidance and risk minimization provisions of Coastal Act Section 30253, LUP Policy 7.B.5 and CZR Section 10-5.2943.3 direct the City to require the preparation of a geology and soils report, with particular content and coverage, “at the time of project application” for certain specified high density residential and other high occupancy development⁸ located in areas of significant liquefaction potential. The proposed residential, office, retail commercial, and restaurant components of the Marina Center development meet these project review criteria and thus require preparation of a geology and soils report. Additionally, as discussed in the *Geology, Soils, and Seismicity* sub-chapter, the site is historically known to be subject to significant liquefaction. Notwithstanding the citation of use of an unpublished 2006 “geotechnical characterization report” of the site, a timely geology and soils report has not been prepared and made available for review. Mitigation Measure F-1a proposes to further defer the preparation of until after adoption of the EIR. Preparation of the requisite site stability analysis should be expedited and made available as part of the environmental review process. Specific mitigation measures (i.e., pre-construction site preparation, foundation & structural design, and grading & drainage recommendations) to reduce any significant adverse impacts to less-than-significant levels should also be identified.

3-11

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With respect to the DEIR’s coverage of hazardous substances impacts, please refer to the above comments under the III. Project Description – Site Remediation sub-heading.

IV. H. Hydrology and Water Quality

⁷ Alternately cited as: EMC §156.053.

⁸ These project types are defined as: (1) residential development having a gross density of eight or more units per acre; (2) office buildings of 10,000 square-feet or larger in size; and (3) visitor-serving facilities of 5,000 square-feet or larger in size.

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Applicable Coastal Act and LCP Policies and Standards

Coastal Act Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 continues on to direct:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30253 of the Coastal Act states:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Equivalent provisions are set forth within the LUP’s *Stormwater Drainage, Aquatic Resources and Marine, Wetland, and Riparian Habitat*, and *Geological Hazards* sub-sections, and within CZR Sections 10-5.2912 and 10-5.2943.

Comments

The impact analysis identifies a number of mitigation measures (i.e., erosion/sediment control plans; dry-weather scheduling; inlet protection; soil stockpile management; dust abatement; material delivery, storage, and use protocols; monitoring; swale bio-filtration; prohibitions on certain herbicides and pesticides) to be taken to prevent and reduce address water quality impacts from stormwater-entrained pollutants and sedimentation both during the construction phase and long-term during the development’s economic life. These water quality best management practices (BMPs) should serve to prevent significant impacts to receiving coastal waters both on- and off-site from site development sources.

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Although Mitigation Measures H-4a and H-5a provide for collecting and conveying site runoff to appropriately designed drainage facilities and treatment of stormwater within drop inlet vaults, no preliminary analysis has been provided with regard to the initial sizing and types of these facilities. As regards post-construction water quality measures, in acting on past LCP amendment and permit applications, the Commission has utilized water design standards developed cooperatively with the State Water Resources Board and regional water quality control boards for treating, filtering, and infiltrating stormwater runoff up to and including the 85th percentile, 24-hour and/or one-hour storm event for a given area, for flow- and volumetric-based BMPs, respectively. The DEIR should be supplemented to address how such design goals could be implemented at the project site (see enclosure.)

3-13

With respect to water-borne hazards, namely coastal flooding, tsunami inundation, and the implications of global sea-level rise, the DEIR utilizes data derived from 1986 flood mapping 1993 and 1995 tsunami modeling, and 2006 sea-level projections. These sources are somewhat dated and more current scientific information is available and should be utilized in analyzing these impact types. The more recent and site-specific data developed and collated by the members of the Redwood Coast Tsunami Work Group⁹ and prepared for the Samoa Town Plan EIR (“Revised Tsunami Vulnerability Evaluation – Samoa Town Master Plan, Humboldt County, California,” GeoEngineers, Inc. and PlanWest Partners, Inc., ©2006, and revisions) should be considered in assessing potential tsunami inundation risks, including the establishment of appropriate floor elevations for residential development at the site.

3-14

As regards sea-level rise, in December 2008, a staff briefing was presented to the Coastal Commission on recent developments in the fields of climate change and global warming (see: http://documents.coastal.ca.gov/reports/2008/12/F3_5-12-2008.pdf). Much of the presentation regarding predicted global sea-level rise followed from the 2007 release of the fourth assessment report by the United Nations - World Meteorological Organization’s Intergovernmental Panel on Climate Change (IPCC) (see: <http://www.ipcc.ch/ipccreports/assessments-reports.htm>) and various scientific papers published after its release (e.g., Rahmstorf, S. 2007. “A Semi-Empirical Approach to Projecting Future Sea-Level Rise,” *Science*, v315, 368-370, DOI:10.1126/science.1135456 and W. T. Pfeffer, et al. “Kinematic Constraints on Glacier Contributions to 21st-Century Sea-Level Rise,” *Science* 321, 1340 (2008); DOI:10.1126/science.1159099.) These materials, as well as the pending 2008 *California Climate Action Report*, should be consulted in the preparation of a supplemental quantitative assessment of the effects of global sea-level rise on site stability and the exposure of persons and property to natural and anthropogenic hazards at the project site, including the effects such future inundation may have on the management of hazardous materials and contamination retained/confined at the project site.

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IV. I Land Use and Planning

Applicable Coastal Act and LCP Policies and Standards

Section 30253 of the Coastal Act states, in applicable part

⁹ See <http://www.humboldt.edu/~geology/earthquakes/retwg/> for contact information.

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(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (6) Restoration purposes.
- (7) Nature study, aquaculture, or similar resource dependent activities...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary... [Emphases added.]

Coastal Act Section 30240 directs:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The central precepts of these policies and standards are iterated as Policies 6.A.1 through 6.A.14 within LUP Part II, Section 6 – *Natural Resources*, and in CZR Section 10-5.2942.¹⁰ In addition, Section 10-5.2910¹¹ directs:

No diking, filling, or dredging shall be permitted in the coastal zone, unless determined to be consistent with the provisions of all applicable Coastal Zone Development Standards, Part 3 of this Article, and all applicable policies of the land use plan of this LCP.

¹⁰ Alternately cited as: EMC §156.052.
¹¹ Alternately cited as: EMC §156.015.

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Coastal Act Section 30250(a) directs, in applicable part:

New residential, commercial, or industrial 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 or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

Coastal Act Section 30252 continues on to state:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Moreover, Section 30255 of the Coastal Act directs that:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

City of Eureka General Plan Policy 3.F.2 states:

The City shall work with the North Coast Railroad to determine if feasible locations for switching operations can be located outside the city, allowing the current balloon track area to be used for industrial or commercial development purposes.

In addition, Section One of the City's Land Use Plan (LUP) titled *Land Use and Community Design* contains numerous policies that relate to the proposed plan and zoning redesignations and site development. The policies most germane to the proposed development project include the following:

LUP *Land Use and Development Framework* Policy 1.A.2 states:

Within the coastal zone, the City shall ensure that coastal-dependent developments have priority over other developments on or near the shoreline. Except as provided elsewhere in this General Plan, coastal dependent development shall not be sited in a wetland.

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Coastal-related developments shall generally be accommodated proximate to the coastal-dependent uses they support.

General Plan Policy 1.L.1 states, in applicable part:

The City shall discourage new commercial development within the city that will adversely affect the economic vitality of the Core Area...

General Plan Policy 1.L.8 states:

The City shall require major commercial development projects to either be located in areas served by public transportation or in areas to which the existing public transportation service can be feasibly extended.

LUP *Commercial Development* Policy 1.L.11 states, in applicable part:

The City shall protect and, where feasible, upgrade facilities serving the commercial fishing and recreational boating industries... [Emphasis added.]

General Plan Policy 1.L.12 states:

The City shall promote the concentration of automobile-oriented retail development in the ASC designated area at the west end of 6th and 7th Streets. In particular, the City will support the establishment and retention of auto dealerships in this area. The City shall also discourage the establishment of new dealerships outside of this area.

LUP *Industrial Development* Policy 1.M.5 states:

If efforts to develop a multi-purpose terminal at Dock B are unsuccessful, the City will support the development of a non-coastal industrial park in the Dock B area, including the "balloon track" and the Wright-Schuchart site. In developing such an industrial park, the City would retain the Dock A area for possible long-term cargo terminal development.

LUP *Industrial Development* Policy 1.M.8 states, in applicable part:

The City shall encourage coastal-dependent industrial facilities to locate or expand within existing sites...

General Plan Policy 1.M.8 states:

The City shall require that new industrial and heavy commercial development projects have convenient and safe access to major transportation facilities (highways, railroads, waterfront facilities) to minimize unnecessary and disruptive traffic through residential and other sensitive sections of the city.

General Plan Policy 1.N.9 states:

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The City shall strive to provide high quality public facilities, utilities, and services throughout the urbanized area of Eureka and shall ensure that such facilities, utilities, and services are compatible with surrounding development.

LUP *Water Transportation* Policy 3.G.1 states, in applicable part:

The City shall protect and, where feasible, upgrade facilities serving the commercial fishing and recreational boating industries... Proposed recreational boating facilities shall, to the maximum extent feasible, be designed and located so as not to interfere with the needs of the commercial fishing industry.

Comments

As set forth in Policy 3.F.2 cited above, it is clear that the City's General Plan acknowledged a phase out of the former railroad uses on the proposed project site to be replaced with other commercial and/or industrial development. While such visioning may have been included within the City's long range planning program, the City must nonetheless ensure that any such change in use be consistent with all provisions within the LCP, including both land use plan policies and standards, and zoning regulations. Although this analysis was conducted for the land use plan policies (i.e., Table IV.I-2), other than with respect to the intent and purpose of the proposed new zoning designations, no similar analysis was conducted for the relevant coastal zoning regulations. A summary of each proposed zoning districts development standards was provided, however no analysis accompanied this summary with respect to the project's consistency with those standards.

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The Coastal Act and LCP policies and standards enumerated in each environmental effect subsection categorically set out the more prominent issues that need to be addressed as part of the environmental review of the proposed LCP amendment and development project. Overall, with respect to analyzing conformance with these policies and standards, the EIR should bear in mind the following questions:

- Can the uses which would become permissible as a result of the amendment to the LCP be legally developable at the proposed location, taking into account site-specific conditions and characteristics and the setting (i.e., the presence or proximity of protected ESHA, surrounding development types and densities, shoreline adjacency, hierarchy of land use priorities, etc.)? 3-17
- Will the changes in site plan and zoning designations result in displacing or thwarting the development of other requisite, needed, or planned-for higher priority uses to other locations or timelines that could more effectively be provided for at the proposed project site and/or in a more expeditious timeframe? 3-18
- Are adequate community services, public utilities, and other support infrastructure available to serve the uses at this location under the proposed revised plan and zone categories? 3-19

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- Will the development types that would be facilitated under the amended land use and zoning designations integrate in a non-conflicting manner with established and/or planned surrounding uses? 3-20

Permissibility of the Filling, Dredging, and Diking of Wetlands: The DEIR asserts that the wetlands on the site are neither a "sensitive natural community" under CEQA nor "Environmentally Sensitive Habitat Areas" (ESHA) as defined by the Coastal Act and the City's LCP. However, the Eureka LCP identifies all wetlands as ESHA. Land Use Plan Policy 6.A.6 and Section 10-5.2942.3(2)¹² explicitly declare "wetlands and estuaries" to be "environmentally sensitive habitat areas." Table IV.I-2 of the Draft EIR concludes that the project is "Consistent" with LUP Policy 6.A.7 despite the fact that this policy restricts development in ESHA to resource dependent uses. 3-21

Two of the more salient policies in the LUP regarding wetland impacts are Policy 6.A.9, which requires that any diking, filling or dredging of wetlands be a "permitted use," and Policy 6.A.14, which enumerates all "permitted uses." The Draft EIR in Table IV.I-2 asserts that the project is "consistent" with Policy 6.A.9 and that the project is "potentially inconsistent" with Policy 6.A.14. In fact, the project appears to be "inconsistent" with both policies since only the proposed wetland restoration component is a "permitted use."¹³ 3-22

With regard to consistency to Section 30233 of the Coastal Act, wetland restoration is included as a permissible use for wetland fill. However, as the DEIR acknowledges on page IV.1-14, the filling of wetlands for the purpose of site remediation is not listed as one of the permissible uses for filling of wetlands under Section 30233. The DEIR should also have indicated that filling of wetlands for the proposed reuse of the site for commercial and non-coastal dependent industrial development are also not included in the list of permissible uses for filling wetlands under Section 30233. 3-23

Despite these inconsistencies of the project with the uses permitted by Section 30233 for fill in wetlands, the DEIR 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 DEIR cites the conflict resolution provisions of Section 30007.5 of the Coastal Act and erroneously suggests that this section of the Coastal Act could be used to override the acknowledged inconsistency of the project with Section 30233. 3-24

Section 30007.5 of the Coastal Act does not provide a basis for overcoming the inconsistencies of the project with the wetland fill policies in the manner suggested in the DEIR.

¹² Alternately cited as: EMC §156.052(C)(1)(b).
¹³ See also comments under Land Use and Planning regarding the invocation of Coastal Act Section 30007.5, the Commission's conflict resolution "balancing provisions" for resolving the permissible use inconsistencies.

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The Coastal Act provides that development may only be permitted where the development may be undertaken in conformity with all coastal resource, public access, and public recreation protection policies of the Act and/or an applicable local coastal program. The "conflict resolution process" provided by Coastal Act Section 30007.5 may only be invoked where an unavoidable conflict exists between competing Coastal Act policies. For example, construction of an impoundment for irrigation on a stream that supports threatened salmon could present a conflict between Coastal Act policies that seek to maintain agricultural production on the one hand and policies that require protection of habitat supporting sensitive species on the other hand. The Commission is required to resolve such conflicts in the manner that is most protective of significant coastal resources. The conflict resolution process is not applicable in cases where a proposed development is simply inconsistent with the Coastal Act absent a conflict between competing Coastal Act policies. In these cases, the development is simply prohibited.

In order to use the conflict resolution mechanism of Section 30007.5, the Commission must first identify a conflict between Chapter 3 policies of the Coastal Act. If there is no conflict between policies, Section 30007.5 is not applicable. Further, the conflict must be one that inevitably arises out of an attempt to meet another Chapter 3 policy. Thus, the Commission must find that in meeting the requirements of one Chapter 3 policy, it is impossible to meet the requirements of another Chapter 3 policy. More precisely, the Commission must find that denial of an LCP amendment due to a Chapter 3 inconsistency necessarily will itself result in an inconsistency with a Chapter 3 policy.

References in the DEIR to the conflict resolution section of the Coastal Act (Section 30007.5) are misleading because in this case there is no conflict between restoring wetlands at the site and limiting fill to only the uses permissible under Section 30233 of the Coastal Act. As discussed previously, if the City were to approve the proposed LCP amendment, the Commission would review for consistency with the Coastal Act the proposed re-designation of the bulk of the site in the LUP from "Public/Quasi Public," to various commercial and non-coastal dependent industrial uses, as well as the proposed corresponding changes to the zoning district applicable to the site. In reviewing the re-designation and rezoning of the site, the Commission could act in several ways that would not result in an inconsistency with a Chapter 3 policy. Wetland restoration is a use that could be allowed under the current Public/Quasi Public land use designation. Thus, denial of the LCP amendment would not preclude wetland restoration from occurring on the site and denial would not lead to a proposed project going forward that would fill wetlands for other uses that are not permissible under Section 30233. In addition, the Commission could consider various alternative land use designations for the areas proposed to be filled that allow for uses that are permissible for wetland filling under Section 30233 such as coastal dependent industry and wetland restoration development, including the designations of Coastal Dependent Industrial or Conservation Water. All of these courses of action would avoid a conflict with Chapter 3 policies. Therefore, the Commission could not use Section 30007.5 in the manner suggested in the DEIR because denial of the proposed LCP amendment due to its inconsistency with the wetland fill provisions of Section 30233 of the Coastal Act would not itself result in an inconsistency with another Coastal Act policy.

Priority Uses: The discussion in the DEIR concerning consistency with Coastal Act policies fails to address the need for use of the site for priority uses under the Coastal Act.

3-24
cont.

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The Coastal Act contains numerous policy provisions relating to the protection of near shore areas for a variety of highly valued and functionally dependent uses that could not feasibly be provided or developed elsewhere. These include public accessways and related support facilities, water-oriented public and private recreation, coastal-dependent industrial operations, including aquaculture and commercial fishing-related uses, and other manufacturing or processing works requiring waterfront siting. The Coastal Act also includes other provisions for fostering the siting and development of visitor-serving facilities as a second-tier priority development type, provided such use and/or development does not adversely impact higher priority uses and developments, particularly those that are functionally-dependent upon shoreline-proximate locations. Section 30222 of the Coastal Act states:

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.

In reviewing development proposals involving differing uses on locations within waterfront areas, the comparative coastal-dependency of the prospective proposed use, the relative availability of sites for coastal-dependent development, and the current and projected needs of the area need to be fully considered if significant impacts to high-priority coastal-dependent uses are to be avoided.

The proposed commercial and industrial land uses proposed for the site are not priority uses under the Coastal Act. In evaluating the proposed LCP amendment that would change the Public LUP and zoning designations to a mix of commercial and industrial designations, the Commission will need to evaluate the proposed amendment against the priority use policies of the Coastal Act and whether the proposed commercial and industrial uses would occupy land that is needed to serve priority uses. Given the proximity of the site to the waterfront and its location across Waterfront Drive from the Eureka Boat Basin, the need to evaluate the potential use of the site for priority uses is especially important. The DEIR should examine such potential uses as use of the site for coastal dependent industry, as a support area for shipping terminal uses, and for recreational boating uses. One of the most comprehensive analyses of port or harbor related development potential of Humboldt Bay performed in recent years is the Port of Humboldt Bay Harbor Revitalization Plan, prepared by consultants for the Humboldt Bay Harbor, Recreation and Conservation District in February, 2003. The City of Eureka and Humboldt County also participated in the study. The study identifies the project site as a site that should be considered particularly for use as a dry-boat storage facility for the storage of recreational boats on land. The study notes the proximity of the site to the boat launching ramp at the Eureka Boat Basin and suggests the utility of the site for such a priority use. The proximity to the marina, the recreational amenities of the waterfront, and its location across Waterfront Drive from Wharfinger building where many public and private meetings of various groups are held also suggest that the site may have particular utility for visitor serving uses, such as lodging and restaurants. The DEIR should fully evaluate the demand and feasibility for the use of the site for these specific uses as well as the range of priority uses identified in the Coastal Act.

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cont.

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IV.N. Recreation (and Coastal Access)

Applicable Coastal Act and LCP Policies and Standards

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Coastal Act Section 30213, in applicable part, directs:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30222 of the Coastal Act states:

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.

Coastal Act Section 30223 goes on to direct that:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In addition, Coastal Act Section 30234 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land. [Emphasis added.]

Coastal Act Section 30252 continues on to state, in applicable part:

The location and amount of new development should maintain and enhance public access to the coast by... (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

LUP Coastal Recreation and Access Policy 5.B.3, in applicable part, states:

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The City... where feasible, shall provide... facilities serving, commercial and recreational boating, including party and charter fishing boats.

LUP Coastal Recreation and Access Policy 5.B.9 states:

The City shall ensure that public access support facilities are distributed throughout the Eureka Coastal Zone. Offstreet parking shall be provided in the waterfront area; however, it shall not be located immediately adjacent to the shoreline, unless there is no feasible alternative. [Emphasis added.]

LUP Table 5-2, which sets forth the City’s coastal access inventory, identifies the project site directing, in applicable part, as follows:

Access Point/Area	Description of Proposed Access
Across the Northwestern Pacific Railroad right-of-way from Waterfront Drive to Old Town	The City shall, in conjunction with the California Public Utilities Commission and the Northwestern Pacific Railroad, prepare a implementable long-range plan for pedestrian and vehicular at-grade access, consistent with requirements of this General Plan, in order to maximize public access opportunities and ensure public safety.

Comments

As with much of the bulk of the DEIR, its analysis centers on the pedestrian and bike path amenities that would be provided by the proposed development project and does not separately address the impacts associated with the changes in plan designations and zoning. This assessment is especially pertinent to potential impacts to recreation opportunities and coastal access given: (1) the site’s proximity to the Eureka Public Marina; (2) the existing “Public/Quasi-Public” land use and “Public” zoning designations being specifically intended for providing such facilities more so than any other alternate land use and zoning category; and (3) the project locale having been identified in other City and regional planning documents as a potential site for development of a variety of similar facilities including “tourism / marine science cluster” (e.g., public aquarium, marine lab, cruise dock, naval vessel museum, and related activities) and “dry boat storage.”

3-26

Alternatives

Applicable Coastal Act and LCP Policies and Standards

Coastal Act Section 30233(a) reads, in applicable part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative... [Emphases added.]

Coastal Act Section 30260 directs, in applicable part:

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Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section ... if (1) alternative locations are infeasible or more environmentally damaging... [Emphases added.]

Comments

In the interest of avoiding and minimizing adverse impacts to coastal resources, the Coastal Act in several contexts requires a thorough assessment of alternatives both to designations for specific classes of land uses as part of reviewing for certification LCPs, port plans, public works plans and UC/CSU long range development plans, and in the siting and design of development projects. With regard to the requested land use plan and zoning amendment, these evaluations of the range of feasible alternatives in the DEIR were effectively limited down to three options: (1) the proposed Marina Center project (and a reduced project variant); (2) the “no project” wherein the existing P/QP and P designations would be retained; and (3) reclassifying the site’s zoning to “Light Industrial” (no corresponding land use plan designation for which the MG zoning would implement was disclosed.) Given the recent economic down-turn of the last three financial quarters and the current and pending availability of several large retail commercial properties, the alternatives section of the DEIR should be revisited to evaluate which if any or several of these existing developed sites could accommodate the proposed retail commercial, professional office, and commercial services uses.

3-27

Errata

In addition to responding and providing supplemental evaluation of the potential environmental effects set forth in the above comments, the DEIR contains several erroneous statements which should be corrected within the final document:

- The coastal zone boundary in proximity to the project site is not the centerline of Broadway and Third Streets. Rather, pursuant to a motion adopted by the Commission on March 1, 1977 in conjunction with the jurisdictional maps prepared per Section 30103(b) of the Coastal Act, “where the Coastal Zone boundary follows road or railroad rights-of-way, the boundary of the Coastal Zone shall be the inland boundary of the improved right-of-way as it exists as of January 1, 1977, or as modified by closure or additional improvement thereafter provided that it shall not be more than 100 yards inland from the center line.” [Emphasis added.] (Chapter IV, Section I Land Use and Planning, p. IV.I-3)
- The City of Eureka’s LUP has been amended multiple times since the September 1998 certification; the 1998 LUP is not the “current City of Eureka Land Use Plan.” (Chapter IV, Section I Land Use and Planning, p. IV.I-10)
- Although the area is the subject of several land use policies, the Westside Industrial Area Study has never been transmitted to the Coastal Commission for certification review for inclusion as part of the LCP. (Chapter IV, Section I Land Use and Planning, p. IV.I-71)

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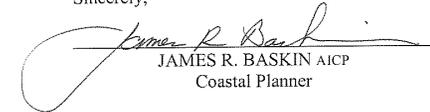
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- In its administration of the requirements of Coastal Act Section 30233, the Coastal Commission considers excavation, the extrication of earthen materials, and other forms of grading not otherwise comprising “filling” or “diking” as forms of “dredging.” (Numerous citations)

3-31

Thank you for the opportunity to provide comments as part of the preparation of the environmental analysis. Please call if you have any questions regarding this letter.

Sincerely,


JAMES R. BASKIN AICP
Coastal Planner

Encl: 85th Percentile Design Goal Implementation Considerations and Eureka WFO weather station precipitation data

RSM/JRB:jb/t

Letter 3: California Coastal Commission (James Baskin)

Attachments to Letter 3 are included in Appendix U.

- 3-1 The comment suggests that Draft EIR Chapter IV.I, Land Use and Planning, include a supplemental consistency analysis that would be required by the Coastal Commission in assessing the proposed changes to the Local Coastal Program for purposes of certification. Please see Master Responses 3 and 5 for further discussion and analysis of the issues raised by the commenter. Generally, a consistency analysis is not necessary for CEQA unless it reveals a physical change in the environment that is not addressed in other sections of the EIR. Here, the physical changes and resulting environmental impacts associated with project site remediation, wetland restoration, and the Marina Center project are addressed throughout the EIR (e.g., under Chapter IV.D, Biological Resources and IV.H, Hydrology & Water Quality).
- 3-2 The comment on analysis of the LCP amendment is noted. The Draft EIR evaluates the environmental impacts of the project, as it must do under CEQA. It may – though it need not – provide the policy analysis and other findings that may ultimately be needed for an amendment to the City’s certified LCP. Here, the Draft EIR goes the extra step and did analyze some of the policy issues raised by the LCP amendment necessary to enable the proposed project as well as to analyze the specific environmental impacts of the proposed project’s physical development.
- 3-3 The comment states that the Draft EIR should provide more detail regarding specific Remedial Action Plans. For further discussion of project site remediation, please refer to Master Response 4 of this document and to Appendix S, which includes a recently completed Supplemental Interim Remedial Action Plan (SIRAP) for the project site. This Plan has received conditional concurrence by the North Coast Regional Water Quality Control Board staff.
- 3-4 The comment states that the information in the Remedial Action Plan, to be secured from the Regional Water Quality Control Board, would be crucial to the Coastal Commission in its assessment of the project. For further discussion regarding project site remediation, please refer to Master Response 4 of this document.
- 3-5 The comment questions the location of future utility lines that would serve the project site. The proposed project would place existing above-ground electricity and telephone utility poles and transmission lines on the project site underground. Off-site utility poles and transmission lines serving the project site would not be placed underground.
- 3-6 The comment states that the Chapter IV.A, Aesthetics, of the Draft EIR should include a quantitative discussion of height and bulk based on specific square footages of nearby buildings and properties in comparison with the proposed project and the proposed approvals and entitlements.

The existing visual character of the project's surroundings, and the potential impact of the proposed project, is discussed qualitatively under Impact A-3 beginning on page IV.A-6 of the Draft EIR. The proposed zoning amendments are discussed in Chapter IV.I, Land Use and Planning. Please also see Master Response 3 for additional discussion of Coast Act Policy Considerations, including those pertinent to protecting scenic coastal resources.

CEQA does not require a quantitative comparison of height and bulk of the proposed project and the surrounding built context in discussing aesthetics. (See, e.g., CEQA Guidelines Section 15064.7(a) (thresholds may be "quantitative, qualitative or performance" based).) The photo-simulations of the proposed project and the description of the surrounding context provided in Chapter IV.A, however, provide an adequate representation of the buildings visual attributes for the purpose of assessing the project's environmental effects on aesthetics.

The comment also states that there is no separate discussion in the Draft EIR of the potential impacts the proposed planning and zoning changes may have on whether subsequent project site improvements could conditionally comply with certain General Plan and LUP policies pertaining to aesthetics. The Draft EIR discusses the environmental impacts of the proposed project, including the proposed planning and zoning changes, and a range of alternatives. That discussion reveals that project site improvements can be designed in keeping with the proposed planning and zoning changes that comply with the policies pertaining to aesthetics.

- 3-7 The comment suggests that the Final EIR discuss how the proposed project would be consistent with requirements to be promulgated and imposed by the North Coast Unified Air Quality Management District (NCUAQMD). While the comment is unclear, it appears to be referencing the scoping plan and other activities currently under consideration by NCUAQMD and the California Air Resources Board (CARB) to address greenhouse gas (GHG) emissions. The NCUAQMD regulations and programs that would be applicable to the proposed project are presented in the Draft EIR on pages IV.C-7 and IV.C-8 and pages IV.C-12 through IV.C-15. The proposed project would be consistent with requirements imposed by NCUAQMD and CARB applicable to new development, even though the project would result in a significant and unavoidable impact to PM10 emissions in the air basin. NCUAQMD and CARB are not currently considering any other requirements that would necessarily be inconsistent with the proposed project. Still, it would be premature and speculative to evaluate any NCUAQMD or CARB requirements that have not yet been proposed or promulgated.

The comment also suggests that mitigation measures should be included in the Final EIR that require the purchase of carbon off-sets, exchanges, and/or banking credits to reduce (GHG) emissions as set forth in Assembly Bill 32 (AB 32). As disclosed on pages IV.C-19 through IV.C-22, the Draft EIR determined that the project would not conflict with State goals identified in AB 32 based on three separate analyses. These analyses support the findings that the project's cumulative impacts related to GHG emissions would be less

than significant. Since no significant GHG emissions impacts are identified, no further mitigation measures to offset the proposed project's GHG emissions would be required.

It is important to note that the purchase of carbon off-sets, exchanges, and/or banking credits would not be an appropriate strategy to mitigate indirect GHG emissions associated with the project. Such mitigation offsets typically apply to stationary industrial sources where emissions are readily quantifiable and attributable to the emissions source on an ongoing basis. The proposed project includes no traditional stationary sources. Instead, the bulk of project-associated GHG emissions come from mobile sources like cars and trucks. It would be inappropriate and technically impossible to quantify those sources over the life of a project (10, 20, or even 50 years), and there would be no way for the project itself to impose that sort of mitigation on drivers coming in and out of the project site. Further, if imposed on the Project Applicant and not the mobile sources themselves, that mitigation would be too costly and disproportionate, as not all of those vehicle trips could be attributable to the proposed project (see responses to comments 9-9 and 16-22 concerning significance thresholds and project's GHG emissions). Such mitigation would not satisfy the standards of nexus and proportionality (CEQA Guidelines Section 15041(a)). The offset programs suggested by the comment are still in development, and would be difficult for the City to enforce given the current state of the carbon credit market in California. For example, the City would not be able to demonstrate or verify that the money paid by the Project Applicant to offset the project's GHG emissions would actually achieve the level of emissions reductions sought for the project.

As discussed in Impact C-6 in the Draft EIR, implementation of Mitigation Measure C-2a would require the Project Applicant to develop and implement transportation management programs designed to reduce traffic congestion and automobile use in order to reduce total mobile source emissions that would be associated with the project, which represent approximately 86 percent of the overall GHG emissions that would be associated with the project. In addition, compliance with energy conservation and other local measures would substantially reduce the emissions of GHG attributable to the project through vehicle emissions reductions, vehicular trip reductions, recycling programs, and increases in building and appliance energy efficiencies. Consequently, no further analysis or mitigation is warranted.

- 3-8 The comment states that, as only a portion of the wetlands present are proposed to be dredged or filled, it is apparently not necessary to remediate soil contamination throughout the project site. The comment also states that to analyze the project's impacts and its consistency with land use policies, it is important to characterize each wetland with respect to contamination and the proposed remediation.

The comment's premise is not correct. All wetlands present within the site are proposed to be excavated or filled as part of the remediation and wetland restoration work. As discussed in the Draft EIR and SIRAP (Appendix S of this Final EIR), investigation and sampling have revealed that contamination extends across the project site, including the

wetlands within it. The nature and extent of the contamination, including the wetland areas, has been investigated and characterized in detail, and in a manner suitable for planning and designing appropriate remedial measures.

The SIRAP itself is designed to implement appropriate measures to address current contamination levels, and includes soil excavation, site grading, and placement of clean material on specified portions of the site. For example, about 0.5 acres of palustrine emergent wetlands within the southwest corner of the project site and about 1.0 acre of estuarine wetlands within the Clark Slough remnant would be temporarily excavated, dewatered, and/or disturbed during soil remediation and construction of the 11.89-acre Wetland Reserve Area.

For the 4 acres of delineated palustrine emergent wetlands and associated upland areas lying north and east of the proposed wetland reserve and Clark Slough remnant (a total of about 32 acres referred to here as the Upland Remediation Area), there are five discrete areas that would require significant excavation. The lateral extent of that excavation cannot be determined until the excavation and testing of removed soils can be completed. These excavation areas include or are surrounded by a portion of the 4-acres of palustrine emergent wetlands located within the Upland Remediation Area. This hot-spot excavation would remove some soils with particularly elevated concentrations of identified contaminants, but would not remove all contamination at the site. Excavation of the entire site is not proposed, nor is it feasible or necessary.

Grading and clean cover are needed over the remainder of the Upland Remediation Area, including both wetlands and uplands. The clean cover material would form a protective barrier that prevents people and wildlife from coming into contact with any remaining contaminants underneath. It would also promote natural infiltration of storm water and eliminate the existing stormwater from leaving the site through the southern ditches and pipes. The contamination, proposed remedial measures, and wetlands are sufficiently delineated and characterized to evaluate the project's remediation activities and environmental impacts.

See also Master Responses 3, 4, and 5, which provide further detail and information regarding site characterization and site remediation plans and the project's consistency with the applicable land-use policies.

- 3-9 The comment recognizes that a well constructed, relatively large tidally influenced wetland would have greater natural resource value than the existing small wet depressions, but says there would be temporal loss of habitat functions during restoration and creation, so a mitigation ratio greater than 1:1 would be appropriate.

The project proposes to mitigate the permanent filling of 6.15 acres of coastal wetlands, in part, by creating, enhancing, and preserving wetlands on the adjoining reserve, thus offsetting the loss of wetlands at a ratio slightly higher than 1:1 (about 1.05:1). This ratio is sufficient in this case given several considerations as indicated on page IV.D-22 to 23 of the Draft EIR: (1) the project site is well-located for creation of a high-quality

estuarine reserve, requiring only enhancement of existing estuarine wetland resources, (2) opportunities for creating functional estuarine wetlands are rare, and therefore particularly valuable; here the project site is uniquely suitable for estuarine wetland creation, and (3) existing palustrine wetlands are of such poor quality that the restored wetlands are anticipated to be of much higher quality than those currently onsite. Furthermore, the wetland creation is proposed to occur concurrently with remediation of the project site (see also Master Response 4), and thus the temporal loss would be brief and insignificant.

- 3-10 The comment states that LCP policy requires 100 foot buffer zones between wetlands and development, unless the Project Applicant demonstrates that a smaller buffer would protect the resources. The commenter further notes that a 50-foot buffer is likely not adequate, especially given the expected use of trails by the public around the restored wetlands.

As the comment notes, smaller buffer areas can be appropriate where they still protect the resource in question. For example, the buffer is adequate if it protects the habitat area from the potential adverse environmental impacts caused by the development. Such determination may consider a number of factors, including the distance necessary to ensure that sensitive species of plants and animals will not be disturbed significantly by the permitted development (e.g., due to the nesting, feeding, breeding, resting, or other habitat requirements of resident and migratory fish and wildlife species). Other factors may include the susceptibility of the parcels to erosion, the existence of topographic features such as hills or bluffs that buffer the habitat areas, or the type and scale of development.

The proposed project, as designed, includes a buffer area of at least 50 feet between the commercial and other land uses developed as part of the Marina Center project and the restored wetlands consistent with the LCP. According to LCP Policy 6.A.19:

“The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive areas. The minimum width of a buffer shall be 100 feet, unless the applicant for the development demonstrates on the basis of site specific information, the type and size of the proposed development, and/or proposed mitigation (such as planting of vegetation) that would achieve the purpose(s) of the buffer, that a smaller buffer would protect the resources of the habitat area.”

The proposed estuarine mitigation/restoration area is protected by wetland buffer zones on all sides, and buffers of less than 100 feet are proposed where existing streets, existing rail rights of way, or planned pedestrian trails adjacent to Clark Slough necessitate doing so, or where other measures are included to protect the resource from surrounding land uses (e.g., placement of berms and planning of vegetation). There are no sensitive species onsite, and the habitat in Clark Slough is only marginally suitable. Under these limited circumstances, in keeping with the buffer zone requirements of the LCP, the project proposes to provide visual screening (e.g., earthen berms and native vegetation to

minimize disturbing water birds), as described on page 45 of the Biological Assessment report prepared by HBG and required by Mitigation Measure D-3c of the Draft EIR, which would achieve the purposes of the buffer to protect the resources of the reserve. In addition, there are other mitigation measures proposed in the EIR that help protect the resources in the Clark Slough remnant, as well as the species that the project hopes to attract with the creation of the wetland reserve (see, e.g., Mitigation Measures A-4a and D-3e concerning project lighting and Mitigation Measures H-3b and H-4a concerning erosion control and drainage). In any event, these reduced buffers would not compromise the biological integrity of the proposed estuarine wetland or its function, which would be improved significantly with the proposed wetland reserve in place as compared to the existing configuration.

- 3-11 The commenter states that a timely soils and geology report has not been prepared and made available for review.

A geotechnical investigation (*Geotechnical Characterization Report, Balloon Tract* dated March 2006) has been completed for the proposed project site which adequately identified the range of seismic risks and other geologic hazards present at the project site. That investigation was available for public review during the public comment period on this EIR. The “site specific investigations” called for in Mitigation Measures F-1a would result in further specificity about project site conditions and would determine among the various feasible measures that are standard in the industry which would be the most effective in reducing the potential impacts. This approach of prescribing future site specific investigations is standard practice within the geotechnical engineering industry. The site conditions regarding subsurface materials have not changed at the project site since preparation of the 2006 report and therefore those findings remain relevant.

Site-specific investigations would be used to obtain site specific data such as the depths of artificial fill and Bay Mud to be used along with the proposed loading (size of building) that would allow engineers to identify the design parameters for the spacing and dimensions of the deep foundation systems appropriate for each specific structure within the project. This approach to mitigation is accepted practice in implementing CEQA. The CEQA Guidelines (Section 15126.4b) state:

Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specific way.

In compliance with CEQA, the Draft EIR identifies the areas with potential geologic impacts (i.e., seismic shaking, liquefaction and damage due to low-strength or expansive soils) and specifies a mitigation measure requiring compliance with the performance standards prescribed in the California Building Code. Because each project element may require a separate design specific to its situation and conditions of hazard, Mitigation

Measure F-1a is necessarily generic. The mitigation measures in the Draft EIR establish a basis of commitment by the City and Project Applicant to effectively reduce geologic hazards, such as those associated with earthquakes or slope instability by specific measures meeting or exceeding the performance standards in the California Building Code. While these measures are known to be effective, it is impractical, if not impossible to dictate at this time the sort of geotechnical stabilization, building foundation, and other construction methods that may be used for each building when the individual buildings have not yet been designed.

- 3-12 The comment states that specific mitigation measures to mitigate significant impacts should be identified. Please see response to comment 3-11, above.
- 3-13 Noting that Mitigation Measures H-4a and H-5a provide for conveying project site runoff to appropriately designed drainage facilities and treatment of stormwater within drop inlet vaults, the comment states that the Draft EIR should be supplemented to address how such design goals could be implemented at the project site. On much the same basis as discussed in response to comment 3-11, under CEQA, the application of the performance standards (maximum flow of 1 cubic feet per second or runoff volumes that do not exceed pre-project flows) contained in Mitigation Measure H-4a and H-5a provide the mitigation necessary to reduce the potential impacts of increased impervious surfaces at the project site to less-than-significant levels. These standards can be achieved in a number of different ways according to industry practices (such as reducing impervious surfaces, street-cleaning programs, bio-swales, oil/water separators), and with the incorporation of the City of Eureka's recommendations for approval, the design is assured to meet state, regional, and local requirements. Without specific site plans and building designs it is impractical to impose detailed design criteria for treating, filtering, and infiltrating stormwater runoff. To ensure mitigation measures are effective Mitigation Measure H-4 in the Draft EIR has performance standards. Mitigation Measures H-4 and H-5a have been revised. See Chapter 2, Errata.
- 3-14 The comment states that some of the sources used for evaluating water-borne hazards appear dated and that more current information should be used. In particular, the comment notes that more recent and site-specific data have been developed by the Redwood Coast Tsunami Work Group and for the Samoa Town Plan EIR, and that those sources should be considered in assessing tsunami risks and establishing appropriate floor elevations for residential development at the project site.

Information developed by the Redwood Coast Tsunami Work Group (RCTWG) and the Samoa Town Plan EIR has been considered in preparing this EIR. In fact, the Draft EIR presents a map of tsunami inundation potential from the RCTWG, which is based on the most current available data. That map shows the project site as being located in a Moderate tsunami inundation hazard area, which is acknowledged in the EIR discussion. Mitigation measures, including development of a formal evacuation plan and preclusion of habitable spaces on ground floors, are included. The Humboldt Earthquake Education Center, discussed in the EIR text, was a predecessor of the RCTWG.

In addition, the tsunami hazard assessment reports and third party peer reviews for the Samoa Town Master Plan on the Samoa Peninsula (opposite the Eureka Channel from the project site) were reviewed. Those studies conclude that the tsunami hazard is significant at the Samoa Peninsula, and define a 30-foot (msl) elevation for habitable development. That is, habitable floors must be located above 30 feet msl (this does not appear to preclude development in lower elevation areas, but lower floors in these areas would not be habitable). The results of the Samoa tsunami assessment are relevant to the Marina Center site, but are not strictly applicable. Due to the difference in exposure levels between the two sites (the Samoa Peninsula has a higher exposure level to direct wave impact), it does not appear appropriate to apply the 30-foot standard on the inner shore of Humboldt Bay. As discussed in the EIR, the Samoa Peninsula is likely to block direct impact of all but the largest tsunamis. Therefore, the most likely inundation scenario involves overtopping of the southern end of the North spit and rapid rise of floodwaters within the bay. Even under the worst-case scenario, the Samoa Peninsula would be expected to provide a dampening effect should it be overtopped by large tsunami waves.

Policy criteria regarding tsunami standards have not been developed for the City of Eureka, so there is no clear regulatory guideline. City code (Eureka Municipal Code, Chapter 150, Section 150.016 (B) and Chapter 156, Section 156.021 (A)) does require that bayfront development occur with floor elevations above 12.5 feet. In consideration of the recognized tsunami inundation hazard at the project site, the EIR stipulates that habitable dwelling spaces not be developed on the ground floor of the Marina Center which, when first floor heights are taken into consideration, would place a minimum floor height for habitable space at least 20 feet above msl. Structural considerations are outlined to ensure that Marina Center improvements would withstand inundation and potential surge, scour and/or hydraulic uplift (the intent is to provide safe haven and opportunities for vertical evacuation, even in the event of local tsunamis with a short lead time). The Draft EIR accurately evaluates the risk and concludes that with mitigation incorporated, the risks associated with tsunamis and other hazards would be less than significant.

- 3-15 The comment suggests that relatively recent reports regarding climate change contain predicted and projected figures for sea-level rise that should be consulted in an evaluation of its effect on the public at the proposed project site including its effect on the existing contamination at the project site.

The December 2008 California Coastal Commission staff briefing and the 2009 California Climate Action Report discuss the lack of a definitive consensus of the amount of sea level rise that would occur, as was also discussed in the Draft EIR on page IV.H-9 in Chapter IV.H, Hydrology and Water Quality. These two reports include estimates of sea level rise that range from 20 to 55 inches by the year 2100 (from Dr. Rahmstorf in the 2008 briefing) and a range of 23 to 55 inches by the year 2100 (from the 2009 California Climate Action Report). However, as stated in the 2008 briefing, "direction on sea level rise to coastal permit project applicants is in flux. The old process of taking historic trends is no longer sufficient, and an upper planning limit has not been established.

Guidance is being done on a case-by-case basis, with hope that some written direction can be provided in 2009.” As stated in the Draft EIR in Chapter IV.I, Land Use and on page IV.H-15, the proposed project would have to adhere to the Coastal Zoning regulations, which implement the policies of the Land Use Plan portion of the adopted Local Coastal Program, codified in Chapter 156 of the Eureka Municipal Code (EMC), and are also referenced as Article 29, Part 1, Section 10-5.29 et. seq. of the zoning regulations of the City for the coastal zone. Even so, the project elevations are well above the projections for sea level rise, and thus sea level rise is not anticipated to change the analysis in the EIR. With adherence to the Local Coastal Program policies (that would include the most recent scientific data regarding projected sea level rise), the potential impact would therefore be less than significant.

In terms of the effects of sea level rise on the existing contamination at the project site, with implementation of the proposed project, the existing contamination would be remediated to the levels required by the Regional Water Quality Control Board as further discussed in Master Response 4. Please also see response to comment 3-14 regarding tsunami hazards and responses to comments 3-7, 8-2, and 22-3 regarding sea level rise.

- 3-16 The comment states that the Draft EIR should have included an analysis of each of the proposed zoning districts and their conformance with land use plans and policies, particularly the provisions of the Local Coastal Program. Please see Master Response 3, which discusses further the proposed Implementation Plan amendment (Zoning designation amendments) of the Local Coastal Program and their consistency with the Land Use Plan of the Local Coastal Program.

The comment further states that while the Draft EIR provides a summary of each proposed zoning district’s development standards it does not include an analysis of the proposed project’s consistency with those standards. As noted in Master Response 3, an analysis of all possible future uses of the project site should the Coastal Commission approve the LCP Amendment but the Project Applicant fail to proceed with the Marina Center project would be unreasonable and speculative. The Draft EIR need only evaluate the proposed project and a reasonable range of alternative projects, which it does. Nevertheless, the proposed Marina Center project shows compliance with the development standards specified within the zoning districts that would be adopted for each area of the project.

- 3-17 The comment questions whether uses that would become permitted pursuant to the proposed project’s Local Coastal Program amendment would also be legally developable pursuant to other regulations, including the presence or proximity of protected ESHA, surrounding development types and densities, shoreline adjacency, and hierarchies of land use priorities, among other site-specific conditions and contextual setting characteristics.

The purpose of CEQA is to analyze the proposed project’s potential environmental effects, including pertinent policy implications, and not to gauge the project’s ability to

clear certain political, regulatory, or other legal constraints. While the feasibility of alternatives and mitigation measures must be evaluated in an EIR, CEQA does not require that the EIR evaluate the feasibility of the proposed project. Nevertheless, the proposed project's ability to be legally developed with respect to protected ESHAs, surrounding development types and patterns, shoreline proximity, and land use priorities are discussed throughout the EIR. It is beyond the scope of the Draft EIR to analyze the legality of every potential alternative use that could be developed on the project site under the proposed zoning and land-use designation; the EIR need only evaluate the proposed project and a reasonable range of alternatives. Please refer also to Master Response 3 and 5.

- 3-18 The comment asks whether changes in the site plan and zoning designations would displace or thwart development of other requisite, needed, or planned high-priority uses to other locations or timelines that could more effectively and expeditiously be provided for at the project site.

The plans and policies applicable to the project site are discussed throughout Chapter IV.I, Land Use and Planning. Development of the project site for one use naturally precludes (for a time at least) development of the project site for other uses and, in that sense, may displace or perhaps thwart any such development for other uses that otherwise might have occurred on the project site. The comment does not identify any requisite, needed, or planned high-priority uses of this sort. The City too is not aware of any, particularly given the site characteristics and constraints, ownership, and applicable policies. Further discussion of any such uses and associated environmental impacts would be speculative. Moreover, there do not appear to be any other currently planned or needed priority land uses that would be displaced as a result of this project. For example, in 1993 the City of Eureka Harbor Commission prepared a Waterfront Revitalization Program Report, which assessed 32 projects designed to revitalize the waterfront. The Final Program Report identified the pedestrian/bicycle trail extension along the waterfront from K Street south and west to Del Norte Street as a high priority project. Portions of this trail have already been completed. There was also general support for rebuilding Dock B, which is located on waterfront property west of the project site and across the railroad tracks and two roadways. Because such a project would have too high an impact on City services and human resources, however, the report recommended that the City lease Dock B "and adjacent uplands" to the Humboldt Bay Harbor, Recreation, and Conservation District for development of a multi-purpose, publicly-owned dock. The recommendation was never adopted, and this project has never been pursued in part because of cost considerations, lack of current demand, and availability of more suitable alternative sites. Other elements of the Revitalization Report are generally consistent with the proposed project, and so the project would be implementing rather than displacing priority uses.

- 3-19 The comment asks whether there are adequate community services, public utilities, and other support infrastructure available to serve the uses at the project site under the proposed revised plan and zone categories. As discussed in Chapters IV.M. Public Services and IV.Q, Utilities and Service Systems of the Draft EIR, the proposed project

would have a less-than-significant impact on community services, public utilities, and other support infrastructure. See also Master Response 3.

- 3-20 The comment asks whether the Draft EIR should have included an analysis of the development types that would be facilitated under the proposed land use designation and zoning amendments, and whether those uses would “integrate in a non-conflicting manner” with nearby and planned uses. The discussion of the proposed project’s relationship to existing and planned uses is included in the Draft EIR under Impacts I-1 and I-4, beginning on pages IV.I-11 and IV.I-81. See also Master Response 3.
- 3-21 The comment notes that the Draft EIR states that wetlands on the project site are not a “sensitive natural community” under CEQA nor an “environmentally sensitive habitat area” (ESHA) under the Coastal Act and the City’s LCP, and states that the LCP Policy 6.A.6 identifies all wetlands as ESHA. The comment adds that the Draft EIR concludes the project is consistent with LCP Policy 6.A.7 even though this policy restricts development in ESHA to resource dependent uses.

LCP Policy 6.A.6 provides that wetlands within the Coastal Zone are ESHA and are shown on maps available for review at the City Community Development Department; the policy further provides that not all ESHA are shown on the maps and such ESHA that may exist shall be identified as part of any project application. LCP Policy 6.A.7 provides that the City shall ensure that ESHA are protected against significant disruption of habitat values and only uses dependent on such resources are allowed in such areas. Designation of an area as ESHA is pertinent to determining whether certain policies of the Coastal Act and LCP apply to that area and whether proposed activities in that area are consistent with those policies. Designation of an area as ESHA does not itself have a direct bearing on evaluating a project’s environmental impacts on that area under CEQA; that evaluation is based on the actual physical characteristics of the area, and not on any label attached to it for other technical or regulatory purposes. As discussed in the Draft EIR, the palustrine wetlands scattered within the upland areas of the project site do not exhibit the essential elements of ESHA as set forth in the Coastal Act in that neither the plant nor animal life or their habitats present on the project site are rare or especially valuable because of their special nature or role in an ecosystem and would not be easily disturbed or degraded by human activities and developments. Indeed these palustrine wetlands were created by human activities and developments, and they provide only minimal habitat value and perform only marginal wetland functions. In fact, the existing wetlands may harm wildlife by exposing the wildlife to contaminants.

For much the same reason, as discussed in the Draft EIR, the palustrine wetlands are not sensitive natural communities within the meaning of CEQA. Dominated by invasive, non-native plant species, the project site lacks suitable habitat for sensitive or special-status species. The project site is subject to a Clean-up and Abatement Order from the RWQCB. Implementation of the SIRAP (see Appendix S) and creation of the wetland reserve would result in the permanent filling of 6.15 acres of the existing wetlands and

would result in the creation of about 6.46 acres of new wetlands of higher quality and slightly greater acreage in a reserve along Clark Slough.

Whatever the legal or regulatory designation of wetlands onsite, under CEQA, the EIR must evaluate the project based on its existing environmental setting and baseline. In determining whether the project would trigger the significance criteria set forth in Appendix G concerning sensitive natural communities, the Draft EIR evaluates several legal and technical designations of the project site, including the Coastal Act's definition of ESHA. Because the project site does not encompass any sensitive natural community, the project would not result in a significant impact under this threshold.

Please also see Master Response 3 and 5 for a discussion of the project's consistency with LCP policies.

- 3-22 The comment states that the proposed project is not a permitted use pursuant to LUP policies 6.A.9 and 6.A.14, which require that any diking, filling, or dredging of wetlands be a "permitted use" and lists such uses, respectively.

Please see Master Responses 3 and 5. As stated there, the proposed project would include LUP amendments that would allow the development of a broader range of uses than is currently allowed. The Draft EIR is therefore accurate in stating that the uses of the proposed project would be consistent with LUP policy 6.A.9 and potentially inconsistent with LUP Policy 6.A.14. The amendments to the LUP proposed as part of the project would ensure consistency with LUP Policy 6.A.14. It should also be noted that the majority of zoning designations for the project site under the current LCP are not on the list of specified uses under LUP Policies 6.A.9 or 6.A.14.

Please also see Master Response 5 for a discussion of permitted uses under Coastal Act.

- 3-23 The comment states that the Draft EIR should have stated that filling of wetlands for the proposed reuse of the project site for commercial and non-coastal-dependent industrial development is not included in the list of permissible uses for filling wetlands under Section 30233 of the Coastal Act.

The Draft EIR lists on pages IV.I-13 and IV.I-14 the permissible uses pursuant to Coastal Action Section 30233. "Commercial and non-coastal-dependent industrial uses" are not included in this list. The Draft EIR is therefore clear in listing permissible uses. Given the broad and long list of non-permissible uses pursuant to Section 30233, it is both more efficient and clear for the Draft EIR to list permissible uses instead of non-permissible uses. The particular discussion of filling wetlands for the purposes of project site remediation is included because it relates to the overall project and the attainment of the overall goals of the Coastal Act. See also Master Response 5.

- 3-24 The commenter opines that the conflict resolution provisions of Section 30007.5 of the Coastal Act would not serve to resolve the project's inconsistency with Section 30233, which pertains to the filling of wetlands and permissible uses. Please see Master

Response 5 for further discussion and analysis of how conflict resolution provisions of the Coastal Act can apply to the proposed project.

3-25 The commenter states that the Draft EIR, in discussing consistency with Coastal Act policies, fails to address the needs for priority uses of the project site under the Coastal Act. Please see Master Responses 3 and 5 and response to comment 3-18.

3-26 The commenter states that the Draft EIR's analysis centers on pedestrian and bike path amenities provided by the proposed development project and does not separately address the impacts associated with proposed changes in plan designations and zoning.

The analysis includes more than the pedestrian and bicycle facilities to be provided by the proposed project. As stated on Draft EIR page IV.N-2, under Impact N-1, the proposed project is in proximity to thousands of acres of state and national parks. In addition, the proposed project would not affect the existing ratio of 5.6 acres of local park space per 1,000 residents. Also, as stated on Draft EIR page IV.N-3, under Impact N-2, the project would include creation of a wetland reserve that would provide recreation opportunities.

Recreation impacts associated with changes in land use designation and coastal zoning are discussed in Chapter IV.I, Land Use and Planning. As stated on Draft EIR pages IV.I-49 and IV.I-50 in Table IV.I-2, Policy Consistency Analysis, the proposed project would improve access to Humboldt Bay, the adjacent Marina and boardwalk.

As stated in Table IV.I-1 on page IV.I-2, some of the project site parcels are currently designated for Public/Quasi-Public (PQP) land use in the Local Coastal Program Land Use Plan (which is basically the General Plan for the Coastal Zone) and lie within Public (P) coastal zoning districts. As stated in Table IV.I-1, in Figures IV.I-1 and IV.I-2, and on pages IV.I-6 and IV.I-75 through IV.I-80, the proposed project would require a Local Coastal Program amendment. Therefore, the Draft EIR is clear that the proposed project is not consistent with the current PQP land use designation and the P coastal zoning district controls.

The project site may be identified in other City or regional planning documents as a potential site for development of tourism and/or marine science industries. These documents, however, do not regulate the land uses of the project site. Those land uses are regulated by the City's General Plan, Zoning, and Local Coastal Program. Please also see Master Responses 3 and 5 for responses related to the Local Coastal Program and Coastal Act land use regulations.

3-27 The commenter states that the recent economic conditions have led to more vacant retail space, and that the Alternatives Chapter of the Draft EIR should be revisited, with a new alternative formulated that would reuse existing vacant retail space. The comment is noted. Please see Master Response 1, specifically the subsection entitled "New Recessionary Conditions." The Draft EIR screened two dozen potential alternatives, including several off-site alternatives to arrive at a reasonable range of alternatives for more detailed consideration and analysis. The project site is uniquely situated in an area

transitioning from industrial to other uses, and is within reasonable proximity to Old Town and Downtown. Despite the economic downturn, there are no current vacancies that would accommodate this sort of mixed-use development.

- 3-28 The commenter states that the coastal zone boundary was incorrectly described in Chapter IV.I, Land Use and Planning. The correction to the location of the coastal zone boundary has been acknowledged per Section 30103(b) of the Coastal Act. The third paragraph on page IV.I-3 of the Draft EIR is revised as follows:

The coastal zone boundary follows the ~~center line~~ inland boundary of the improved right-of-way of Broadway north to Third Street then east along the ~~centerline~~ inland boundary of the improved right-of-way of Third Street; consequently all property west of Broadway and north of Third Street, including the streets themselves, is located in the coastal zone. References to the general plan for properties in the coastal zone are to the Land Use Plan portion of the Local Coastal Program.

The City acknowledges that the Eureka LCP has been amended multiple times since September 1998. As outlined in the LCP Status Report, the LCP has been modified four times since the approval of the 1998 LCP.¹

- 3-30 The commenter claims that the Westside Industrial Area Study was not sent to the Coastal Commission for certification review for inclusion as part of the Local Coastal Program. The comment is noted. The Draft EIR does not state that the Westside Industrial Area Study is part of the LCP. The Draft EIR states that the Study is included in the adopted General Plan, and that it recommends strategic changes to the Local Coastal Program.
- 3-31 The commenter notes that in the administration of Section 30233 of the Coastal Act, the Coastal Commission considers excavation, the extrication of earthen materials, and other forms of grading not otherwise comprising “filling” or “diking” as forms of “dredging.” Comment noted. Coastal Act Section 30233 is cited four times in the Draft EIR: on pages IV.D-17, IV.I-13, IV.I-14, and VI-6. In each instance, a summary of the intent of Section 30233 as applied to the proposed project is included—such as Section 30233’s relevance to dredging, diking, and filling of wetlands—to avoid reprinting the entire Section 30233 word-for-word within the Draft EIR. These summaries are not meant to imply that Coastal Act Section 30233 does not apply to other activities, such as mineral extraction [30233(a)(6)], restoration purposes [30233(a)(7)], and incidental public service purposes [30233(a)(5)].

¹ California Coastal Commission. 2008. LCP Status Report, Actions through June 30, 2008. October 10, 2008.

Comment Letter 4

Comment Letter 4



State of California - The Resources Agency
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ARNOLD SCHWARZENEGGER, Governor



January 27, 2009

Ms. Sidnie L. Olson, Senior Planner
Community Development Department
City of Eureka
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RECEIVED
JAN 29 2009
DEPARTMENT OF
COMMUNITY DEVELOPMENT

Dear Ms. Olson:

Marina Center Draft Environmental Impact Report (DEIR),
Eureka, Humboldt County, California

The Department of Fish and Game (DFG) has reviewed the Draft Environmental Impact Report (DEIR; State Clearinghouse #2006042024) received on December 3, 2008, for the proposed Marina Center Mixed Use Development Project (project). As a trustee for the State's fish and wildlife resources, DFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary to sustain their populations. As a responsible agency, DFG administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. DFG offers the following comments and recommendations on this project in our role as a trustee and responsible agency under the California Environmental Quality Act (CEQA, California Public Resource Code §21000 et seq.).

Project Description

The project site is 43 acres and consists of 11 parcels. The project site has been vacant since the late 1980s but historically had been used as a railroad switching, maintenance, and freight yard. The project site is a brownfield with soil and groundwater contamination characterized by long-chain petroleum hydrocarbons and metals. The site contains several old building foundations, rail cars, soil piles, and a transmission tower. The remnants of Clark Slough and wetlands (one to three parameters) occur throughout the project site and are described in Section IV D-31 of the DEIR as "meager and highly disturbed." The preferred alternative proposes to develop some of the wetlands (5.54 acres). Creation of an estimated 11.89-acre wetland reserve (8.98-acre estuarine wetland preserve and 2.91 acres of associated upland buffer) around Clark Slough is the proposed mitigation for wetland loss.

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Humboldt Bay

Eureka is situated between the two largest tributaries to Humboldt Bay: Eureka Slough (formed by the confluence of Freshwater and Ryan sloughs) and the Elk River. Humboldt Bay is California's second largest estuary and vital fish and wildlife habitat. Humboldt Bay is a biodiversity hotspot and provides refuge and nursery habitat for more than 120 fish species, many with important commercial and recreational fisheries value. The Bay and its wetlands and dunes are habitat for at least 20 State- and federally-listed species and California Species of Special Concern (SSC). Humboldt Bay is California's largest producer of cultured oysters and a critical nursery for juvenile Dungeness crab. Due in part to significant declines in the salmon fisheries, Dungeness crab is now a mainstay of the local fishing industry accounting for more than 50% of the economic value of Humboldt County's fishing industry (Prosperity 2007).

The lower reaches of all the major tributaries entering Humboldt Bay are utilized by anadromous salmonids, including: coho salmon (Oncorhynchus kisutch), State- and federally-threatened; Chinook salmon (O. tshawytscha) (Eureka Slough only), federally-threatened; Coastal cutthroat trout (O. clarki clarki), SSC; and Steelhead (O. mykiss), federally-threatened.

Recent studies performed by the DFG Natural Stocks Assessment Project (Wallace 2006) have shown that juvenile salmonids use Freshwater Creek Slough as rearing habitat, in particular young-of-the-year (yoy) coho salmon, yoy Chinook salmon, and, to a lesser extent, juvenile steelhead and cutthroat trout, as well as, numerous other marine fish and invertebrates. While residence time may vary between sloughs, years, and species, yoy coho salmon used Freshwater Creek Slough extensively, and yoy coho salmon residing in the upper slough were larger than their cohorts residing upstream in Freshwater Creek (Wallace 2006).

These studies illustrate that juvenile coho throughout the Humboldt Bay watershed exhibit redistribution, primarily downstream, to over-winter in low gradient habitat in freshwater-estuary ecotone ringing Humboldt Bay (Wallace 2009). For example, DFG studies found that coho salmon smolts in Freshwater and Eureka sloughs moved into accessible adjacent habitat including other sloughs, marshes, and tidal meanders. They also found that marked coho salmon smolts from Freshwater Creek and Slough moved into the lower portion of Elk River Slough during their residence time in Humboldt Bay. These findings strongly suggest that juvenile coho will move into non-natal habitat around Humboldt Bay if they have access to that habitat. As such, the restoration and creation of the wetlands reserve (i.e., Clark Slough and associated wetlands) should include a "fish-friendly" tide gate that allows for safe passage of juvenile salmon and marine species.

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Native eelgrass (*Zostera marina*) beds are highly productive nurseries and refuge areas that are widely recognized for their critically important ecological function in Pacific Northwest estuaries (Phillips 1984). Pursuant to Title 14, California Code of Regulations, §30.10, native eelgrass is protected and under the Magnuson-Stevens Fishery Conservation and Management Act is considered Essential Fish Habitat. Eelgrass is documented in Clark Slough (Goldsmith 2006); however, the DEIR does not disclose this. Furthermore, *Z. japonica* was discovered in Humboldt Bay in 2002 and is an emerging issue that threatens many aspects of the Bay's ecosystem. The DEIR includes a five-year monitoring plan for the wetland reserve. The plan should include avoidance measures or mitigation for any impacts to eelgrass, monitoring for *Z. japonica*, as well as a general goal to increase the area of native eelgrass within the wetland reserve.

4-2
4-3

Climate Change and Sea Level Rise

Consistent with the intent of CEQA, local lead agencies have a very important role to play in California's fight against climate change. Local lead agencies can encourage well-designed, sustainable private projects by analyzing and disclosing to the public the environmental benefit of such projects in any required environmental document (Brown 2008). The project as proposed is estimated to generate 20,000 metric tons per year of CO₂ emissions (i.e., greenhouse gasses; GHG) from operations.

Average expected sea level rise, determined from several climate models, ranges from 10-80 cm over the 2000-2100 period (Projecting Future Sea Level 2005). A higher sea level will have significant effects on Humboldt County, including more coastal land becoming flood-prone and salt water intrusion into existing freshwater areas. Increased sea level elevation, especially in combination with storm-driven surges, extreme waves, intense low-pressure winter storms and high tides, is predicted to result in extensive flooding in coastal regions of California (Projecting Future Sea Level 2005).

4-4

Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006, recognizes that California is a substantial source of GHG emissions. While the project as described falls below current reporting standards for industrial stationary sources for CO₂ emissions in relation to AB 32 goals, mitigation for the project (wetland reserve) and the project infrastructure itself may be impacted over time from climate change and related rising sea levels. The DEIR should address the prognosis of sea level rise in relation to the current project, the potential for additional GHG Reduction Measures (See: OPR 2008), and the viability of Clark Slough wetland reserve in perpetuity.

Trash Removal

The DEIR recognizes the removal of trash and debris as part of the Stormwater Management Plan. DFG concurs this is appropriate given the known adverse impact of these materials on fish and wildlife likely to frequent the project area. However, the associated mitigation measure suggests that trash removal would occur each year before the start of the rainy season. It is unlikely that trash removal occurring at such a limited frequency will adequately address the likely volume of wind-blown trash that will be inadvertently generated from the proposed mixed-use development. The Final EIR should include a trash removal plan that ensures the wetland reserve is free of trash in perpetuity.

4-5

Recommendations:

1. The Final EIR shall address mitigation and enhancement for eelgrass habitat in Clark Slough.
2. The five-year monitoring plan described in Mitigation Measure D-3b shall also include monitoring for the non-native eelgrass, *Z. japonica*. The project shall notify DFG as soon as possible if *Z. japonica* is detected in Clark Slough, and coordinate with DFG for eradication.
3. DFG shall be provided an opportunity to review and comment on the draft restoration plan for the wetland reserve before it is made final.
4. The final project shall include "fish-friendly" tidegate modifications and the Final EIR shall discuss how the project would improve estuarine habitat for all species, including salmonids.
5. A trash removal program shall be developed that is adaptive, comprehensive, and proportional to trash generated and will ensure the wetland reserve is trash free in perpetuity.
6. The Final EIR shall address the prognosis of sea level rise in relation to the current project, the potential for additional GHG Reduction Measures (See: OPR 2008), and the viability of Clark Slough wetland reserve in perpetuity.

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If you have any questions or comments regarding this matter, please contact Environmental Scientist Michael van Hattem at (707) 445-5368 or Environmental Scientist Vicki Frey at (707) 445-7830 or write to them at 619 Second Street, Eureka, California 95501.

Sincerely,


GARY B. STACEY
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cc: See Page Six

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Letter 4: California Department of Fish and Game (Gary Stacey)

- 4-1 The comment states that the wetlands restoration and creation should include a “fish-friendly” tide gate. The existing tidal gate was constructed within the past ten years and is maintained by the City of Eureka for flood control. It is outside of the control of the Project Applicant. The proposed project would reserve the southwest corner of the project site for restoration of the existing remnants of Clark Slough (Draft EIR, page IV.D-22.). The tidal flows into Clark Slough are currently muted by a gate. Although muted tidal influence would remain and is consistent with the proposed wetland reserve, no new tide gate is proposed as part of the project. It should be noted that the Clark Slough remnant does not currently serve as habitat for juvenile coho salmon, and is somewhat removed from the two major tributaries to Humboldt Bay: Eureka Slough and the Elk River. Given the fact that the Clark Slough remnant is adjacent to Entrance Bay, it is unlikely that juvenile coho would use the remnant even if restored to full tidal influence.
- 4-2 The comment states that eelgrass has been documented in Clark Slough and is protected under the Magnuson-Stevens Fishery Conservation and Management Act (FCMA), and notes that the Draft EIR does not disclose this. Also, the comment notes that *Z. japonica* was discovered in Humboldt Bay in 2002 and is an emerging issue for the Bay’s ecosystem.

Eelgrass has been identified under the FCMA as an important element of essential habitat for groundfish, Pacific salmon, and coastal pelagic fish, but is not itself considered a protected species. Eelgrass is present in the portion of Clark Slough lying between Waterfront Drive and the railroad tracks. Eelgrass is not present within the Clark Slough remnant east of Waterfront Drive. Neither of these areas serves as habitat for groundfish, Pacific salmon, or coastal pelagic fish.

The Slough habitat on the project site is transitional in nature and is not expected to sustain a viable eelgrass population. Eelgrass grows in intertidal and subtidal waters, and thus it is unlikely to be present or to survive in abundance in the Clark Slough remnant because it has only limited tidal influence, low salinity, and lack of clarity. Given these characteristics, eelgrass would not be considered an appropriate species to include in the Slough restoration planning. Further, the proposed wetland restoration work would not involve dredging or other work within the remnant channel where the eelgrass was identified. Therefore, the project would not adversely affect this habitat; instead, the project is expected to enhance eelgrass habitat.

Likewise, *Zostera japonica* has not been identified in the Clark Slough remnant. *Z. japonica* is a non-native, invasive species of eelgrass, and has been detected on Indian Island in Humboldt Bay. The proposed wetland reserve is proposing to introduce only

native plant species, and has both adaptive management and non-native invasive species control components designed to address such invasive species (Draft EIR, page IV.D-29, Mitigation Measures D-3b and D-3f).

- 4-3 The comment states that the wetland monitoring plan should include measures to address eelgrass. As noted above in response to comment 4-2, eelgrass grows in intertidal and subtidal waters; it is unlikely to be present to any significant degree in the Clark Slough remnant. Nonetheless, eelgrass may be considered as one of the native plant species to be included in the reserve design. Further, Mitigation Measure D-3 already includes an extensive monitoring, adaptive management, and non-native invasive species control program that would address non-native eelgrass as well.
- 4-4 The comment outlines the various studies concerning global climate change and sea level rise, and possible effects associated with those global phenomena. The comment acknowledges that while the project may fall below current reporting standards for industrial stationary sources in relation to AB 32 goals, the Draft EIR should address the potential for sea level rise to affect the proposed project, the potential for additional greenhouse gas (GHG) reduction measures (OPR 2008), and the viability of the Clark Slough wetland reserve in perpetuity.

Sea level rise is discussed on page IV.H-9 in Chapter 4, Hydrology and Water Quality. A maximum rise of 28 inches is mentioned in the Draft EIR, which is relatively similar to the 80 cm (31 inches) figure stated in the comment. Given the elevation of the uplands surrounding the Clark Slough remnant, sea level rise is not expected to have any effect on the viability of the wetland reserve within the foreseeable future. Further discussions of sea level rise and global climate change are provided in responses to comment 3-7, 3-15, 8-2, and 22-3.

- 4-5 The comment requests that a more robust trash removal strategy be included in the detailed restoration plan. While trash removal is implied as part of the maintenance required referenced under Mitigation Measure D-3b, this measure has been revised to include the following additional text (underlined):

...The plan shall include, at a minimum: details of methods for site selection, preparation, and remediation; exotic plant removal; excavation, grading, and rip-rap removal; establishment of hydrological function; planting materials and methods; establishment of native species; creation of an effective buffer; maintenance and trash removal; monitoring; contingency plans; and plans for long-term funding for wetland monitoring and maintenance.

Please note that another portion of Mitigation Measure D-3b is revised in response to comment 1-5. Please see Chapter 2, Errata, for the complete revised Mitigation Measure.

In addition, Mitigation Measure D-3d (page IV.D-29 of the Draft EIR), also requires funding for long-term management and protection of the wetland reserve.

- 4-6 The comment makes a series of recommendations concerning eelgrass, non-native and invasive species, a fish-friendly tidegate, the trash removal program, and sea level rise and climate change, each of which echoes the recommendations contained in comments 4-1 through 4-5, above. The comment also requests that the Department of Fish and Game be provided the opportunity to review and comment on the restoration plan before it is finalized. A copy of the restoration plan would be included with the application for streambed alteration as applicable.

Comment Letter 5

Comment Letter 5

DEPARTMENT OF TRANSPORTATION
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1-HUM-101-78.026
Eureka Marina Center DTIS
SCH# 2006042024

Sidnie Olson, Principal Planner
Community Development Department
City of Eureka
531 K Street
Eureka, CA 95501

Dear Ms. Olson,

We have reviewed the Draft Environmental Impact Report (DEIR) and Appendices, including the Traffic Impact Study (TIS) for the proposed Balloon Track Mixed Use Development, dated November 2008.

The proposed project includes 313,500 square feet of Retail/ Service; 28,000 square feet of Nursery/ Garden; 104,000 square feet of Office; 72,000 square feet of Multi-Family Residential (54 units); 70,000 square feet of Light Industrial; 14,000 square feet of Restaurant; and 12,000 square feet of Museum. The project site includes approximately a quarter mile of frontage on Broadway (SR 101). The project is expected to generate an additional 15,666 daily trips on local roads, including 792 trips in the a.m. peak hour and 1,369 trips in the p.m. peak hour.

Our comments here should not be considered to be exhaustive, but cover the areas of relative importance from a transportation perspective. We have the following comments:

Project Phasing/ Mitigation (DEIR p. III-14, Section C)

Traffic impacts from the project are proposed to be mitigated through a combination of measures that would complement each other and provide improved operations on Broadway as a linked system. These measures are listed on page 54 of the TIS: "Mitigation Needed at Project Opening (Assuming Full Development of All Uses)." We concur with this approach in concept, as analysis has shown that the Broadway corridor operates as a complex system.

It is noted in both the TIS and the DEIR text that all 30 measures listed on page 54 of the TIS may not be necessary (required) to be completed at once if the project is constructed in phases. However, a detailed phasing plan has not been developed.

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Since the required mitigation measures work in conjunction with each other—improving traffic flow up and down 101 as a coordinated system—they can not be implemented piecemeal. A separate TIS will have to be developed for any Phasing Plan, so that appropriate measures are identified and constructed in association with each planned phase. If the project is to be constructed in phases, we recommend that development of a detailed Phasing Plan and supplemental TIS be required as a condition of approval for the project

Right of Way/ Geometrics

As we've noted in previous correspondence, a number of identified measures appear to require more right of way than exists. As design details are confirmed, surveys will be required in order to confirm right of way assumptions and needs. Among the most likely locations where right of way issues may occur are:

The addition of east and westbound left turns lanes on Washington at Broadway appears to require widening and/ or prohibition of parking.

The new signal at Hawthorne and Broadway calls for 58' cross section on Hawthorne. The existing width is about 35' on the east side of Route 101, and about 44' on the west side of Route 101. While the TIS indicates an existing 60' right of way width for Hawthorne, topographic constraints may impact design.

At the Route 101/ Harris Ave. intersection the TIS proposes to shift the southbound lanes "at least 6 feet" to the west, in order to give an adequate turning radius for Surface Transportation Assistance Act (STAA) vehicles. As we've previously noted, this would at least require a design exception for reduced lane and/ or shoulder width, and may require a more complex engineered solution in order to avoid impacting the existing right turn lane into the mall.

Future (2025 plus project) scenario calls for 3 southbound lanes from Vigo St. to the mall. In some areas there does not appear to be enough existing width to do this.

Encroachment Permit Process

All improvements within Caltrans right of way will require an encroachment permit. It appears that the total cost for mitigation within Caltrans right of way will exceed three million dollars, and would therefore require a separate Project Study Report (see Chapter 9, Article 8 of the Project Development Procedures Manual: http://www.dot.ca.gov/hq/oppd/pdpm/other/PDPM-Chapters.pdf).

We strongly recommend that the developer submit preliminary engineering design plans for all proposed street and signal improvements/modifications to both Caltrans and the City as early as

5-40

5-1

5-1 cont.

5-2

5-3

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possible, so that any potential design issues can be addressed in a timely manner. Potential issues may include Design Exceptions and Traffic Handling/ Stage Construction Plans, which require Caltrans approval.

5-3
cont.

Safety Considerations

Overall, there are many improvements with potential safety benefits included as part of the proposed project mitigation. We know that reducing the congestion on Broadway will also improve safety and reduce collisions.

However, we do not agree with the following conclusions stated in the Accident Analysis (Appendix P, Page 16):

- "...the expected reduction of accidents overall is 15 percent."
- "It is estimated that there will be 16.6 fewer accidents per year at the study intersections..."

5-4

These conclusions have not been substantiated within the document. It is stated that the Highway Safety Improvement Program (HSIP) Guidelines were used to develop the collision reductions. However, the HSIP Guidelines are for locations with a singular improvement. The project and mitigation measures represent a system of modifications, and cannot be reduced to a singular accident collision reduction percent. In addition, it is not appropriate to make the claim that a specific number of accidents will be reduced. In fact, with the introduction of new signals, some types of collisions will likely increase while the severity will be decreased. Given the complexity of the project and mitigation measures this conclusion is not appropriate without an equally complex model of the system.

Recently a Pedestrian Safety Audit was completed by Caltrans, the City of Eureka, and FHWA. One of the safety issues that were identified was the long distance between crossings on Broadway. It was recommended that Harris St., Hawthorne St., and Clark St. be signalized to allow safer crossings for pedestrians. It was discovered during this process that Clark St. has a particularly high number of pedestrian crossings. Given the future increases expected in pedestrian activity, and the recent findings during the Pedestrian Safety Audit, signalization at Clark St. should be considered.

5-5

Other Comments (TIS)

Page 3, Paragraph 3 states that bicycles desiring to travel east on Seventh Street will need to cross Broadway at Sixth Street, then travel south on the sidewalk to the bike lane on Seventh Street. This recommendation, although likely to occur, is unacceptable, as bicycles would be traveling in the wrong direction and on the sidewalk.

5-6

5-41

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Our previous comments (October 5, 2007) noted that a dedicated Right turn lane would be required on Eastbound Hawthorn due to the predicted increases in right turn volumes, (from 14 to 259 p.m. peak hour). This lane is not noted in Mitigation Measure O-1c, but is now noted in the TIS text on page 54, #16. This should also be reflected in Figure 13 (and Page IV.O-38 of the DEIR).

5-7

Page 54, Mitigation 8: Raised Median on Broadway at 7th Street. Some consideration should be given to evaluating the raised median as a pedestrian refuge. This may include extending the raised median to Clark Street and further south to accommodate the frequent mid-block pedestrian crossings.

5-8

Appendices G, H, and K are extremely difficult to read due to their size and quality, as this is the final documentation supporting the TIS, consideration should be given to making them readable.

5-9

Appendix M concerns the use of gates. Gates are no longer mentioned in the TIS or the DEIR. There is no need to include this Appendix.

5-10

Appendix H does not include the Greater Eureka Travel Model (GEATM) use and calibration documentation referred to in the TIS text. As the use of the GEATM for this project is repeatedly referenced both in the TIS and the DEIR, consideration should be given to including the documentation of its use.

5-11

Page 54, Mitigation #9 (DEIR Mitigation Measure O-1h). This mitigation also effectively prohibits left turns onto Commercial Street from southbound Broadway. No mention of this is included in these documents. The Commercial Street intersection has been omitted from this study; although, it is directly across from the project site.

5-12

The TIS as presented includes minimal intersection analysis for the year 2025. A few 2025 intersection analyses are provided in the appendices, all of the impacted intersections should be included. The Cumulative 2025 + Project volumes as shown appear flawed. For example: Figure 10, Baseline 2010 + Project, Intersection #1 (Broadway/4th Street) shows peak hour volumes of 86 and 96 vehicles per hour (vph) in the AM and PM period respectively. As projected in Figure 15, Cumulative 2025 + Project, the same peak hours show a reduced AM volume of 71 vph and the same PM volume. Many other intersections do not add the expected diverted traffic to certain movements including Wabash Avenue and Broadway, and Hawthorn and Broadway.

5-13

Other Comments (DEIR)

Table II-1

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We concur with the need for Mitigation Measures O-A through O-K to be required as part of the entitlements for the entire project, as analyzed in the TIS. In addition, we concur with the need for the other improvements described on page IV.O-26, "Proposed Project Access and Off-site Improvements." All of these measures are listed on page 54 of the TIS: "Mitigation Needed at Project Opening (Assuming Full Development of All Uses)."

5-14

The description of the proposed 6th Street offset intersection on page IV.O-26 states that relocation of the southern Crivelo's driveway "is desirable. . . ." We concur with the finding in the TIS (page 54, #7) that the driveway *must* be relocated.

5-15

We recommend that the explanation for why the raised median is needed (also on page IV.O-26) be replaced with the verbiage found in #8, page 54 of the TIS.

5-16

Page IV.O-1 to O-4. There is no description regarding Hawthorn Street. We recommend that a description of this street be included since a signal is proposed to be installed at Hawthorn Street and Broadway and it is proposed to be a major exit route for traffic exiting the project area. The pavement on Hawthorne Street west of Broadway is dilapidated and should be improved. If not improved, traffic will not be inclined to use this route to exit the project.

5-17

Page IV.O-38. (Figure 13 in the TIS): In the "With Project" plan, eastbound and westbound Washington Street should have left turn lanes (consistent with IV.O-37).

5-18

We look forward to continued collaboration with City staff and consultants on this challenging project.

Sincerely,



REX A. JACKMAN
Chief, System and Community Planning
Caltrans District 1

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5-42

Letter 5: State of California Department of Transportation (Caltrans), District 1 (Rex Jackson)

- 5-1 The comment refers to the necessary implementation of mitigation measures in sync with development of the proposed project, states that a detailed phasing plan would need to be developed, and recommends that such a phasing plan and supplemental traffic impact study be required as a condition of project approval.

As the comment notes, no detailed phasing plan has been prepared for the project beyond the first phase of site remediation and wetland restoration. As the Draft EIR emphasizes on pages III-14 and III-15, once a phasing plan is developed, project mitigation measures must be evaluated to ensure that the project implements those feasible mitigation measures necessary to address the project's impacts associated with each phase. It is acknowledged, for example, that improvements along U.S. 101 (Broadway and the Fourth/Fifth Street couplet through Downtown) would need to be coordinated.

To the degree that any mitigation measures are phased along with the project (as opposed to built up-front), funding and implementation of transportation measures would be detailed in a development agreement, or other similar reimbursement or credit agreement, between the developer, the City of Eureka, or Caltrans subsequent to certification of the EIR. In the meantime, it is impracticable, if not impossible, to outline the necessary phasing for transportation improvements because the phasing scenarios have not been developed and ultimately would depend on market conditions and other business-related factors. Nonetheless, the Draft EIR evaluates the worst-case scenario – full build-out of the project by 2010. Consequently, no additional conditions of approval are necessary at this time.

- 5-2 The comment raises concerns about available right-of-way to accommodate mitigation measures identified in the Draft EIR at specific locations.

Washington Street and Broadway: At this intersection, the width of Washington Street west of Broadway is measured to be about 44 feet curb-to-curb, and east of Broadway it is 40 feet curb-to-curb. There is parking allowed on Washington Street both east and west of the intersection. With installation of left turn lanes, parking would be allowed along only one curb side; the specific side has not been decided. The properties adjacent to Washington Street include Don's Rent-All, Leon's Car Care, Kentucky Fried Chicken, and the Home Remodeling Center, which all have off-street parking. City records show that the Washington Street right-of-way is 60 feet wide, with eight-foot-wide sidewalks on each side of the street west of Broadway, and 8- to 12-foot-wide sidewalks east of Broadway. Consequently, the right-of-way appears to be sufficient to accommodate the proposed transportation improvements at this intersection and roadway segment.

Hawthorne Street and Broadway: Hawthorne Street is 36 feet curb-to-curb east of Broadway, where widening would be needed to provide four lanes of traffic and a six-

foot-wide sidewalk. City records shows that the right-of-way is 60 feet with an eight-foot-wide sidewalk area west of Broadway and twelve feet of sidewalk width east of Broadway. On the northeast corner, the distance from the existing curb to the NAPA Auto Parts Store building is about 32 feet. The north side of Hawthorne Street east of Broadway may require a slope easement at the NAPA Auto Parts Store. A retaining wall along Hawthorne Street could be considered. In any event, the right-of-way appears to be sufficient to accommodate the proposed transportation improvements at this intersection.

Broadway, Vigo Street to Bayshore Mall: A field check was completed for Broadway roadway width. It was verified that restriping to shift six feet is within the existing curbs, and no widening would be needed for the new signal at Harris Street. A Caltrans design exception would be required for the non-standard roadway shoulder design. The existing roadway width along this section is measured to be about 72 feet. The southbound lanes could be restriped so that the left turn radius can increase for the STAA truck turning. Also, the southbound stop bar for the left turn lane could be moved north by 10 feet to increase the left turn radius. Moving the stop bar provides a wider area for receiving the left turn on Harris Street. A short retaining wall may be needed at the point where Harris Street receives left turns from southwest-bound Broadway.

The roadway shoulders would be used for restriping for the additional southbound through lane south of Vigo Street. A Caltrans design exception would be required for the non-standard roadway shoulder design. With a curb-to-curb section of 72 feet, Broadway could be restriped to provide three southbound lanes without additional roadway widening.

As stated on Draft EIR pages IV.O-40 to O-42, and O-54, each of these improvements would require approval from Caltrans.

- 5-3 The comment states that all improvements within Caltrans right-of-way would require an encroachment permit, and that based on the estimated cost to construct the mitigation measures identified in the Draft EIR (and Caltrans' Project Development Procedures Manual), implementation of the mitigation measures would require a separate Project Study Report.

It is acknowledged that an encroachment permit would be required prior to construction of improvements within Caltrans right-of-way. The City of Eureka (and the Project Applicant) would work with Caltrans to ensure that engineering design plans for all street and traffic signal improvements/modifications can be reviewed in a timely manner. The estimated construction cost of all improvements within Caltrans right-of-way is less than \$3 million, and therefore, a Project Study Report would not be required.

- 5-4 The comment questions statements made in the Draft EIR and the methodology used related to accident reduction associated with the proposed project.

In addition to the method used in the traffic study, the following three additional methods are used to estimate accident reduction expected due to improvement of U.S. 101 through Eureka:

1. Federal Highway Administration (FHWA): Desktop Reference for Crash Reduction Factors;
2. Institute of Transportation Engineers (ITE): Traffic Safety Toolbox; and
3. Texas Transportation Institute (TTI): Texas Roadway Safety Design Spreadsheet.

The FHWA and ITE methods are similar to the method used by Caltrans in their estimation of safety benefits of the Highway Safety Improvements Program, where reduction factors are used for categories of improvements. The TTI methodology is a spreadsheet that estimates accident rate changes on the basis of operational and geometric improvements. The average for reductions from these three methods was found to be 9.7 percent, with the highest at 15 percent.

There is no fully analytical method to develop and calibrate an accident reduction model based on current geometric conditions, traffic patterns, and traffic controls, which could then be used to forecast the expected number of accidents after changes in geometric conditions, traffic patterns, and traffic controls. Such a method exists for estimating levels of service (average delay in response to traffic conditions, controls and geometrics), but not for accident forecasting. While the methods have limitations, the method for analyzing the traffic safety-related impacts applied to the proposed project is one of the best methodologies available, and demonstrates that in many cases, safety would be improved, which supports the Draft EIR's finding (see pages IV.O-43 and IV.O-44) that the proposed project would have a less-than-significant impact on traffic safety.

- 5-5 The comment states that signalization of Clark Street at Broadway should be considered. It is acknowledged there are difficulties in pedestrian circulation along and crossing Broadway, primarily caused by existing high traffic volumes. Raised medians, improved warnings, street narrowing measures, lighting, etc. have all been demonstrated to reduce pedestrian-related accidents. Recommendations for similar problems have been made in several recent publications including articles in *ITE Journal* (January 2004 and May 2007), and a handbook jointly published by FHWA, NHTSA and the Pedestrian and Bicycle Center in March 2009 entitled *How to Develop a Pedestrian Safety Action Plan*. In those articles, it has been noted that installation of unsignalized pedestrian crossings at multi-lane, high-volume arterial urban streets should be avoided. This is because high traffic volumes offer no safe crossing gaps, even when considering one direction of traffic at a time, along with the potential of the multiple threat exposure from having more than one lane in each direction. If median islands are constructed, they should probably be the Danish offset type so that pedestrians walk facing oncoming traffic in the median and they cross half the street at a time.

- No pedestrian or vehicle signal warrants were met at the intersection of Broadway and Clark Street. The potential queues on southbound Broadway at 14th Street and northbound Broadway at Washington Street could extend beyond any unsignalized pedestrian crosswalk on Broadway at Clark Street. Pedestrians should not be expected to cross two or more lanes, through a stopped or slow-moving queue of vehicles. In short, while the need is understood, the suggested improvements are not technically warranted and would not serve to lessen the proposed project's impacts further.
- 5-6 The comment criticizes the location of the proposed bicycle route crossing Broadway at Sixth Street. With the Marina Center project, an alternative route is available by guiding bicyclists to exit the Marina Center site from the Fourth Street access drive, go south on Broadway to Fifth Street, turn left on Fifth Street to go east, turn south on B Street, and then turn onto Seventh Street connecting to the existing Class II bike lanes on Seventh Street. The out-of-the-way problem already exists for the bicyclist travelling from Waterfront Drive wishing to access the existing bike lanes on Seventh Street, in that they must either go east on Washington Street to Summer Street and then to Seventh Street, or they can go south on Commercial Street to get to the Seventh Street bike lane. Therefore, the project would improve bicycle circulation by opening a route directly across the project site from Waterfront Drive to Fourth Street and Broadway. It should be noted, the project does not propose to circulate bicycles on the sidewalk.
- 5-7 The comment points out discrepancies in how the lane configuration on the eastbound Hawthorne Street approach to Broadway is described and depicted in the Draft EIR and the March 31, 2008 Traffic Impact Study (TIS).
- Page 55 of the TIS (Appendix P of the Draft EIR), in item 16, incorrectly states, "On the eastbound approach, provide one eastbound right turn and one eastbound through-turn lane... ." This is a typographical error in the report. The statement should have read, "On the eastbound approach, provide one eastbound through-turn lane...."
- A dedicated eastbound right-turn lane as suggested by the comment would not be needed to achieve acceptable service levels at this intersection. The Draft EIR and Mitigation Measure O-1c, therefore, correctly omit a dedicated eastbound right-turn lane on Hawthorne Street. As shown in Tables IV.O-8 (Mitigated 2010 Conditions) and IV.O-10 (2025 Conditions) of the Draft EIR (and in the corresponding Tables IV and VII of the TIS), with implementation of Mitigation Measure O-1c, the intersection of Broadway and Hawthorne Street would operate at LOS B (an acceptable level) or better during both peak hours, and therefore no further mitigation is necessary.
- 5-8 The comment states that installation of a raised median should be considered as a pedestrian refuge on Broadway at Seventh Street. Installation of a raised median on Broadway between Sixth Street and Washington Street would create a hazardous situation for pedestrians wishing to cross Broadway, with or without the proposed project. Traffic queues are, and would continue to be, present during many signal cycles in the peak and off-peak hours. Also, the total volume of traffic approaches, and

sometimes exceeds, 1,000 vehicles per lane per hour, or one vehicle every 3.6 seconds in each lane. This would make it difficult for pedestrians to find any safe crossing gaps. It should be noted that the distance between the existing crosswalks across Broadway from Washington Street to Sixth Street is approximately 575 feet, which is less than the 600-foot maximum walking distance between controlled pedestrian crossings that is generally accepted.

5-9 The comment states that appendices of the Traffic Impact Study, which is Appendix P of the Draft EIR, are difficult to read. Appendix G entries are in pencil. They have been darkened with black ink and reprinted, and forwarded to Caltrans. Appendix H includes model plots that are produced directly by the modeling software, and cannot be improved at the scale presented in the report. The best plots are 24 inches by 36 inches, which have been provided to the City for their files (available for review). Appendix K has been reprinted and was forwarded to Caltrans.

5-10 The comment states that Appendix M of the Traffic Impact Study should be deleted from the report because the subject addressed in that appendix is no longer under consideration.

The comment is correct, and Appendix M is deleted from the Traffic Impact Study.

5-11 The comment states that use of the Greater Eureka Travel Model (GEATM) is referenced both in the Draft EIR and the supporting Traffic Impact Study (TIS), and the comment requests that documentation of the use of the GEATM be included in those documents.

The GEATM was used as the baseline for modeling the 2010 traffic scenario and all traffic intersections and roadway segments under existing conditions, as well as the basis for forecasting future distribution of project-generated trips on the road network. Consequently, the GEATM is so referenced.

5-12 The comment states that Mitigation Measure O-1h would prohibit left turns onto Commercial Street from southbound Broadway and the Draft EIR does not include this information. The first sentence of Mitigation Measure O-1h, page IV.O-41 of the Draft EIR, is revised as follows to clarify the turn prohibition from Broadway to Commercial Street:

The ~~p~~Project ~~a~~Applicant shall obtain an encroachment permit from Caltrans and shall cause to be completed improvements necessary to prohibit southbound left turns from Broadway to eastbound Seventh Street ~~(and to Commercial Street)~~, and instead, shift these turns to the southbound left turn lane at Washington Street, one block to the south....

5-13 The comment states that Cumulative 2025 + Project volumes as shown appear flawed. All study intersections are included in the Traffic Impact Study Appendix F for 2025 plus project conditions. What may be misleading is that an additional scenario is included in the 2025 plus project scenario for adversely affected intersections without mitigation

(which is not reported in the text of the traffic study, because the assumption is that if the project exists in 2025, project mitigations would have occurred as a requisite conditions of development). However, the small differences between volumes for 2025 in Figure 15 and the volumes in the Synchro analysis included in the appendix are acknowledged. The differences are the result of conducting LOS analysis prior to final adjustments in estimates for 2025 volumes. Figure 15 has been updated to report on the latest 2025 volume estimates and is consistent with the volumes used in the Synchro analysis. In all cases the minor differences in volumes result in no significant changes in LOS – that is, none of the LOS D results move into LOS E (on U.S. 101), or from LOS C to LOS D (at city intersections). In addition, the traffic consultant has since added Marina Center in the now-accepted 2030 version of the Greater Eureka Area Travel Model (GEATM), which includes both Marina Center and Ridgewood Village. In all cases, the 2030 volumes with both projects are slightly lower than the extrapolated volumes in the Marina Center Draft EIR. In other words, the traffic report for Marina Center represents slightly higher traffic volumes than the 2030 GEATM forecasts. This includes the added volumes returning to Broadway via 14th Street, Wabash Avenue, Del Norte Street and Hawthorne Street with all Marina Center outbound traffic rerouted to Waterfront Drive / Railroad Avenue.

- 5-14 The comment expresses agreement with Mitigation Measures O-1a through O-1k identified on pages IV.O-X to IV.O-Z in the Draft EIR, as well as other improvements described on page IV.O-D.

The opinion about the validity of improvement measures that would be constructed and in-place under project conditions is acknowledged.

- 5-15 The comment expresses agreement with the Traffic Impact Study's (TISs) finding that construction of an offset intersection at Broadway and Sixth Street must include relocation of the southern driveway of the used car lot (Appendix P of the Draft EIR).

The Draft EIR used the conditional “may include” language in recognition of the fact that the Project Applicant does not control the pertinent property. Further, such relocation would not be necessary to maintain acceptable levels of service. Nevertheless, the specific design for the intersection location has not yet been prepared, and any proposed intersection construction on U.S. 101 would require an encroachment permit and approval from Caltrans.

- 5-16 The comment recommends that the Draft EIR's explanation (on page IV.O-26) for the raised median extending south of Seventh Street be replaced with text in the Traffic Impact Study.

The third sentence of the second full paragraph on page IV.O-26 of the Draft EIR is revised as follows to clarify the reason why the raised median would be needed:

The modification of the Broadway/Sixth Street signal and intersection also includes restriping Broadway for a northbound left turn lane at the project access drive at

Sixth Street, ~~and~~ the installation of a raised median extending south of Seventh Street ~~and prohibition of~~ to prohibit southbound left turns from Broadway to eastbound Seventh Street.

- 5-17 The comment states that there is no description of Hawthorne Street in the Setting section of Chapter IV.O, and states that Hawthorne Street's pavement condition must be repaired to accommodate project-generated traffic. The following paragraph is added to page IV.O-4 of the Draft EIR:

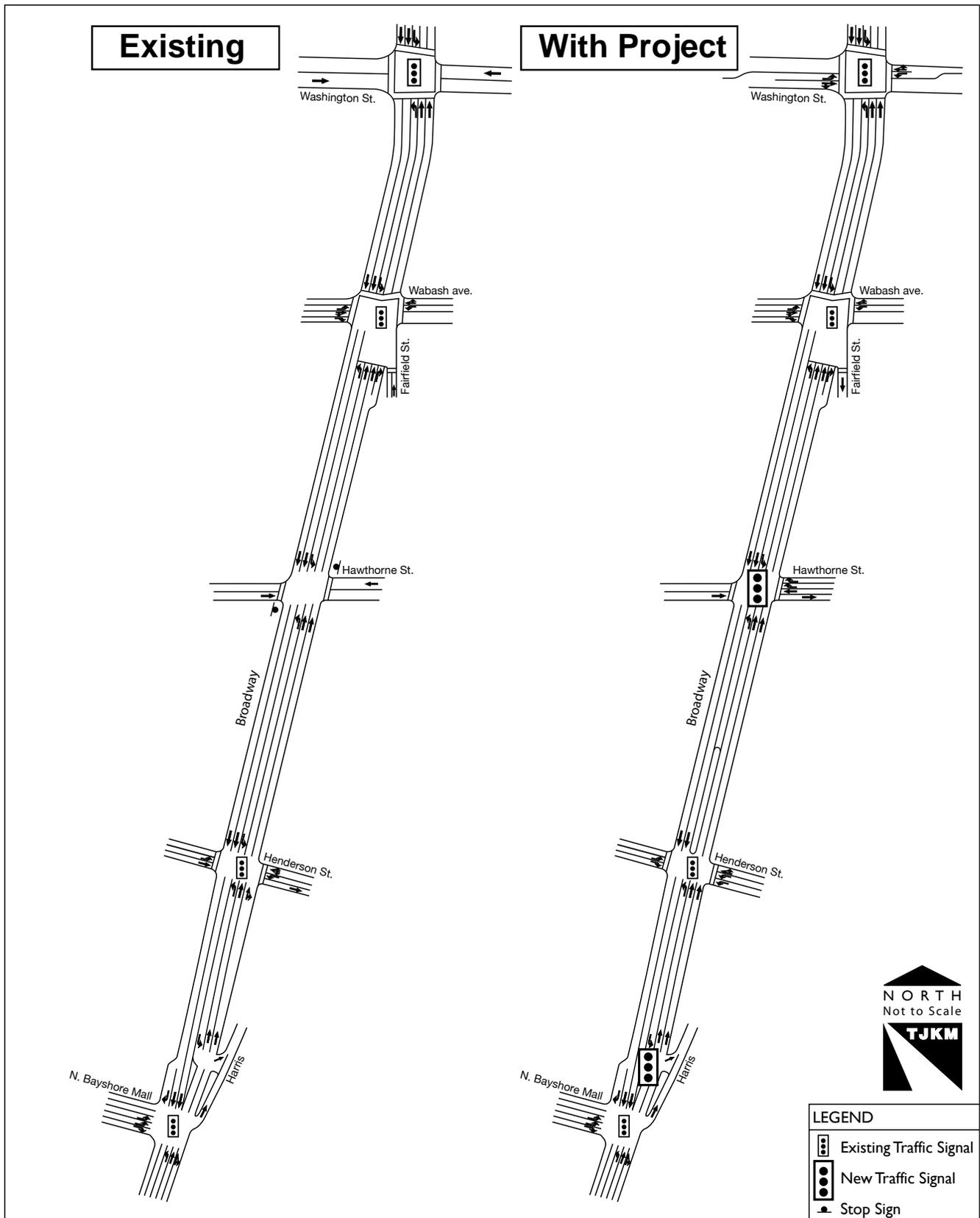
Hawthorne Street

Hawthorne Street is a two-lane roadway extending east and west. It begins at Felt Street on the west and extends east to 'C' Street. Hawthorne Street is stop controlled at Broadway. The street is 42 feet wide west of Broadway, and 36 feet wide east of Broadway. Parking is allowed on both sides of the street, both east and west of Broadway. There is an approximately two percent uphill grade east of Broadway to Fairfield Street.

The existing pavement on Hawthorne Street is a baseline condition. While it may result in some rerouting of traffic to other roadways that currently have better pavement, it would not do so to a degree that would change the surrounding levels of service estimated with the proposed project. The street is included as part of the City's regular road maintenance program. The current condition of the roadway does not preclude expanded vehicle travel.

- 5-18 The comment requests that the depiction of the "With Project" lane configuration on Washington Street at Broadway be consistent on Figures IV.O-11 and IV.O-12 of the Draft EIR.

Figure IV.O-12 is revised (see next page) to show the "With Project" lane configuration on Washington Street at Broadway consistent with Figure IV.O-11.



SOURCE: TJKM Transportation Consultants

Marina Center Mixed-Use Development Project . 205513

Figure IV.O-12 (Revised)
Broadway 2010 Improvements (South)

Comment Letter 6

Comment Letter 6

Sidnie Olson

From: Kasey Ashley [KAShley@waterboards.ca.gov]
Sent: Monday, January 26, 2009 8:59 AM
To: Sidnie Olson
Subject: Marina Center Draft EIR
Attachments: Comments Draft EIR.doc



Good Morning Sidnie,

I only read three parts of this huge document. my comments are attached. You will also get these in a letter from our agency along with other comments.

ka

5-51

Comments on Marina Center Project Draft EIR
SCH #2006042024

III. Project Description

Infrastructure

The text in this section indicates that new infrastructure would be constructed. During this construction, trench excavation soil and groundwater from construction dewatering will be required to be sampled in order to determine the properly permitted site for disposal.

6-1

Site Remediation

The text lists activities that could be required in a remedial action plan (RAP). As the Rap has not been developed, it is premature to list any potential activities unless the list of activities includes all possible remedial actions that occur at any given site.

6-2

G. Hazards and Hazardous Materials

Other Substances

The extent of dioxin contamination has not been investigated and needs to occur prior to site construction activities.

6-3

Health Risk Assessment

Text in the first paragraph of this section states "The groundwater at the site is not a current source of drinking water." While this is a factual statement, one of the beneficial uses of the groundwater as defined in the North Coast Region's Water Quality Control Plan (Basin Plan) is for municipal supply.

6-4

Project Impacts

In the event that the site is determined to have restricted land use due to contaminated soils being left in place, a deed restriction will be required to be filed with the County Recorder's Office.

6-5

Mitigation Measure G-1b

The text indicates that three samples of the backfill material will be analyzed by a laboratory to ensure that the backfill meets the site clean-up standards. Depending on the amount of backfill material, three samples may not be an adequate number of samples.

6-6

Mitigation Measure G-1c

Text indicates that during construction of the Marina Center suspected residual contamination could be detected by a hydrocarbon odor or visually. In addition, field sampling equipment needs to be used during construction to identify possible contamination. This equipment needs to consist of a photo-ionizing detector (PID).

6-7

Comment Letter 6

Mitigation Measure G-1d

The Integrated Waste Management Board may have comments on the reuse of contaminated soils at the site. 6-8

Table II-1 Summary of Impacts and Mitigation Measures for the Proposed Marina Center Project

Text under Impact G-1 states "A RWQCB-approved site remediation has been completed and a soil and groundwater management contingency plan would be prepared for the property." This statement is not factual. Regional Water Board staff have concurred with several interim remedial measures in the past, however the final remedial action plan has not been submitted for our review and concurrence. 6-9

Letter 6: California Water Resources Control Board (Kasey Ashley)

- 6-1 The comment states that during construction, excess water would be required to be sampled to ensure proper disposal. The construction activities of the proposed project would comply with all controls and testing established by the RWQCB under its Cleanup and Abatement Order, as well as any condition may part of Water Quality Certification issued in conjunction with the 404 permit. Such compliance is referenced under Mitigation Measure D-3a and would be incorporated into the required Storm Water Pollution Prevention Plan (SWPPP) (Draft EIR, pages IV.H-13, H-15, and H-17).
- 6-2 The comment states that it is premature to list remediation activities because a Remedial Action Plan has not been developed. The examples of activities that could be required in a Final Remedial Action Plan (FRAP) are included in the Draft EIR to provide a layperson with an understanding of what a FRAP may entail. Further, since publication of the Draft EIR, the Project Applicant has prepared a Supplemental Interim Remedial Action Plan (SIRAP) which has been approved by the RWQCB. That SIRAP, which is part of Phase 1 of the proposed project, details certain remedial activities that must be undertaken by the Project Applicant to comply with the RWQCB's 2001 Cleanup and Abatement Order No. R1-2001-26. The SIRAP and final cleanup of the project site is still conditioned on a FRAP, which must also be approved and carried out under the supervision of the RWQCB and as required under the Cleanup and Abatement Order. Please also see Master Response 4 and new Appendix S for updated information on site remediation plans for the proposed project.
- 6-3 The comment states that the extent of dioxin contamination has not been investigated and needs to occur before construction of the project. Sampling for dioxin has occurred and is proposed to occur in the SIRAP. Dioxins in sediment samples from onsite ditches and the Clark Slough remnant are discussed on Draft EIR page IV.G-6. Further, Mitigation Measure G-1b states that prior to commencement of construction activities, the Project Applicant must complete characterization and remediation of all contaminants to the satisfaction of the RWQCB. This includes dioxin. See also responses to comments 23-4 and 23-5 and Master Response 4 for additional discussion of dioxin and the proposed remediation for the project site.
- 6-4 The comment states that while it is true that the groundwater at the project site is not currently a source of drinking water, one of the beneficial uses of groundwater is for municipal supply. The Draft EIR on page IV.H-14 acknowledges that one of the beneficial uses of groundwater in the Humboldt Bay Basin Plan is for municipal uses. This project does not propose to take any action that would change or reduce the beneficial uses associated with groundwater or surface waters specified in the Humboldt Bay Basin Plan. All ongoing monitoring and remediation would continue under the supervision of the RWQCB.

6-5 The comment states that a deed restriction may be required if contamination is left in place that would restrict land uses. The comment is noted. As stated in Mitigation Measure G-1b, construction of the proposed project would not commence until the Final Remedial Action Plan has been approved by the RWQCB. Conditions imposed as part of that Final Remedial Action Plan would be fully implemented.

6-6 The comment states that three samples of backfill material may not be adequate depending on the total amount of backfill material placed. The excavations outlined in the SIRAP are limited to a few discrete areas, and the amount of backfill material is not anticipated to be significant. Generally, the higher the volume of soil being imported, the fewer samples per ton should need to be collected. Consequently, three samples for each excavation area are believed to be sufficient. Nonetheless, the text on Draft EIR page IV.G-20 is revised to state:

...~~Three samples~~At least one sample for every 500 cubic yards of the backfill material....

6-7 The comment states that a photo-ionizing detector could be used during construction to identify possible contamination. Specific monitoring protocols may vary depending on the level of site disturbance associated with construction, which in turn can only be determined once the final site designs and construction methods are developed and finalized. The Final Remedial Action Plan and associated monitoring protocols must be reviewed and approved by the RWQCB. Nonetheless, the text on Draft EIR page IV.G-20 is revised to state:

...could be detected by a hydrocarbon odor, photo-ionizing detector (PID), or visually....

6-8 The comment states that the Integrated Waste Management Board may have comments regarding the reuse of soils at the project site. The text for Mitigation Measure G-1d on Draft EIR page IV.G-21 is revised to state:

Mitigation Measure G-1d: Possible reuse of ~~contaminated~~ excavated soils as subgrade fill material shall require approval from the local environmental oversight agency (Humboldt County Department of Health), Integrated Waste Management Board, or successor agency, and/or RWQCB.

6-9 The comment requests correction of the status of RWQCB approvals. The RWQCB has approved a series of interim remedial measures, including those contained in the SIRAP. As set forth in Master Response 4 and in response to comment 6-2, above, regulatory closure of the project site is still subject to a Final Remedial Action Plan, which plan cannot be developed and approved until final site designs and construction methods are determined. That Final Remedial Action Plan must be submitted to the RWQCB for its review and concurrence. The discussion under Impact G-1 in Draft EIR Table II-1 on page II-16 is revised to state:

A RWQCB-approved interim site remediation has been completed and a soil management and groundwater management contingency plan would be prepared for the ~~property~~-project site. The site is still subject to a Final Remedial Action Plan to be reviewed and approved by the RWQCB.

Comment Letter 7

Comment Letter 7



California Regional Water Quality Control Board
North Coast Region

Bob Anderson, Chairman



Arnold Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

January 30, 2009

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DEPARTMENT OF
COMMUNITY DEVELOPMENT

Ms. Sidnie L. Olson
Eureka Community Development Department
531 K Street
Eureka, CA 95501

Dear Ms. Olson:

Subject: Regional Water Board Comments on the Draft Environmental Impact Report (DEIR) for the Marina Center Project, Eureka, Humboldt County, SCH No. 2006042024

Thank you for the opportunity to comment on the DEIR for the Marina Center Project. We appreciate the chance to respond and express concerns early in the environmental review process relating to our own statutory responsibility. The North Coast Regional Water Quality Control Board (Regional Water Board) is a responsible agency for this project, as defined by the California Environmental Quality Act (CEQA) having jurisdiction over the quality of ground and surface waters (including wetlands) and the protection of the beneficial uses of such waters. The DEIR identifies probable environmental impacts and suggests mitigation measures to minimize the significance of those impacts.

We have reviewed the document prepared for the Marina Center Project and offer the following comments and recommendations, in our role as a trustee and responsible agency under CEQA.

General Comments

Overall, we strongly support the efforts of City staff and other interested parties in developing the document. While there are a number of very positive mitigation measures in the DEIR, we are concerned that development related impacts will result in significant degradation to surface and ground water quality. Specifically, impacts related to loss of riparian and wetland areas, storm water pollution, hydromodification and site remediation will need to be mitigated to the fullest extent possible. In order to ensure that water quality objectives are met in the future, it is critical that impacts from new development be fully mitigated. Growth-related development in the area has contributed to the impairment of water quality, often through the discharging of pollutants to surface water and ground waters. Appropriate best management practices

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(BMPs) for the prevention of pollution must be implemented and monitored to ensure protection of water quality. The Regional Water Board is responsible for protecting the quality of waters of the State, which include all ground and surface waters within the State.

7-1
cont.

Specific Comments

D. Biological Resources

1. Impacts to wetlands and waters of the State

The Regulation of Wetlands Section on page IV. D-17 does not discuss the Water Quality Control Plan for the North Coast Basin (Basin Plan) (http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105_bp/070605_Basin_Plan.pdf). The DEIR needs to acknowledge the definition of waters of the state which is: Water Code Section 13050 (e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state" and includes but is not limited to all waters of the United States.. The Final EIR (FEIR) must identify all surface waters that could be impacted by the proposed project, including, but not limited to wetlands, springs, drainage channels, creeks, and the Clark Slough. The FEIR must clearly identify all potential adverse impacts to these waters and mitigation measures that will be implemented to protect them. These impacts should first be adequately evaluated to see if any can be avoided or minimized. All efforts to first avoid and second to minimize impacts to waters of the State must be fully exhausted prior to deciding to mitigate for their loss. If after careful and adequate evaluation, the project's impacts to waters of the State are deemed unavoidable, then compensatory mitigation (for acreage, function and value) will be necessary for any unavoidable impacts. For example, seasonal wetland impacts must be mitigated by seasonal wetland mitigation; linear watercourse impacts must be mitigated by linear watercourse mitigation. Our staff may require a greater than 1:1 mitigation ratio as a condition of approval for this project.

7-2

7-3

7-4

For unavoidable impacts to waters of the State, water quality certification under section 401 of the Clean Water Act and/or Waste Discharge Requirements (Dredge/Fill) from the Regional Water Board will be necessary. United States Army Corps of Engineers Clean Water Act Section 404 permits and Department of Fish and Game stream alteration agreements may also be necessary.

7-5

2. Storm water

H: Hydrology and Water Quality

Page IV.H-19 states that "the proposed project would result in the conversion of nearly 29 acres of the approximately 43-acre site into impervious surfaces and would result in an increase in peak discharge from the project site...without proper mitigation, development of the project site could increase the levels of NPS urban pollutants and litter entering Humboldt Bay. An increase in NPS pollutants could adversely affect the beneficial uses of the bay."

7-6

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Mitigation Measure H-4a: The project applicant shall prepare a drainage plan indicating the specifics of the project drainage system. The drainage plan shall demonstrate that the culverts are adequately sized and configured to address peak runoff and protect against a 10-year storm event. The drainage plan shall ensure that any increase in storm water drainage runoff in a 10-year storm event remains below 1 cfs. Alternatively, if the 1 cfs threshold cannot be maintained in a projected 10-year storm event, the drainage plan shall provide a retention/siltation basin that limits storm water runoff to pre-project flows. The plan shall be submitted to and approved by the City of Eureka, and recommendations from the City shall be adopted by the project applicant prior to issuance of a building permit.

Mitigation Measure H-5a: The applicant shall treat storm water at drop inlets that capture runoff from roof drains, paved pedestrian areas, and parking, prior to connection to the City's storm drain system. The project applicant shall prepare and implement a permanent maintenance program for storm water treatment facilities on the project site.

Mitigation Measure H-5b: The project applicant shall incorporate grassed swales (biofilters) into the project landscape plan, to the extent feasible, for runoff conveyance and filtering of pollutants. The maintenance of biofilters on the project site shall be the responsibility of the project applicant.

Mitigation Measure H-5c: The applicant shall ensure that only USEPA-approved herbicides and pesticides are used on the site in any area that might drain to aquatic environments.

These mitigation measures rely extensively on filters and other proprietary storm water BMPs. The Regional Water Board has been directed by the State Water Board, in a resolution adopted on May 6, 2008, (http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0030.pdf) to incorporate low impact development (LID) in regulatory actions. We recommend that the mitigation measures provide guidance to develop the project in accordance with LID strategies to treat storm water to the maximum extent practicable in accordance with the City's storm water permit coverage and for ease of further permitting by our agency. Filters may not be effective in treating storm water and require higher maintenance than landscape-based BMPs.

The quality of storm water runoff is directly correlated to the extent of impervious surfaces within a watershed. We strongly encourage disconnection of impervious areas from storm drain systems and routing to vegetated areas where possible. We support infiltrating treated storm water runoff into the ground as a means of treating it and recharging ground water supplies. This helps to buffer low summer/fall flows which in turn help to reduce water scarcity and creek temperatures. Please see the attached list of Storm Water and LID resources we have included for your benefit in proceeding with this project.

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7-6
cont.
7-7

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All newly installed impervious surfaces (runway, roads, roofs, sidewalk, etc.) must incorporate post-construction storm water BMPs to remove any contaminants, and to attenuate peak flows, before discharge to waters of the State. We strongly encourage the use of LID techniques to address potential storm water impacts as close to the source as possible. Dry detention basins (particularly those with limited detention times) are not effective for pollutant removal. Permeable pavements can have significant benefits as long as subdrains are not needed. LID techniques promote healthy aquatic systems and can reduce flood and drainage control costs over time. Post-construction storm water treatment controls are vital in protecting water quality from the effects of increased storm water runoff from new development.

Hydromodification

Recent studies have confirmed that increased impervious surfaces within a watershed will lead to alteration of the natural hydrology expressed as higher winter flows (peak flows) and lower summer/fall flows (base flows). Alteration of the natural flow regime (hydromodification) can result in increased stream temperatures associated with base flows, alteration of the channel morphology (e.g. widening or incising of stream channel) associated with increased peak flows, adverse impacts to native riparian vegetation and reduction in ground water recharge capabilities. The design and construction of new development projects using LID can protect natural flow regimes and reduce the impacts of hydromodification and thus help prevent adverse impacts to stream and wetland systems.

3. Clean ups Comments on Marina Center Project Draft EIR

III. Project Description

Infrastructure

The text in this section indicates that new infrastructure would be constructed. During this construction, trench excavation soil and groundwater from construction dewatering will be required to be sampled in order to determine the properly permitted site for disposal.

Site Remediation

The text lists activities that could be required in a remedial action plan (RAP). As the Rap has not been developed, it is premature to list any potential activities unless the list of activities includes all possible remedial actions that occur at any given site.

G. Hazards and Hazardous Materials

Other Substances

The extent of dioxin contamination has not been investigated and needs to occur prior to site construction activities.

7-8
7-9
7-10
7-11

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Health Risk Assessment

Text in the first paragraph of this section states "The groundwater at the site is not a current source of drinking water." While this is a factual statement, one of the beneficial uses of the groundwater as defined in the North Coast Region's Water Quality Control Plan (Basin Plan) is for municipal supply.

7-12

Project Impacts

In the event that the site is determined to have restricted land use due to contaminated soils being left in place, a deed restriction will be required to be filed with the County Recorder's Office.

7-13

Mitigation Measure G-1b

The text indicates that three samples of the backfill material will be analyzed by a laboratory to ensure that the backfill meets the site clean-up standards. Depending on the amount of backfill material, three samples may not be an adequate number of samples.

7-14

Mitigation Measure G-1c

Text indicates that during construction of the Marina Center suspected residual contamination could be detected by a hydrocarbon odor or visually. In addition, field sampling equipment needs to be used during construction to identify possible contamination. This equipment needs to consist of a photo-ionizing detector (PID).

7-15

Mitigation Measure G-1d

The Integrated Waste Management Board may have comments on the reuse of contaminated soils at the site.

7-16

Table II-1 Summary of Impacts and Mitigation Measures for the Proposed Marina Center Project

Text under Impact G-1 states "A RWQCB-approved site remediation has been completed and a soil and groundwater management contingency plan would be prepared for the property." This statement is not factual. Regional Water Board staff have concurred with several interim remedial measures in the past, however the final remedial action plan has not been submitted for our review and concurrence.

7-17

4. Wastewater

Q. Utilities and Service Systems

The City of Eureka City's Elk River Waste Water Treatment Plant (WWTP) operates in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements administered by our agency. The permit was issued in 2004 and is valid through March 2009. The permit sets limitations on the treated effluent quality and quantity discharged into Humboldt Bay.

As stated, the WWTP operates at approximately 70 percent of the permitted capacity in dry weather conditions and at 100 percent of the permitted capacity during peak wet

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weather events. We are concerned that the City's WWTP capacity for the development of this project may be inadequate. This project will need to demonstrate adequate capacity for planned growth resulting from this project.

7-18

5. Required Permits for this Project

The following summarizes project permits that may be required by our agency depending upon potential impacts to water quality:

Water Quality Certification (401 Certification): Permit issued for activities resulting in dredge or fill within waters of the United States (including wetlands). All projects must be evaluated for the presence of jurisdictional wetlands and other waters of the State. Destruction of or impacts to these waters should be avoided. Under the Clean Water Act Sections 401 and 404, disturbing wetlands requires a permit from the United States Army Corps of Engineers (ACOE) and a State 401 water quality certification. To determine whether wetlands may be present on any proposed construction site, please contact Jane Hicks of ACOE at (415) 977-8439. If wetlands or other waters of the State are present, please contact Mark Neely at (707) 576-2689. Alterations or work within or adjacent to streambeds or lakes may also require a 1602 Lake and Streambed Alteration Agreement from the California Department of Fish and Game (CDFG). Removal of riparian vegetation also requires this permit. We recommend that all applicants contact CDFG for additional information on these requirements.

7-19

Waste Discharge Requirements (WDRs) or a Conditional Waiver of WDRs: Under authority of the California Water Code, the Regional Water Board may issue WDRs for any project which discharges or threatens to discharge waste to waters of the State. Projects that impact waters of the State (including any grading activities within stream courses or wetlands) require permitting by the Regional Water Board. The Regional Water Board may also require permits for discharges of post-construction storm water runoff and on-site septic systems accepting 1,500 gallons or more per day. An application may be printed from the State Water Resource Control Board website at: www.swrcb.ca.gov/sbforms/.

7-20

General Construction Activity Storm Water Permit: Land disturbances on proposed projects of one acre or more require a general construction storm water permit. If the land disturbance will be in excess of one acre, the owner of the property will need to apply for coverage under this permit prior to the commencement of activities on-site. This permit requires the preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) that identifies BMPs to minimize pollutant discharges from the construction site. The permit also requires inspections of construction sites before and after storm events, and every 24 hours during extended storm events. The purpose of the inspections is to identify maintenance requirements for the BMPs and to determine the effectiveness of the

7-21

5-58

Comment Letter 7

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implemented BMPs. Owners may call our office to receive a permit package or download it off the Internet at www.waterboards.ca.gov.

↑ 7-21
| cont.

If you have any questions or comments, please contact me at (707) 570-3761 or by email at MDougherty@waterboards.ca.gov

Sincerely,



Mona Dougherty
Water Resources Control Engineer

121208_AJT_Marina Center_DEIR.doc

cc: Mr. Scott Morgan, State Clearing House, P.O. Box 3044,
Sacramento, CA 95812 RE: SCH No. 2006042024

Michael G. van Hattem, Coastal Conservation Planning Northern Region,
California Department of Fish and Game, 619 Second Street, Eureka, Ca 95501

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Low Impact Development Resources

Puget Sound LID manual:
http://www.psp.wa.gov/downloads/LID/LID_manual2005.pdf

Resolution of the California Ocean Protection Council Regarding Low Impact Development:
http://www.resources.ca.gov/copc/05-15-08_meeting/05_LID/0805COPC05_%20LID%20Res%20amended.pdf

Low Impact Development Center:
<http://www.lowimpactdevelopment.org/>

Green Infrastructure Municipal Handbooks:
<http://cfpub2.epa.gov/npdes/greeninfrastructure/munichandbook.cfm>

Marin County's LID manual:
http://www.mcstopp.org/acrobat/GuidanceforApplicantsv_2-5-08.pdf

San Diego County's LID manual – has a section on LID for roads:
<http://www.sdcounty.ca.gov/dplu/docs/LID-Handbook.pdf>

Low Impact Development – Sustainable Storm Water Management:
http://www.waterboards.ca.gov/water_issues/programs/low_impact_development/

EPA Green Infrastructure Basic Information:
<http://cfpub.epa.gov/npdes/greeninfrastructure/information.cfm>

Managing Wet Weather with Green Infrastructure:
http://cfpub.epa.gov/npdes/home.cfm?program_id=298

State Water Board Funded Projects That Include Low Impact Development:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/low_impact_development/

City of Portland's Sustainable Storm Water Management Program – LID for streets:
<http://www.portlandonline.com/bes/index.cfm?c=34598>

Low Impact Development Center – Green Highways and Green Infrastructure:
http://www.lowimpactdevelopment.org/green_highways.htm

Streetscape improvements and water quality design:
<http://www.lowimpactdevelopment.org/nhb/lid.htm>

Low Impact Development for Roads - Washington State Green Building for Transportation Infrastructure
webpage: <http://www.metrokc.gov/kcdot/roads/eng/lid/militarys272/index.cfm>

LID Urban Design tools – has design software for different BMPs:
<http://www.lid-stormwater.net/homedesign.htm>

LID design fact sheet:
<http://www.coastal.ca.gov/nps/lid-factsheet.pdf>

LID Training Program for Local Transportation Projects:
http://www.lowimpactdevelopment.org/epa03_transportation.htm

Storm Water Management and LID at EPA headquarters – BMP choice and design:

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http://www.epa.gov/owow/nps/lid/stormwater_hq/

<http://sustainablesites.org/>

A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption:
http://www.waterboards.ca.gov/lid/docs/ca_lid_policy_review.pdf

Storm Water Resources:

The CASQA Construction BMP manual:
<http://www.cabmphandbooks.com/Construction.asp>

This is our MS4 website that has storm water and LID links:
http://www.waterboards.ca.gov/northcoast/water_issues/hot_topics/santa_rosa_ms4_npdes_stormwater_permit/

State Water Board Storm Water Program:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/

Erase the Waste Campaign – California Storm Water Toolbox:
http://www.waterboards.ca.gov/water_issues/programs/outreach/erase_waste/

State Water Board Storm Water Grant Program:
http://www.waterboards.ca.gov/water_issues/programs/grants_loans/prop84/index.shtml

The San Francisco Regional Water Board storm water website:
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/avail_docs.shtml

EPA Storm Water Program:
http://cfpub.epa.gov/npdes/home.cfm?program_id=6

Federal Funding Sources for Watershed Protection:
<http://cfpub.epa.gov/fedfund/>

California Stormwater Quality Association:
<http://www.casqa.org/>

Stormwater Manager's Resource Center:
<http://www.stormwatercenter.net/>

Post Construction BMPs:
<http://www.stormwaterauthority.org/library/library.aspx?id=190>

For more information, please contact Mona Dougherty at mdougherty@waterboards.ca.gov or John Short at jshort@waterboards.ca.gov

Letter 7: California Water Quality Control Board (Mona Dougherty)

- 7-1 The comment expresses general concerns regarding wetlands, riparian habitats, hydromodification, and stormwater pollution, and the comment encourages the use of best management practices (BMPs) in relation to stormwater.

For further discussion of loss of riparian and wetland areas, please see Chapter IV.D. Biology. For further discussion of stormwater, please see responses to comments 7-7, 7-8, and 16-44 and 16-47 of this document. Responses to comments 7-7 and 7-8 relate to best management practices that would be identified to mitigate stormwater impacts. For further discussion of site remediation, please see Master Response 4 and new Appendix S. Use of appropriate BMPs is discussed on pages IV.H-15, -17 and -18, Chapter 4, and included in Mitigation Measures H-3a and H-3b for control of stormwater both during construction and post-construction phases of the proposed project.

By hydromodification, the comment is presumably referring to the process whereby urbanization of an area changes the watershed. For example, urbanization can change the course of a stream by increasing the percentage of rainfall that becomes runoff during any given storm. Here, the area in question is already urbanized, and the Clark Slough remnant already accepts municipal stormwater and stormwater from the project site. It is largely rip-rapped or degraded, and thus is not likely to be affected by increases in stormwater. And the Draft EIR already includes an analysis of stormwater and Mitigation Measure H-4a which requires a drainage plan to either limit peak runoff at below 1 cubic-foot per second (cfs) or below pre-project flows. Consequently, the proposed project is not anticipated to have any significant adverse effects related to hydromodification.

- 7-2 The comment notes that the Draft EIR does not discuss the Basin Plan, and that the Draft EIR needs to acknowledge the definition of “waters of the State.”

The Water Quality Control Plan (Basin Plan) for the North Coast region is discussed on pages IV.H-13 and H-14 of the Draft EIR. To address waters of the State, the Draft EIR is revised on page IV.D-17 as follows:

Regional Water Quality Control Board

The Regional Water Quality Control Board (RWQCB), North Coast Region, regulates waters of the state under the Porter-Cologne Act. “Waters of the state” means “any surface water or groundwater, including saline waters, within the boundaries of the state.” (Cal. Wat. Code, Section 13050(e).) Under Section 401 of the Clean Water Act, the RWQCB has review authority over Section 404 permits.

- 7-3 The comment states that the Final EIR must identify all surface waters that could be impacted by the proposed project. The Draft EIR in Chapters IV.D, IV.G, and IV.H identifies all surface waters (and all waters of the state) that could be effected by the

proposed project, including the Clark Slough remnant, onsite wetlands, and Humboldt Bay itself. There are no other surface waters that would be affected by the proposed project.

- 7-4 The comment states that the Final EIR must clearly identify all potentially adverse impacts to surface waters from the proposed project and, if impacts cannot be avoided or minimized after careful and adequate evaluation, provide in-kind compensatory mitigation (e.g., seasonal wetlands created for seasonal wetlands impacted). The comment notes that RWQCB staff may require a greater 1:1 mitigation ratio for these waters.

The Draft EIR carefully evaluated all of the proposed project's potentially adverse impacts to surface waters and all waters of the State, provided a series of mitigation measures, and then concluded that the proposed project's impacts on these waters would be less than significant (e.g., Draft EIR, Chapters IV.D, IV.G, and IV.H). The comment fails to point out any deficiencies in the existing analysis and mitigation measures. It should be noted, however, that the mitigation already includes a slightly greater than 1:1 mitigation ratio for onsite wetlands and waters, though some of those mitigations would be out-of-kind. A 1:1 ratio and out-of-kind mitigation are entirely reasonable in this instance due to a number of factors, including (i) the degraded and disturbed nature of the existing wetlands and waters onsite; (ii) the temporary nature of the impacts; (iii) the fact that the project site is highly conducive to the creation of high-quality estuarine wetlands, as opposed to seasonal wetlands which currently occur at the project site; and (iv) the significant increase in wetland function and value expected from the wetland reserve over the existing, largely man-made depressions and ditches that are filled with invasive, non-native plant species. Opportunities for creating functional estuarine wetlands are rare, and therefore particularly valuable; here, the project site is uniquely suitable for estuarine wetland creation. For further discussion of the mitigation ratio and out-of-kind wetlands, please review the Draft EIR, pages D-21 through D-30, and responses to comments 3-8, 3-9, 87-1, and 179-17.

- 7-5 The comment states that for unavoidable impacts to waters of the State, a Section 401 water quality certification and/or waste discharge requirements will be necessary. The comment also notes that a U.S. Army Corps of Engineers 404 permit and CDFG streambed alteration agreement may also be needed.

The Draft EIR evaluates the proposed project's potentially significant impacts on waters of the State, including the Clark Slough remnant and wetlands onsite, and specifically notes that a 401 water quality certification and 404 wetland permit will be required (Draft EIR, pages IV.D-21 through -30). A streambed alteration agreement under Section 1600, *et seq.*, of the California Fish and Game Code will probably be needed for the restoration work proposed for the Clark Slough remnant. The same effects analysis and mitigation would apply.

- 7-6 The comment summarizes information provided in the Draft EIR about stormwater and states that mitigation measures should include low-impact development guidance to

address stormwater quantity and quality to the maximum extent practicable under the City's stormwater permit coverage. The comment also notes that filters may not be effective in treating stormwater and require higher maintenance than landscape-based BMPs.

As identified in the Draft EIR, Chapter IV.H and Mitigation Measures H-4 and H-5, the Project Applicant must prepare a detailed drainage plan which would specify those BMPs and design features to address both stormwater quantity and quality in accordance with the requirements of the City's municipal stormwater permit. Mitigation Measure H-5b, for example, requires use of grass swales or biofilters to the extent practicable, which would qualify as landscape-based BMPs. Additionally, the stormwater drainage plan would be subject to review by City and other agencies to ensure compliance with the City's municipal stormwater permit. Nonetheless, revisions in the proposed project's mitigation can help clarify these requirements. Please see response to comment 23-16 and the revised Mitigation Measure H-5a, as well as the following revisions to Mitigation Measure H-5b on Draft EIR page IV.H-20:

Mitigation Measure H-5b: ~~The project applicant shall incorporate grassed swales (biofilters) into the project landscape plan, to the extent feasible, for runoff conveyance and filtering of pollutants. The maintenance of biofilters on the project site shall be the responsibility of the project applicant.~~ The Project Applicant shall incorporate low impact development (LID) strategies, such as grass/vegetative swales (biofilters) and other landscape-based BMPs into the project landscape, design plan, and final drainage plan.

- 7-7 The comment strongly encourages disconnection of impervious areas from storm drain systems and routing to vegetated areas where possible, and supports infiltrating treated stormwater runoff into the ground. See also response to comment 7-6, above.
- 7-8 The comment states that specific stormwater treatment practices must be incorporated into the proposed project, and again raises generally the possible effects associated with hydromodification. Please see responses to comments 7-1, 7-6, and 7-7. Post-construction BMPs are required in mitigation and as part of the project to address stormwater quality and quantity. LID technologies and strategies would be considered, though specific design features and treatment measures would depend on the final site design and project configuration.
- 7-9 The comment states that during construction, dewatering would be required to be sampled. The comment is noted. The construction activities of the proposed project would comply with controls and testing agreed upon with the RWQCB. Please see response to comment 6-1.
- 7-10 The comment states that it is premature to list remediation activities because a Remedial Action Plan has not been developed. The comment is noted, although the remediation activities were listed as a sample of what actions could be taken. Please see response to

- comment 6-2, as well as Master Response 4 and new Appendix S, which address site remediation, as well.
- 7-11 The comment states that the extent of dioxin contamination has not been investigated. Please see response to comment 6-3, which explains the investigation of dioxin contamination to date.
- 7-12 The comment states that the Basin Plan has designated municipal use as a beneficial use of groundwater. The comment is noted. Please see response to comment 6-4.
- 7-13 The comment states that a deed restriction would be required if contamination is left in place that would restrict land uses. As stated in Mitigation Measure G-1b on Draft EIR page IV.G-20, construction of the Marina Center would not commence until final approval of site remediation has been approved by the RWQCB. This would include any deed restriction, if such a restriction is required by the RWQCB. Please see response to comment 6-5.
- 7-14 The comment states that three samples of backfill material may not be adequate for analysis. Please see response to comment 6-6, which includes text changes to the Draft EIR to address the comment.
- 7-15 The comment states that a photo-ionizing detector could be used during construction to identify possible contamination. Please see response to comment 6-7, which includes text changes to the Draft EIR to address the comment.
- 7-16 The comment states that the Integrated Waste Management Board may have comments regarding the reuse of soils at the project site. Please see response to comment 6-8, which includes text changes to the Draft EIR to address the comment.
- 7-17 The comment requests correction of the status of RWCQB approval. Please see response to comment 6-9, which includes text changes to the Draft EIR to address the comment.
- 7-18 The comment states concern regarding the capacity of the wastewater treatment plant. As stated on Draft EIR page IV.Q-1, the City of Eureka's Elk River Wastewater Treatment Plant (WWTP) operates in accordance with North Coast Regional Water Quality Control Board (RWQCB) permit requirements. The WWTP has a permitted average dry weather capacity of 5.24 mgd, and a peak wet weather capacity of 32 mgd. Please see responses to comments 80-1 through 80-13 regarding the average dry and peak wet weather capacities of the wastewater treatment plant, as well as Chapter 2 of the Final EIR, which includes staff-initiated changes related to the permitted capacity of the WWTP.
- 7-19 The comment is a summary of the 401 Certification that would be required of the proposed project. The Draft EIR, Chapter IV.D, includes information on 401 water quality certifications.

- 7-20 The comment is noted that the RWQCB may require Water Discharge Requirements (WDRs) for the proposed project. Since the proposed project must also obtain a 404 permit under the federal Clean Water Act and associated 401 water quality certification from the RWQCB and obtain coverage under the general construction stormwater permit, separate WDRs are not anticipated. The Draft EIR, Chapter IV.H, references the RWQCB's waste discharge requirements.
- 7-21 The comment states that a General Construction Activity Storm Water Permit would be required. The Project Applicant would apply for a General Construction Activity Storm Water Permit at the appropriate time by preparing a SWPPP and filing a notice under the general permit. The SWPPP and construction-related permitting are outlined in Chapters IV.D, IV.G, and IV.H of the Draft EIR.

Comment Letter 8

Comment Letter 8

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



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January 30, 2009

File Ref: SCH# 2006042024

PROCEIVED
FEB 06 2009
DEPARTMENT OF
COMMUNITY DEVELOPMENT

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

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

Dear Ms. Olson:

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

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

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

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

Sidnie Olson

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

8-1

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

- 1) The DEIR states that the GHG emissions produced by the project, 20,000 metric
tons of CO2(e) per year, are less than significant with mitigation measures C-2a
and C-2b. These two mitigation measures were designed to reduce criteria
pollutants, and incidentally, will also reduce some GHG emissions. However, the
contribution of 20,000 metric tons of CO2(e) per year to this global issue remains
unmitigated. The mitigation and monitoring program should be enhanced to
include measures that will fully mitigate the direct GHG emissions produced by
this project (including construction of the buildings and of the wetland). As an
example, an appropriate mitigation measure for fully offsetting direct GHG
emissions would be "The applicant shall, 60 days prior to the start of
construction, provide a plan for the CSLC Executive Officer's review and
approval to purchase carbon offsets from the California Climate Action Registry
(CCAR), the local Air Pollution Control District (APCD), or other source that is
approved by the CSLC and is consistent with the policies and guidelines of the
California Global Warming Solutions Act of 2006 (AB 32)."
2) The project proposes to permanently fill 5.54 acres of freshwater wetlands and
mitigate those impacts, at a 1:1 ratio, with the creation of out-of-kind estuarine
wetlands. Details for the wetland creation/restoration project are lacking, and
need to be further developed in the DEIR to ensure adequate mitigation.
Typically, a greater than 1:1 ratio is proposed for creating out-of-kind mitigation,
and we would suggest that the applicant work with the Department of Fish and
Game to arrive at a more appropriate ratio.
3) Once the appropriate mitigation ratio is determined, a conceptual wetland
restoration plan for the southwest corner of the Marina Center project should be
developed. This plan should depict locations for different types of wetland, i.e.,
open tidal channels, saltmarsh, etc., with a list of the target species. The target
species should then serve as the basis for quantitative performance standards

8-2

8-3

8-4

5-66

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

8-4 cont.

4) Success of the wetland restoration project at this location will be largely dependant upon the substrate and the hydrology. There was inadequate information in the DEIR to evaluate whether or not the substrate is appropriate for a wetland and to evaluate the impacts of the contaminated site and the non-point pollution of the watershed on the water quality of the proposed wetland. The DEIR should be modified to fully disclose such aspects of the restoration project or provide performance standards for both substrate and hydrology. In addition, the DEIR should describe how the tidal gates or structure(s) will be re-designed to provide adequate tidal flushing for this constricted tidal prism.

8-5

5) A small buffer area is proposed around the wetland creation/restoration site. This buffer should not only be adequate to protect the new site from the surrounding land uses, but should also provide adequate space for the wetland to "retreat" toward the upland areas as the sea-level continues to rise. Without building into the design the extra area to account for sea-level rise, the resultant marshes will ultimately not provide the intended ecological functions and values.

8-6

6) It is our understanding that the old rail yard is known to be contaminated and that the area may be capped, rather than having the contaminated materials removed. However, there are few details in the DEIR regarding the actual level contamination and the proposed remediation for the site, and therefore, it is difficult to determine the levels of remaining contaminants that may influence the surrounding wetlands. Specific details regarding the proposed remedial actions on the site need to be included in the DEIR.

8-7

7) The current and past uses of the adjacent property south of the proposed Marina Center project are industrial in nature. The DEIR should evaluate the impact of the adjacent properties on the water quality of the wetland. It is unclear whether such run-off would be treated prior to entering the wetland or if the wetland will be used to ameliorate the run-off. In the event the restored wetlands are used as a temporary surface water attenuation basin, the DEIR should discuss how the excess water will be treated and discharged out of the wetland and the need, if any, for a discharge permit.

8-8

5-67

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

Sincerely,

Gail Newton, Chief
Division of Environmental Planning
and Management

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

Letter 8: California State Lands Commission

- 8-1 The comment explains the status of ongoing settlement discussions on the extent of sovereign or public trust lands at the property, and states that in the interim the comment assumes much of the property is either sovereign or public trust lands and that the proposed uses – office, multi-family, light industrial, restaurant, and museum – might not provide water-dependent uses as required. The comment suggests that the Project Applicant continue to work with the State to resolve this issue.

As outlined in the comment and pages IV.E-4 through IV.E-8 of the Draft EIR, it is uncertain whether and to what extent there are any public trust lands within the project site. The Project Applicant is in discussions with California State Lands to resolve any possible title issues. It should be noted, however, that portions of the project site were historically salt marsh, with some tidal sloughs running within them. The surface of salt marsh lands, though, is often above the elevation of ordinary high water, and to that extent the lands would not be subject to the public trust doctrine. What is more, the mere fact that lands may historically have been tide or submerged lands does not end the matter. Much of the present Downtown of Eureka, for example, for several blocks inboard of the shoreline, was historically of such a character, but has been ruled not to be subject to the public trust. Those lands were validly conveyed by the State into private ownership, and any initial impressments with the public trust have long since been terminated.

Even if impressed with the trust, courts and commentators have disagreed about how it should be applied. For example, the public trust doctrine has been interpreted to mean that the lands are held in trust for the public purposes of commerce, navigation, fisheries, and, more modernly, recreation and environmental protection. However, the public trust doctrine does not dictate a particular use, nor does it favor one use over another. The public trust doctrine, therefore, would not prohibit a Lead Agency from favoring a particular public trust use, even if that use would result in greater environmental degradation. For example, oil production has been held a proper public trust use, as has the building of a YMCA hotel for sailors and seamen. Such policy decisions would be weighed by decision-makers in evaluating whether to approve a proposed project, but are not the sort of policy issues contemplated under CEQA. Indeed, there are a host of public trust uses – including maritime industrial uses – that would have more significant adverse effects on the environment than the proposed project.

Here, the Project Applicant is proposing to amend the land-use zoning for the project site to General Service Commercial, Waterfront Commercial, Limited Industrial, and Water Conservation, and to restore and enhance the Clark slough remnant, wetlands, and other habitat values of the project site. There are a number of public trust-consistent uses that could be developed under the Project Applicant's proposed zoning designations, including maritime industrial uses. But the proposed project also would create new estuarine and palustrine emergent wetlands that, along with the nature trail, would

provide opportunities for water-oriented recreation along the reserve and slough remnant. And as a consequence of the site remediation and other measures to manage stormwater, the project would protect public trust values within Humboldt Bay and along the waterfront over the long-term. To the extent that there are any physical changes to the environment that involve public trust lands or resources, however, those physical changes are addressed in the various chapters of the Marina Center EIR and no further information is required.

- 8-2 The comment indicates that the 20,000 metric tons of greenhouse gas (GHG) emissions that would be associated with the project should be completely offset through mitigation requirements, such as the purchase of carbon off-sets, exchanges, and/or banking credits. As described in response to comment 3-7, project impacts related to GHG emissions are found to be less than significant, and carbon off-sets, exchanges, or banking credits would not be an appropriate strategy for mitigation of emissions associated with the project. CEQA requires mitigation measures for significant impacts. Accordingly, since no significant GHG emissions impacts are identified, no mitigation measures to completely offset project related GHG emissions are identified.
- 8-3 The comment states that details of proposed wetland creation and restoration are lacking and that they need to be further developed to ensure adequate mitigation. The comment is noted. Please see responses to comments 7-2 through 7-5, above, which discuss the permitting process for filling of wetlands. The details of the wetland reserve are sufficient for the Lead Agency to make a determination about the significance of any associated impacts and the presumed success of the implementation. There are adequate safeguards in the form of the detailed Restoration Plan itself (to be submitted before any grading occurs) its long-term monitoring provisions, and specific performance criteria in the mitigation itself (see Draft EIR, Mitigation Measure D-3b, page IV.D-29).

The proposed project would likely require a streambed alternation agreement from CDFG for work related to restoring the Clark Slough remnant. Mitigation associated with that agreement would be developed in consultation with CDFG.

For further discussion of the mitigation ratio and out-of-kind wetlands, please review the Draft EIR, pages D-21 through D-30, and responses to comments 3-8, 3-9, 87-1, and 179-17.

- 8-4 The comment states that the Draft EIR should provide an appropriate mitigation ratio and then develop a conceptual wetland mitigation plan for the southwest corner of the property. The comment further states that the plan should depict the location of different wetland types, include specific performance standards (coverage of vegetation or richness fish species), and address invasive species. The comment additionally maintains that there is a need for performance bond to ensure funds for long-term management.

As indicated in response to comment 3-9, the mitigation ratio of 1.05:1 is considered sufficient in this case given several considerations as indicated on page IV.D-22 to 23 of

the Draft EIR. The concepts for a restoration plan in the southwest corner of the property are included in the Biological Assessment report prepared by HBG and in the Draft EIR. An estuarine slough channel would be restored in the location of the existing remnant of Clark Slough would result in a total of about 8.98 acres of estuarine wetlands surrounded by 2.91 acres of uplands. A mitigation plan would be developed as part of the process for obtaining the wetland fill permit from the U.S. Army Corps of Engineers and a Coastal Development Permit from the City of Eureka. This mitigation/restoration plan is specified in Mitigation Measure D-3b of the Draft EIR, and would contain requirements for compliance monitoring and reporting, including monitoring activities and performance criteria to measure success of the mitigation/restoration. A long-term management strategy and funding mechanism are also identified under Mitigation Measures D-3b and -3d, and Mitigation Measure D-3a contains the applicable performance standard: any restored or replacement wetlands must provide functions and values “equal to or greater than the affected wetlands.” To ensure that this performance standard applies to on and off-site wetland mitigation as intended, the following clarifying language shall be added to the EIR at page IV.D-25:

Mitigation Measure D-3a: The ~~p~~Project ~~a~~Applicant shall obtain the requisite 404 permit and 401 certification from the Corps and RWQCB, which shall, at a minimum, require the ~~p~~Project ~~a~~Applicant to ensure that functions and values of replacement wetlands are equal to or greater than the functions and values of the wetlands affected by the project according to one or a combination of the following approaches deemed acceptable to the applicable regulatory agencies (e.g., Corps, RWCQB, and Coastal Commission):

8-5 The comment requests additional site-specific information to determine the feasibility of the site restoration proposed. The planned restoration is sufficient for the Lead Agency to make a determination about the significance of any associated impacts and the presumed success of the implementation. There are adequate safeguards in the form of the detailed Restoration Plan itself, to be submitted before any grading occurs, and its long-term monitoring provisions (see Draft EIR, Mitigation Measure D-3b, page IV.D-29). The substrate for the wetlands would be the natural substrate at a level that promotes restoration of estuarine wetlands. Likewise, the existing hydrology, combined with the estuarine wetland creation, would be sufficient for the wetlands reserve, as the existing hydrology is adequate for the existing wetlands.

8-6 The comment states that the wetlands are proposed to be surrounded by a small buffer area. The buffer area should be adequate to protect wetlands from surrounding land uses, and it should allow space for wetland to retreat toward uplands with sea level rise.

The wetland reserve is proposed to include a 2.91 acre buffer surrounding the existing and proposed wetlands. The buffer is adequate to protect the resource, particularly given the features proposed to screen and protect the resource from surrounding land uses (e.g., Mitigation Measures D-3c, D-3d, and D-3e). According to current estimates, sea level rise as outlined on page IV.H-9 of the Draft EIR is expected to increase between 3.9 and

28.3 inches by the end of this century. Given the significant elevation from the slough levels to the surrounding upland and wetland areas (approximately 8 feet or more), and even if actual sea level rise significantly exceeds current estimates, sea level rise is not expected to have any affect on the proposed wetland buffer areas within the foreseeable future.

8-7 The comment states that there are few details regarding existing levels of contamination and specific details regarding proposed remediation actions. Please see Master Response 4 and new Appendix S for further detail regarding these topics.

8-8 The comment requests further details regarding the treatment of runoff from adjacent industrial properties and whether that runoff would enter the wetland on the project site.

Stormwater treatment and conveyance from neighboring industrial properties is part of the baseline condition. Through the project Mitigation Measures H-5a through H-5c, the quality of stormwater runoff from the project site entering Clark Slough would be improved. The Clark Slough wetland reserve is not intended to serve as treatment for adjacent industrial stormwater runoff.

For further discussion of site remediation and wetland restoration plan implementation, please see Master Response 4 and Appendix S.

Comment Letter 9

Comment Letter 9



COMMUNITY DEVELOPMENT SERVICES
PLANNING DIVISION
COUNTY OF HUMBOLDT

<http://co.humboldt.ca.us/CDS/Planning>

County of Humboldt
Department of Community Development Services
Page-Specific Comments on the Marina Center Draft Environmental Impact Report
(SCH # 2006042024)
January 30, 2009

January 30, 2009

David Tyson, Manager
City of Eureka
531 K Street
Eureka, CA 95501

Subject: Marina Center Draft Environmental Impact Report

Dear Mr. Tyson:

Thank you for the opportunity to provide comments on the Marina Center Draft Environmental Impact Report (SCH # 2006042024). Our page-specific comments are attached. Comments from the Department of Public Works are being forwarded under separate cover.

Thank you conducting an open and thoughtful review process. We would like to assist your efforts in any way possible. Questions your staff may have on our comments may be addressed to Michael Wheeler at 268-3730 or mwheeler@co.humboldt.ca.us. I will also make myself available to elaborate upon or discuss our comments at your request.

Sincerely,

Original Signed

Kirk Girard
Director

Enclosure: Page-specific comments

Page III-4, Paragraph 4. The project seeks to maximize the view from the project site to Clark Slough, the small boat basin, Humboldt Bay, and the Waterfront, but makes no mention of impacts to existing coastal views. The DEIR should include discussion on the effects on views to the project from coastal resources.

9-1

Page III-6, Residential Uses. For a mixed-use project of this scale, the proposed residential component is not in balance with other uses. The average residential density of the developed part of the City is calculated to be approximately 9.5 units per acre¹. This compares to the proposed residential density of slightly more than one unit per acre on the project site, about 16% of the average for the City.

9-2

There do not appear to be areas within the City to accommodate the housing needs of those employed on the project site, so the result will be a project that must rely on residential development outside of the City to support the proposed new uses. The residential land inventory in the City's 2004 Housing Element shows there is a potential of only 308 units on vacant land to accommodate the City's 544 new units needed during the 2001 – 2007 time period. This places an undue portion of the requisite residential development (with its attendant service and infrastructure requirements) as a burden on the County and adjacent communities, which must provide the necessary residential support for the project.

9-3

The project is labeled "smart growth" and infill development, however, it does not include an appropriate mix of uses that would limit and self-mitigate traffic impacts and related environmental effects. The proposed project would require most of the housing for the employees of the proposed new commercial and industrial establishments to be located offsite, and may increase traffic and the need for additional public services in the unincorporated County without assessing or providing any mitigation to offset the resultant increased demand and costs for services and infrastructure. This is a significant impact that is not addressed or mitigated in the DEIR. Additionally, the project as proposed is contrary to addressing the City's fair share housing requirements, as it makes no effort to address the housing needs for low and very low income housing needs that would be generated by the project. State law requires an adequate residential land inventory to meet Fair Share Housing requirements. The DEIR should determine if an adequate inventory is available under current conditions and projected conditions through 2025 and evaluate project alternatives at this location accordingly. If the relative lack of housing proposed at this location will require or accelerate annexation of additional lands or place a housing burden on adjacent jurisdictions, the environmental effects of this displacement should be analyzed.

9-4

9-5

Page III-14, Project Phasing and Development Agreement. The project description is incomplete, as it does not include any details of project phasing. A project of this magnitude will likely require phasing of mitigations in relation to planned buildout. Phasing agreements and mitigation requirements may be reflected in a development agreement, however, the details of the development agreement are unknown at this time. A project phasing plan, with associated mitigations, triggered by ministerial development milestones or discretionary review of subsequent phases, is necessary for complete impact analysis. If

9-6

¹ According to the County's GIS system, there are approximately 1,240 developed acres within the City of Eureka. This includes areas set aside for residential, commercial and industrial development, roads, sidewalks, schools, and playgrounds. And Table IV.L-1 of the DEIR reports there are 11,765 dwelling units within the city.

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this detail is anticipated in the development agreement, the agreement should be available for review during the DEIR review process. If not, the development agreement could require a subsequent environmental review.

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cont.

Page IV.A-7, Impact A-3. While the project is brownfield redevelopment, it does convert a vacant and largely vegetated parcel into a developed mix of commercial, residential and industrial uses in buildings up to 5 stories high. The discussion on visual impacts of the proposed development and the potential for improving the aesthetic of the development in relation to the current open space views seems to be limited to a general discussion of the potential for landscaping. Additional design mitigations or project alternatives may be feasible to retain some of the open space character this location provides to the Broadway and Waterfront Drive corridors and the Bay. As previously mentioned, there is little analysis of existing coastal views into the site and how these would be protected or enhanced under project development. The visual simulation depictions of Figures IV.A-4 A and B and Figures IV.A-5 A and B show that the project buildings would block bay views within the project development site. Finally Figures IV.A-6A and B show that the project development would block views of the forested hillsides from within the project site. The County recognizes the beneficial aesthetic effects of redevelopment of this site but nonetheless they anticipated affects should be fully described and made a part of the project.

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Page IV.A-16, Conclusion and Mitigation. The project may require visual mitigation, as it would result in substantial changes in visual character due to construction of new buildings and parking facilities (see above). Appropriate mitigation could include, setbacks, design review or vegetative screening of the project site through appropriate landscaping.

9-8

Page IV. C-20, Second Paragraph. The DEIR states that relatively small projects will not individually have an overall affect on global climate change. Admittedly, thresholds of significance for climate emissions have not been firmly established under CEQA but the California Attorney General has taken the position in several instances that jurisdictions have an obligation (particularly for General Plan Amendments) to implement all feasible mitigations to reduce greenhouse gas emissions consistent with the legislature’s determination of environmental significance and AB32 goals. While project emissions will not be significant in relation to state or world sources, they could be locally significant in relation to greenhouse gas emission strategies adopted by jurisdictions within the County. Patterns of development, job-housing balance and retail sales distribution will be significant factors in mitigating local emission greenhouse gases. The DEIR should estimate green house gas emissions associated with the proposed project and implement feasible mitigations.

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Page IV. C-21, Third Paragraph. The DEIR states: “It is not possible to know at this time whether the project tenants would have longer or shorter commutes relative to their existing homes; whether they would walk, bike, and use public transportation more or less than under existing circumstances; and whether their overall driving habits would result in higher or lower tailpipe emissions.” The DEIR should use an estimate of the required sales volume per square feet of anchor retail floor space to estimate the population base necessary to support the project and distribute average daily trips and emissions to population centers accordingly. Using existing development patterns, the DEIR should also project the anticipated geographic distribution of employee housing needed to support new jobs created by the project or transferred to the project from other locations within the County. The centralization of jobs and retail will result in an increase in overall daily traffic volumes and emission rates as trips to distributed neighborhood commercial areas and town centers are replaced by trips to Eureka.

9-10

Page IV.D-4, Second Paragraph. The biological survey for mammals fails to mention that there was any effort to survey for bats. There are some special status bats species that could be present in the area. According to information on page IV.G-4 there are several metal frame warehouses on the property.

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These could potentially harbor some bat species. The biological surveys and discussion section in the DEIR should be augmented to address this issue.

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cont.

Page IV.E-10, Second Paragraph and Mitigation Measure E-2a (Page IV.E-17). This section describes the need to have a procedure to handling inadvertent archaeological discoveries, but also concludes that there is a known, highly sensitive cultural site (Wiyot Tribe village site) within the project area. 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 mitigating the potential impacts of known sites. The first approach in CEQA mitigation should be to avoid the impact to a known sensitive resource. Efforts should focus on delineation of the site and avoidance and/or capping to protect the resource rather than a priori disturbance and after the fact data recovery. We recommend consultation with the State Office of Historic Preservation on proper methods for mitigation of known cultural sites.

9-12

Page IV.I-11, Second Paragraph. The DEIR’s discussion of Smart Growth principles is comprehensive but the analysis of these principles in relation to project characteristics is general in nature. The affect of large format retail on regional traffic patterns and countywide average daily traffic volume is not discussed in relation to the project. Large format retail requires a large market area for financial support. The proposed Home Depot Center or subsequent large format retail tenants will draw customers from other decentralized retail locations in the County, such as those in Fortuna and McKinleyville. The affect of the project may be a decrease in the Smart Growth characteristics of these communities; for example their utilization of investments in infrastructure, efforts to improve the jobs-housing balance, improve walkability and enhance town center characteristics. The project may also increase overall countywide average daily traffic volume as residents in these communities drive from neighborhood and local retail centers to a large format retail center. Additionally, if the project creates a further imbalance between jobs and housing within Eureka or within the County, the net affect could be an increase in the demand for housing in the unincorporated area or other jurisdictions resulting in a distributed pattern of development and a related increase in overall countywide average daily traffic volume. The DEIR should use an estimate of the required sales volume per square feet of anchor retail floor space to estimate the population base necessary to support the project and distribute average daily trips accordingly. Using existing development patterns, the DEIR should also project the anticipated geographic distribution of employee housing needed to support new jobs created by the project or transferred to the project from other locations within the County. In addition to analyzing environmental affects, these data can be used as a basis for a fiscal impact analysis on surrounding jurisdictions.

9-13

Page IV.I-12, Last Paragraph. The project relationship to the surrounding community is not fully disclosed. According to the circulation analysis, the project would generate significant amounts of new traffic on Broadway and proposes to force 20% of Broadway traffic onto Waterfront Drive. Because of the poor level of service for traffic on Broadway, it is anticipated that there would be increased usage of alternate routes throughout the City and County; for example F Street to Fairway to Herrick. The DEIR fails to analyze or mitigate this impact but this affect is occurring at present and is likely to increase dramatically over the next twenty years based on the DEIR traffic analysis.

9-14

Also not fully discussed in this section, is the use of coastal property for large format retail in relation to competing land uses such as coastal dependent industrial, visitor serving recreation, commercial and housing. The alternative analysis discusses these issues in relation to the primary project objectives as opposed to consistency with Local Coastal Plans and the Coastal Act.

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Page IV.I-14. We urge the City to discuss the potential filling of wetlands on the property with staff of the Coastal Commission to determine if the balancing provisions of the Coastal Act (Public Resources Code Section 30007.5.) are applicable.

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Page IV.I-16, Policy 1.A.2. Project Compliance Discussion. It is stated that “there are no coastal-dependent developments competing for this or any similar parcels of land in the area.” The proposed development may foreclose future opportunities for coastal-dependent developments in the area. The DEIR could prepare this analysis based on a review of documents that have analyzed the potential future demand for coastal uses on Humboldt Bay, such as the Port of Humboldt Bay Harbor Revitalization Plan, February 2003.

9-17

Pages IV.I-17 through IV.I-23. - Discussion of Core Area, Concentrated Mixed-Use Core Policies, Waterfront Policies, Core-Area Residential Policies, Core Public-Open Space Policies, View Corridor Policies, Architectural/Landscape Policies, etc.) All of these policies, which the City has developed for the Concentrated Mixed-Use Core, are cited as being “Not Relevant” because the project site is not located in the identified “Core” of Eureka. Alternatively, the project could be viewed, given the fact that it involves an amendment to the General Plan, as a potential expansion of the Core area. Alternatively, the Core policies could be analyzed as a means to evaluate the compatibility of the project with the identified Core. At a minimum, this analysis would inform the DEIR land use compatibility finding and may result in changes to the project that would enhance the projects compatibility with the desired characteristics of central Eureka.

9-18

Pages IV.I-26 and IV.I-27. Policies 1.L.4 and 1.M.2, are important land use considerations. 1.L.4 was intended to protect the integrity of existing commercial centers out of a concern that static retail growth combined with new retail development would create dislocation and urban decay. Commercial development designed to support increases in population growth or new housing development may not cause dislocation affects but large format “category killers” (ERA letter of October 17) such as Home Depot or Best Buy must dislocate existing retailers in a low retail sales growth area for profitable operation. The conclusions of the applicants’ analysis of economic impact and urban decay (CBRE 2006) would at least provide a starting point for discussion of this land use policy. 1.M.2 was intended to reserve land for industrial growth and job creation. An analysis of the projected long-term demand for this land use in the City would assist in evaluating the compatibility of the project with this policy.

9-19

Page IV.I-30, Public and Quasi-Public Facilities. City policies related to this category are deemed “Not Relevant” as they relate to the location of public facilities. The project proposes to rezone public land in the City and develop it for non-public uses. To evaluate land use compatibility, the policies of this section should be assessed, comparing the existing potential for public facilities at this location in relation to the proposed project.

9-20

Page IV.I-31, Production of New Housing Policies. The proposed project may not be consistent with Goal 1.A. as it does not numerically provide or promote the development of new housing in proportion to Eureka’s fair share requirements and residential inventory requirements. The amount of housing to be provided by the project is out of balance with the housing demands created by the project and the need for an adequate residential inventory within the City of Eureka.

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The proposed commercial and industrial developments will create numerous employment opportunities for new workers which will require more housing, and the amount of housing provided would not fulfill this need. This will result in workers having to commute from outlying areas, and will generate significant traffic and traffic safety impacts in those areas where the workforce for the proposed project will reside. These potential impacts should be analyzed in the DEIR, and appropriate mitigation measures implemented to reduce those potentially significant impacts to the maximum extent feasible.

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To meet Goal 1.A., the project should balance housing opportunities and commercial development, and provide sufficient residential development to meet the increased demands on housing that would result from the project. The residential land inventory within the City should be assessed through 2025 to

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determine if there is adequate land to accommodate residential needs. If a potential shortfall exists, the General Plan amendment and the proposed project should be re-reviewed for compatibility with this goal.

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Also to ensure compatibility, housing types should include a mix of units to accommodate households at the various income levels expected from the proposed commercial and industrial establishments.

cont.

Page IV.I-34 and IV.I.35, Goal 3.A, Policy 3.A.5 and 3.A.10. Taken together this goal and these policies are intended to address the need to stay ahead of traffic demands through planning, funding and implementation of improvements. They are deemed “Consistent” or “Not Relevant” to the proposed project. Policy 3.A.10 requires the City to work with HCAOG, Caltrans and the County, to review options for long-term solutions to congestion on U.S. 101. The proposed project will add an additional 15,669 weekday vehicle trips to a congested Broadway/U.S. 101 corridor. The project will therefore consume existing capacity of transportation facilities placing renewed urgency and importance on the need to cooperatively design and fund new capacity or changes in design to accommodate growth. If existing capacity is consumed (albeit potentially better regulated through signaling) without identifying and funding new capacity or alternative transportation necessary to mitigate cumulative impacts and provide for future growth, the project will not be sufficiently mitigated or consistent with this goal and these policies. The project’s relationship to this goal and these policies should be more thoroughly discussed to make a land use compatibility determination.

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Page IV.I-80, Last Paragraph. Potential land use inconsistencies are not deemed significant environmental impacts because of a conclusion that the inconsistent land use policies were not “adopted for the purpose of avoiding or mitigating an environmental effect.” In the case of general plan and other land use policies, adopted policy alternatives that reduce impacts can be considered “mitigations” and should be monitored for consistency with environmental determinations (CEQA Guidelines Section 15097). For example, the current Eureka General Plan includes a discussion (Page 13 and 14) of the affects of declining retail activity in the downtown area based on competition from outlying retail areas including Bayshore Mall, Henderson Center and the Westside Industrial Area. It concludes that continued competition may undermine the attractiveness of the downtown area for tourism. In this light, Policy 1.L.4: “The City shall encourage consolidation and upgrading of established commercial centers over the development of new shopping center within the Planning Area.” can be considered a policy alternative designed to mitigate the potential blighting affects in the downtown area. Using similar reasoning, Policies 3.A.5, 3.A.6 and 3.A.10 (relating to mitigations to address cumulative traffic impacts) should be considered land use policies or alternatives adopted for the purpose of avoiding or mitigating an environmental effect.”

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Page IV.I-81, Cumulative Impacts. To adequately assess cumulative impacts, the DEIR should consider other potential development projects, particularly retail projects, in the planning stages in the County, including the County’s General Plan Update, the Forster-Gill General Plan amendment and the City of Fortuna’s General Plan Update. Proposals within these project areas should be considered in the “immediate vicinity” of the proposed project because the traffic impacts and retail market territory will overlap.

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Page IV.L-5, Impact L-1. The discussion fails to note that while the project would contribute to the City of Eureka’s fair share of housing, it would not meet the goal of providing housing sufficient for project demands. The project would also result in lost jobs in the County and shift existing County employment to the City without providing sufficient housing. This result would mean a greater number of commuters going into the City, exacerbating an already stressed traffic situation on U.S. 101.

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Page IV.O-9 and following. The County Department of Public Works will be providing comments on the circulation analysis under separate cover, however, in our Department’s experience with similar

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projects of a regional nature, we believe that the traffic analysis is too focused and does not include a sufficient number of intersections in the analysis. The intersections of Hwy 255 with 4th and 5th Streets should have been addressed as well as the previously mentioned alternative route through the County of F Street to Fairway to Herrick. The project could also result in significantly increased traffic on the Arcata-Eureka U.S. 101 alternative of Samoa Blvd. to Hwy 255 through Manila and over the Samoa Bridge. The shortcoming in scope of the traffic analysis (City scale versus regional scale) fails to reveal potentially significant impacts to road infrastructure within the County.

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cont.

Page IV.P-3., Fourth Paragraph. The discussion regarding the lack of a potential impact of the project on existing retail trade rests in part on the assumptions of the applicant's 2006 impact analysis (CBRE - as updated in November 2008). The analysis concludes the addition of the proposed retail volume may result in dislocation and vacancies; but a low vacancy rate and alternative demands for closed stores will prevent urban decay. The continued downturn of the economy has overtaken this conclusion (even with the 2008 update). Unfortunately, vacancy data, demand for vacant property, income levels, and retail sales growth must be reassessed prior to final adoption of the EIR.

9-29

Page IV.P-4, Cumulative Impacts, Impact P-2. With respect to home improvement stores there should be an assessment of customer base for this type of store, the square footage of commercial space currently available for this existing business and current existing or planned square footage for this type of store. Assuming Home Depot remains the permanent anchor tenant in the proposed project, dislocations will likely occur in local hardware stores, particularly when combined with the opening of a Lowe's in Fortuna (as analyzed in CBRE 2006). If dislocations are projected, the analysis should evaluate specific store closure and the potential for re-use of those buildings at those locations. In some cases, local hardware stores are anchor tenants of neighborhood commercial centers which could affect the viability of surrounding businesses.

9-30

While changes of tenancy in the anchor retail location would require additional environmental review, the entitlements for large format retail construction will result in a reasonably foreseeable and probable change in tenancy over the life of the constructed improvements. Limiting analysis to the array of retail uses described in CBRE 2006 Table 2 and deferring analysis of the probability of re-tenancy may not be consistent with the cumulative impact analysis required by Title 14, Article 20, Section 15355 (b). The Lead Agency project description should also be modified to reflect the probability of re-tenancy over the useful life of the proposed improvements.

9-31

Page IV-Q-1, Utilities and Service Systems-Wastewater. The Elk River Wastewater Treatment Plant is an important regional asset because it serves approximately 35 percent of the County's current population and is intended to serve a substantial portion of the County's potentially developable land. The City of Eureka collection systems is equally important to the region for the same reason. The environmental setting does not fully describe the contract between the City of Eureka and the Humboldt Community Services District for wastewater collection and for treatment at the Elk River Wastewater Treatment Plant. The environmental setting should describe the City's plans to expand the Elk River Wastewater Treatment Plant to accommodate development within the boundaries of HCSD and the City. The environmental setting should also describe any capacity problems that may be experienced by the City of Eureka collection system. To the extent that the City system is experiencing collection problems, such problems should be described in relation to the location of the Marina Center and the timing of any planned improvements in relation to the proposed Marina Center build-out schedule.

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Page IV-Q-4 through 5, Utilities and Service Systems-Wastewater. The analysis of wastewater impacts does not describe the potential affects on the wastewater collection system from the proposed

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project. This section should describe current and historic wastewater flows from the project site and compare such flows to the proposed Marina Center project.

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cont.

This section compares the assumed wastewater flows of the Marina Project to total permitted peak dry weather flows. It would be more appropriate to compare project wastewater flows to available permitted average dry weather capacity, minus capacity allocated to HCSD. It may also be appropriate to compare assumed project wastewater flows to the available average dry weather capacity upon renewal of the NPDES, minus capacity allocated to HCSD. Wastewater system capacity should be analyzed in relation to planned and proposed projects, including the Ridgewood Village project and the Humboldt County General Plan Update.

9-34

Page VI-3, Basic Objectives. Objective 1: "Strengthen Eureka as the retail and employment center of Humboldt" Unfortunately, given the job transfer and retail dislocation characteristics of the proposed project, the proposed project will weaken the retail and employment position of other cities and the unincorporated areas of the County. The DEIR should carefully analyze physical changes to the environment that may result from this transfer, for example greenhouse gas emissions.

9-35

Page VI-4, List of Potential Alternatives. The alternatives should include a Marina Center project with greater residential development. By placing a greater amount of residential development (200+ units) near to where these newly created jobs will be, there would be less traffic generated by the project. This would also allow create an opportunity for the City to have a wider mix of housing types, including low income and very low income housing. It would also provide residential development opportunities in proximity to the waterfront and Old Town Eureka. A critical mass of residential development along the waterfront would increase the desirability and long-term economic viability of these important regional assets. The accompanying hazardous materials risk assessment (SHN 2006) indicates residential development is a feasible alternative at the site.

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Letter 9: County of Humboldt, Community Development Services Planning Division (Kirk Girard)

9-1 The comment requests that the EIR include a discussion of existing coastal views to the project site. As discussed on Page IV.A-7, Impact A-3 of the Draft EIR, the proposed project would substantially alter the visual quality of the project site, including the views of the project site from Humboldt Bay. Please see Master Response 8, which addresses the view of the project site from Humboldt Bay.

9-2 The comment states that the proposed residential uses are not in balance with the other proposed uses of the project. According to the U.S. Census Bureau, the City of Eureka has a total area of 14.4 square miles, of which 9.4 square miles, or 6,016 acres, is land. As stated in the General Plan (page 13), very little vacant developable land remains within Eureka's city limits. Using the total acreage provided by the U.S. Census Bureau, the 11,765 housing units (2005) are spread among 6,016 acres of land, for a residential density of 1.95 units per acre.

Concentrations of uses, market forces, and real estate development patterns of distinct uses have taken place over the course of the City's history. The result is that industrial uses have concentrated in properties in the western portion of the city, a mix of uses are along the northern portion of the city, and high- and medium-density residential neighborhoods are located farther inland. Simply comparing the proposed project's residential density of 1.25 units per acre to that of the entire City ignores these trends and unfairly suggests that the entire developed area of the City of Eureka, block-by-block, maintain a consistent residential density that this project would not meet.

The area of the city between Broadway, 15th Street, and Humboldt Bay is almost entirely historically industrial in use, and therefore has a residential density at or near zero units per acre. This area includes the project site. If residential density is compared in this manner, the proposed project's residential density greatly exceeds that of similar properties nearby. The mixed-use nature of the project site was chosen as a transition area to provide more sustainably compatible development.

9-3 The comment states that the proposed project would place undue burden on existing housing stock to house employees of the proposed project. As stated on Draft EIR page IV.L-6, under Impact L-1, "the City of Eureka, and Humboldt County as a whole, has a higher unemployment rate than the statewide unemployment rate. This level of unemployment indicates that there is an increasing unmet demand for employment, and that new jobs that would result from the proposed project could be absorbed within the City of Eureka, other nearby cities and unincorporated county areas. Therefore, it is not expected that the project would result in a substantial impact with respect to population growth based on the projected new employment opportunities." Therefore, the project would not place an undue burden on the County and adjacent communities to provide necessary residential and infrastructure development.

- 9-4 The comment states that the proposed project is not an appropriate mix of uses to be labeled smart growth. One of the main principles of smart growth is the concentration of growth in the center of a city to avoid urban sprawl. The proposed project satisfies a number of smart growth principles. For example, it concentrates development in the center of town, is an in-fill development of a brownfield site, includes a mix of uses, and promotes multi-modal transportation to and through the City in the form of the trail along Waterfront Drive and complete streets through the proposed roadway extensions, as described in the Chapter III, Project Description, of the Draft EIR.

The comment also states that the Draft EIR does not discuss traffic impacts that would be generated by project-generated traffic coming from unincorporated areas of Humboldt County, as well as the funding of public services in these unincorporated areas. Project-related and cumulative regional traffic impacts are addressed. Please see Master Response 7 regarding employees traveling to the project site. This includes potential impacts that would fall within unincorporated areas of Humboldt County. The proposed project would have less-than-significant transportation impacts in those areas.

Please see Master Response 1 and response to comment 16-178 regarding the funding of public services. As stated in those responses, the proposed project would result in a net increase in tax revenue for the City and state. Those revenues would be allocated by the City Council and state legislature in annual budgetary review. In addition, it would be speculative to assume that employees of the proposed project would live in unincorporated areas of Humboldt County. The mixed-use and multi-modal components of the proposed project are intended to encourage project employees to live near where they work, within the City limits.

- 9-5 The comment states that the Draft EIR should include a discussion of fair share housing requirements of the State of California as related to the proposed project site and the City of Eureka.

Neither State law nor California Department of Housing and Community Development policy requires any local inclusionary housing ordinance within a jurisdiction's Housing Element. The City of Eureka is expected to meet its low income housing needs through its compliance with its Regional Housing Needs Assessment (RHNA) planning for its General Plan.

The proposed development of market rate housing is necessary to meet the project's key objective to "develop an economically viable mixed use project." As a result of the former industrial use and activity at the project site, the property is currently considered an urban brownfield by the United States Environmental Protection Agency. Consequently, any future project site redevelopment involves major clean-up and restoration costs which further reduce the project's ability to support any below-market-rate housing development.

- 9-6 The comment states that the project description is incomplete because it does not include details about project phasing. The comment suggests that a project phasing plan and

associated mitigations would be necessary to complete the impact analysis and that, if a development agreement that spells this out is not available for review, the development agreement could require a subsequent environmental review.

Phase 1 of the proposed project does not require a development agreement. As acknowledged on pages III-14 and 15 of the Draft EIR, the proposed project is expected to be constructed in phases. Phase 1 is outlined both in the Draft EIR and in Master Response 4. Subsequent phases – including actual entitlement and construction of the Marina Center development – are not yet identified. Construction phasing depends on a number of factors, including the pace of permitting, success of the environmental cleanup, market forces, and other factors, and construction of the project would remain subject to the City Council's future consideration of all necessary approvals and entitlements (e.g., zoning, General Plan, and Local Coastal Plan amendments).

Until those subsequent phases are determined, it is impractical, if not impossible to undertake the level of analysis concerning the individual phases and project mitigations that the comment is suggesting. Still, the EIR contemplates the worst-case scenario of potential environmental impacts by assuming that full build-out of the project would occur in 2010. There is also more than sufficient information available now to accurately assess the potentially adverse environmental effects of the project. Furthermore, once the project phasing is identified, the Project Applicant must complete a project phasing plan that specifies those mitigation measures identified for each phase to ensure that potentially significant impacts are addressed consistent with this EIR. Before the City approves the phasing plan and associated discretionary entitlements (e.g., a Development Agreement), the phasing and mitigation plan would 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. (Draft EIR, at III-14 and -15.)

- 9-7 The comment questions the adequacy of the aesthetics analysis and states that views should be discussed in greater detail. As discussed on page IV.A-7, Impact A-3 of the Draft EIR, the proposed project would substantially alter the visual quality of the project site by constructing one- to five-story structures as part of the project. See Master Response 8 for further discussion related to views of and through the project site from the waterfront. As depicted in Figures IV.A-4a and 4b and IV.4-5a and 5b, the view from the U.S. 101 corridor through Eureka would be substantially altered with the proposed project.

Currently, the view of the project site is dominated by low-lying vegetation and single-story warehouses. Although Humboldt Bay is located in the background, the waterfront itself is not visible and it is not readily apparent through visual corridors that it is there. The pulp mill on the Samoa Peninsula is the dominant building in the background view from Broadway. The pulp mill and the other industrial warehouse buildings that would be obscured by the proposed project are not considered visual resources in the Eureka General Plan or by the general community. The proposed project would be beneficial to public views of the waterfront as it would provide opportunities for coastal views along

the western portion of the Fourth Street extension and the interpretive trails in the restored Clark Slough.

Regarding retention of the open space character of the project site, as stated in the Project Description, the proposed project would include an approximately 11-acre wetland, which would retain some of the site's existing open space character.

In addition, as stated in the outline on page III-18, under *F. Project Entitlements and Approvals*, and reiterated on page IV.A-6 under Impact A-3, the proposed project would be subject to site plan review and architectural review by the City of Eureka.

- 9-8 The comment states that the proposed project could require “visual mitigation.” As stated in the outline on page III-18, under *F. Project Entitlements and Approvals*, and reiterated on page IV.A-6 of the Draft EIR under Impact A-3, the proposed project would be subject to site plan review and architectural review by the City of Eureka. Design features specific to the site plan and buildings would be established at that time. The Design Review Committee will review the exterior design, materials, textures, and colors to help ensure that the proposed project is visually harmonious to its surroundings. Also, buffers, landscaping, wetland restoration, and waterfront biking and recreational trails are part of the proposed project design, and they would enhance the visual quality of the project site. No further mitigation is necessary.
- 9-9 The comment acknowledges that there are no specific significance thresholds for climate change under CEQA, though the Attorney General has argued in some instances (particularly for county or citywide general plans) that agencies have the obligation to implement all feasible mitigation to reduce greenhouse gases (GHG) “consistent with the legislature’s determination of environmental significance and AB 32 goals.” The comment further suggests that while project-related GHG emissions may not be significant in relation to state or world sources, “they could be locally significant in relation to GHG emissions strategies adopted by jurisdictions within the County.” “Patterns of development, job-housing balance and retail sales distribution” would all be significant factors. Finally, the comment recommends that the Draft EIR “estimate” the project’s GHG emissions and implement feasible mitigation measures.

The Draft EIR does, in fact, estimate the proposed project’s GHG emissions (Draft EIR, Impact C-6 on page IV.C-21 and Appendix C showing the calculated GHG emissions associated with the proposed project). The Draft EIR concludes, however, that the emissions associated with the proposed project would not be cumulatively significant. Thus, no mitigation measures specific to GHG emissions are identified. Nonetheless, several measures included in the Draft EIR to mitigate the project’s air quality impacts would likewise benefit and reduce the project’s GHG emissions (Draft EIR, Chapter IV.C, Mitigation Measures C-2a and C-2b). The EIR therefore already includes feasible mitigation measures that would help address global climate change.

The comment acknowledges that the project’s GHG emissions may not be significant when considering state or worldwide sources, but that the project’s emissions could still be

“locally significant.” Climate change is a global phenomenon, resulting from worldwide sources (including sources in nature). Global GHG emissions and the attendant effects of those emissions on climate change can be attributed to every nation, region, and city, and virtually every individual on Earth. Given the scope of global climate change, however, no single development project would have an individually discernable effect on global climate change. Therefore, the challenge in assessing the significance of an individual project’s incremental contribution to global climate change is to determine whether a project’s individual GHG emissions—which can fairly be characterized as miniscule relative to global GHG emissions—would result in a cumulatively considerable contribution to global climate change and climate change’s effects on the physical changes in the environment associated with global climate change (e.g., sea level rise, flooding, or drought). Thus, it would be incorrect to characterize the project’s effects on climate change as “locally significant,” but not cumulatively significant. Further, no jurisdictions within Humboldt County have adopted a GHG emissions strategy that would conflict with the proposed project, and so the project’s significance in relation to global climate change cannot be measured by evaluating local programs in any event.

The comment acknowledges as well that there are no specific significance thresholds for climate change under CEQA. Generally, CEQA Guidelines Section 15064(h)(1) requires a lead agency, when assessing a project’s cumulative impacts, to evaluate whether “the incremental effects of an individual project are significant when viewed in connection with the effects of past project, the effects of other current projects, and the effects of probable future projects.” Each agency, however, is encouraged under the Guidelines to “develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects.” (CEQA Guidelines Section 15064.7(a).) Because there are no established methodologies or thresholds for determining the impacts of a single development project on global climate change, however, lead agencies must develop and apply their own thresholds for each individual project.

Here, the Marina Center Draft EIR relies on a significance threshold that has been used in other cases, and even by State agencies. [For example, see the California Department of Water Resources’ *East Branch Extension Phase II Final EIR*, January 2009, pages 3.2-24 to 3.2-26 (the State applied the 25,000 metric tons per year significance threshold and found that the project had a less than significant impact associated with global climate change).] Essentially, the threshold states that the project’s cumulative effects on global climate change would be significant if the project would:

Conflict with the State goal of reducing greenhouse gas emissions in California to 1990 levels by 2020, as set forth in AB 32, the California Global Warming Solutions Act of 2006 (Draft EIR, page IV.C-5).

To evaluate the proposed project’s effects on global climate change, the Draft EIR looked at a number of factors, including the project’s inherently energy efficient design. The design element captures the sort of factors referenced in the comment (e.g., patterns of development, the jobs-housing balance, and retail sales distribution). As an infill, mixed-use project in the heart of the largest population and employment hub in Humboldt

County and the North Coast region, the Marina Center combines office, retail, and residential uses so as to reduce the most significant source of GHG emissions related to the project—vehicle miles traveled. For example, GHG emissions from projected growth within the Greater Eureka Area would be less with this sort of infill development than it would if the same growth occurs in outlying areas of the air basin where vehicle trips would be longer. Moreover, the project’s emphasis on creating relatively higher-density, mixed use would be expected to make walking and other non-vehicular travel more viable than would be the case for similar population and employment growth in lower-density, single-use neighborhoods (please see also response to comment 9-35, which explains that Eureka has available housing and workforce capacity for project employees, and would not necessarily result in job transfers or relocations). Consequently, while the Draft EIR quantifies GHG emissions expected from all vehicles traveling to or from the project site, these vehicle trips may not constitute “new” trips. Instead, the proposed project could actually reduce overall vehicle trips and help the State achieve its overall GHG reductions goals in line with AB 32. Please also see response to comment 9-35, concerning the retail and employment-related vehicle trips.

It should also be noted that in addition to remaining below the significance thresholds in the Draft EIR, the proposed project is also consistent with a number of other statewide strategies under way to help meet the State’s AB 32 goals. One example involves the California Air Pollution Officers Association (CAPCOA), a non-profit association of air pollution control officers from all 35 local air quality agencies throughout California. CAPCOA recently published a series of model land-use policies to help cities and counties reduce GHG emissions (CAPCOA, *Model Policies for Greenhouse Gases in General Plans*, June 2009). The CAPCOA publication urges local governments to adopt a number of general plan policies that would help reduce GHG emissions, including the following proposed policies:

Infill: The City / County will encourage high-density, mixed-use, infill development and creative reuse of brownfield, under-utilized and/or defunct properties within the urban core.

Mixed-Use Development: The City / County will plan for and create incentives for mixed-use development.

Transit-oriented Brownfield Redevelopment: The City / County will promote the development of brownfield sites and other underused or defunct properties near existing public transportation.

Residential Wood Burning: The City / County will establish or enhance local ordinances that prohibit solid fuel wood-burning devices in mixed-use high-density development.

(CAPCOA, *Model Policies*, pages 73-74, 77, 92.) The proposed Marina Center Project satisfies each of these model policies designed to reduce statewide GHG emissions in line

with AB 32: (i) the proposed project is a high-density, mixed-use, infill development that would creatively reuse a brownfield within the urban core of Eureka; (ii) the proposed project would develop a brownfield site adjacent to existing public transportation; and (iii) Mitigation Measure C-2b would prohibit wood-burning devices. Thus, the proposed project would implement CAPCOA's model policies, which are again designed to help achieve the statewide goal of reducing GHG emissions in California to 1990 levels by the year 2020.

Finally, the comment references the Attorney General's recent litigation efforts as justification for imposing additional mitigation on these sorts of projects. In settling its CEQA cases on climate change, however, the Attorney General has actually been forcing local agencies to accept additional infill development as a strategy for reducing GHG emissions. For example, in a recent settlement with the City of Stockton over the city's general plan update, the parties recognized that: "development on the urban fringe of the City must be carefully balanced with accompanying infill development to be consistent with the state mandate of reducing GHG emissions, since unbalanced development will cause increased driving and increased motor vehicle GHG emissions." (Memorandum of Agreement between the City of Stockton, California Attorney General, and the Sierra Club, dated Sept. 5, 2008.) Thus, again, the Marina Center Project would be generally consistent with those strategies for achieving the State's reduction goals under AB 32, and no further analysis or mitigation is warranted.

- 9-10 The comment appears to identify an alternative method to estimate trip lengths that would be associated with the project in order to calculate greenhouse gas (GHG) emissions and concludes that the project would result in an increase in overall daily traffic volumes and associated emissions rates. Although the trip lengths used for the Draft EIR emissions analysis are estimated using a slightly different approach (the URBEMIS air emissions model calculates the trip lengths based on geographic area and on information provided by the applicable metropolitan planning organization), the overall daily traffic volumes and associated GHG emissions would increase under the project as disclosed in the Draft EIR on page IV.C-20. But the mixed-use design of the proposed project would actually contribute less overall emissions when compared to "business-as-usual."

The project's location near the Downtown area of Eureka, which is the population and retail hub of Humboldt County, would indicate that physical changes—such as GHG emissions—would be more beneficial to the environment than locations elsewhere. As described in response to comment 16-286, an estimated \$4.3 million in credit card purchases were made at the Crescent City Home Depot in 2008 by residents of the Greater Eureka Area. This suggests that vehicular miles driven, and consequently GHG emissions, would be significantly reduced as a result of a local Home Depot.

- 9-11 The comment states that the biological survey for mammals fails to mention that there was any effort to survey for bats. HBG prepared a Biological Assessment (Appendix G in Draft EIR) for the property which outlines the steps taken to evaluate potential impacts to

candidate, sensitive, or species status species. (Huffman-Broadway Group, Inc., *Biological Assessment, Marina Center Project* (March 2008), at pages 1-2.) HBG reviewed pertinent literature, including the California Natural Diversity Data Base (CNDDB), to identify whether populations of endangered, threatened, or rare species might occur onsite or in the project vicinity, including sensitive bat species. The project site was surveyed by HBG biologists between August 2005 and January 2008 to characterize habitat and wildlife resources onsite.

The Biological Assessment identified two bat species that might occur onsite: California myotis (*Myotis californicus*) and the big brown bat (*Eptesicus fuscus*). (HBG Biological Assessment, Table 2.) These two species are common species, however, and therefore would not be considered “candidate, sensitive, or special status species” under the significance thresholds in Appendix G of the CEQA Guidelines or the corresponding threshold in the Draft EIR, page IV.D-18. Two species of bat that are also common and widespread in California – the long-eared myotis (*Myotis evotis*) and Yuma myotis (*Myotis yumanensis*) – were identified in the California Natural Diversity Data Base as occurring or having occurred in Humboldt County or the Eureka or adjacent quadrangles. (Draft EIR, Appendix D, page D-8; HBG Biological Assessment, Table 4.) Optimal habitats for the Yuma myotis are open forests and woodlands; whereas the long-eared myotis is largely found in brush, woodland, and forests habitats, and possibly prefers coniferous woodlands and forests. The long-eared myotis and Yuma myotis are unlikely to occur onsite due to their preferences for brush, woodland, and forest habitats and the lack of suitable habitat onsite. (See, e.g., HBG Biological Assessment, Table 4.) No bats were observed during species surveys conducted between August 2005 and January 2008, nor have any bats been observed in follow up visits by consulting biologists and hydrologists. Moreover, while the project site does contain four metal-framed structures and two wood-framed buildings, some of those structures are currently occupied. These structures are also not the preferred habitat for those bat species that might occur onsite, and the structures are located in an area surrounded primarily by industrial activity and roadways. The proposed project is not anticipated to have any significant adverse effect on special-status bat species and therefore no further information is needed in the EIR.

- 9-12 The comment states that additional mitigation measures should be included in the EIR to address potential excavation of cultural resources. It encourages delineation of subsurface cultural resources and avoidance of excavation in those areas. Please see Master Response 9 for further discussion on how archaeological resources potentially present on the project site would be addressed.

Please also see responses to comments in letter 69, particularly response 69-1, which states that while two Wiyot sites may exist on or near the project area, the archaeological field survey completed by Roscoe & Associates revealed that neither of these sites is apparent on the ground surface. Project engineering plans and soil remediation plans have not yet been finalized for the proposed project; therefore it is not clear exactly where ground-disturbing activities would occur within the greater project area. Once these plans are finalized a subsurface investigation would be completed to help determine the

presence or absence of cultural resources associated with the two Wiyot ethnographic village sites which may or may not exist on the project site. Please see Master Response 9 for revised mitigation measures including subsurface investigations.

- 9-13 The comment states that the proposed project does not conform to all principles of smart growth and that the inconsistencies are not adequately analyzed in the Draft EIR. As stated on Draft EIR page IV.I-12 of the Draft EIR, the proposed project “embodies most of the major principles of smart growth, including infill of a brownfield in the city center using a mixture of land uses in a walkable environment adjacent to open space.” Although big box stores are frequently associated with urban sprawl, that association is not always accurate, especially when development adheres to some of the smart growth characteristics listed above. For example, there are several big box stores in Manhattan (including two Home Depot stores), San Francisco, and Chicago—three places known for high-density, compact development.

As outlined in Chapter IV.O, Transportation, the trip generation for the proposed project is based on published rates and the trip distribution is based on the countywide traffic model. Trips generated by employees of the proposed Home Depot are captured in the transportation analysis conducted for this Draft EIR. The potential impacts of traffic and other impact categories are discussed throughout the Draft EIR, no matter whether or not these impacts are related to smart growth principles.

- 9-14 The comment questions the traffic analysis and mitigation measures, specifically related to F Street. The Greater Eureka Area Traffic Model was calibrated to the segment and intersection counts. The origin and destination functions of the model were also verified through an independent origin-destination study for the nearby Costco store. The model plots in Appendix H show project trips throughout Eureka, including F Street. The traffic consultant for the Draft EIR has since reviewed project-generated volumes onto Herrick Avenue from the U.S. 101 interchange. The model indicates that, in 2030, the Marina Center project would add about 13 and 17 trips to Herrick Avenue during the a.m. and p.m. peak hours, respectively. This constitutes an insignificant contribution to this impact, and thus no further analysis or mitigation is required.

- 9-15 The comment states that the Land Use analysis should also include a discussion of the proposed project “in relation to” competing land uses, specifically coastal-dependent, industrial, visitor-serving, recreation, commercial, and housing uses, as well as uses consistent with the existing Local Coastal Program and the Coastal Act. The comment further states that the Alternatives analysis does not address these issues.

The proposed project’s compliance with the uses permitted in the Local Coastal Program and Coastal Act are discussed in Chapter IV.I, specifically under Impact I-2 and in Table IV.I-2. In addition, please see Master Responses 3 and 5 for detailed discussions of the Local Coastal Program and Coastal Act wetland fill provisions, respectively. CEQA requires an analysis of a reasonable range of alternatives. The Draft EIR includes such analysis, and the comment does not provide alternatives different from those already

evaluated and/or rejected. Please also see responses to comments 16-239 and 16-242, which address a reasonable range of alternatives.

- 9-16 The comment urges the City to discuss Coastal Act Section 30007.5 with Coastal Commission staff. The comment is noted. Please see Master Response 5 for additional discussion of the Coastal Act and its wetland fill policies. The Coastal Commissions comments on the Draft EIR are included in Letter 3, above. Please see responses to these comments, particularly responses to comments 3-23 and 3-31, which discuss Section 30007.5 as related to Section 30233.
- 9-17 The comment states that the proposed development may foreclose future coastal-dependent development in the area, and requests that the Draft EIR include an analysis of the proposed project in relation to previous studies prepared for the other portions of the Humboldt Bay area.

As stated in the Draft EIR, the proposed project is examined in relation to existing and proposed plans for the project site and nearby properties. There are no coastal-dependent developments competing for this or any other similar parcels of land in the area. In addition, as stated in Master Response 3, the project site is not on or adjacent to the Humboldt Bay, therefore, it is arguable whether coastal-dependent uses could even be developed on the property, regardless of whether or not demand exists for such developments. Please also see response to comment 3-18, which states that 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.

- 9-18 The comment states that the proposed project could be viewed as part of the Core Area, and therefore subject to General Plan policies pertinent to the Core Area. As stated on Draft EIR page IV.I-15, the City Council is ultimately responsible for determining whether an activity is consistent with the General Plan. Perfect conformity with the General Plan is not required; instead, the City Council must balance various competing considerations and may find overall consistency with the plan despite minor inconsistencies with specific provisions. Furthermore, the potential inconsistencies with General Plan goals and polices do not themselves create a significant environmental impact under the thresholds established in CEQA Guidelines Appendix G. These policies are, instead, expressions of community planning and organization preferences. The potential physical impacts of the project's inconsistency with specific policies are discussed and analyzed in other sections of the Draft EIR.

The project site is geographically located just outside the Core Area. As such, the proposed project is not subject to General Plan policies related to development within the Core Area. The City Council will consider the appropriateness of the proposed land uses and proximity of the project site to the Core Area when determining the consistency of the proposed project with the goals and policies of both the General Plan and Local Coastal Program.

- 9-19 The comment states that General Plan Policy 1.L.4 is an important land use consideration, and that the proposed project may be inconsistent because it does not consolidate and upgrade existing commercial centers, but instead creates a new commercial center. As stated in Table IV.I-2 on page IV.I-26, the proposed project is “Potentially Inconsistent” with this policy.

In addition, the comment states that General Plan Policy 1.M-2 is an important land use policy. Policy 1.M.2 calls for the promotion of development and upgrading of the Westside Industrial Area to accommodate industrial growth and the relocation of industry from unsuitable sites and areas. As stated in Table IV.I-2 on page IV.I-27, the proposed project is potentially inconsistent with this policy, and a detailed discussion of the Westside Industrial Area is provided beginning on page IV.I-71.

The comment is therefore noted, the potential inconsistency is disclosed, and no further response appears warranted. These are policy considerations, and not environmental impacts. The City Council will ultimately decide on appropriate land uses and consistency with the General Plan. In any event, the proposed entitlements intend to amend the General Plan to ensure the project’s consistency.

- 9-20 The comment states that the proposed rezoning of the project site makes it subject to General Plan policies related to the siting of public facilities. As outlined on page IV.I-30 of the Draft EIR, the policies related to Public and quasi-Public Facilities are not relevant to the proposed project, as the policies relate to the location and quality of public facilities. As stated in Chapter III, Project Description, the proposed project would require a Local Coastal Program amendment from the City Council. The Draft EIR therefore acknowledges that rezoning is required, and the proposed project’s inconsistency with existing PQP zoning is disclosed.

- 9-21 The comment is related to Goal 1.A of the General Plan. The proposed project, in and of itself, would not be required to meet Goal 1.A of the General Plan, which encourages the City “to provide adequate site and promote development of new housing.” As stated on page IV.I-31 of the Draft EIR, it would be consistent with the City’s goal in that it would provide a mix of housing on the project site.

- 9-22 The comment states that increased employment at the project site would create additional vehicular trips by employees living outside of walking distance. As outlined in Chapter IV.O, Transportation, the trip generation for the proposed project is based on published rates and the trip distribution is based on the countywide traffic model. Trips generated by employees of the proposed Home Depot are captured in the transportation analysis conducted for this Draft EIR. Furthermore, although the proposed project would create new jobs, it would not generate them on a scale that would require new housing (see Chapter IV.L, Population and Housing of the Draft EIR). Mitigation is already included in the Draft EIR and no further mitigation is required.

- 9-23 The comment states that the proposed project may not include enough residential units to meet the housing demand it would generate. As stated in response to comment 9-22, and

discussed in Chapter IV.L, Population and Housing of the Draft EIR, Impact L-1 specifically, the proposed project would accommodate approximately 122 persons in 54 dwelling units. The proposed project would generate approximately 1,092 net new jobs. As discussed on page IV.L-3, the City of Eureka and Humboldt County have a higher unemployment rate than the statewide unemployment rate. New jobs proposed by the project could be absorbed within the City and surrounding areas. It is not expected that the proposed project would result in a substantial impact with respect to population growth based on the projected new employment opportunities.

- 9-24 The comment states that policies requiring coordination with other government agencies are relevant to the proposed project due to the new vehicular trips that would be generated by the project. As outlined in Chapter IV.O, Transportation, the proposed project would generate 15,669 weekday vehicle trips. Mitigation Measures outlined in the Draft EIR were developed in conjunction with Caltrans District 1 to address the project's impacts to Broadway and the U.S. 101 corridor. Thus, no further information regarding this impact is needed and no further mitigation is needed.
- 9-25 The comment states that the last paragraph of page IV.I-80 indicates that land use inconsistencies are deemed insignificant because land use policies, such as policies included in the General Plan, were not adopted for the purposes of mitigating environmental effects.

The Draft EIR does not make this conclusion on page IV.I-80 or any other page of the document. Page IV.I-73 does note the inconsistency with a particular policy, in this case the Westside Industrial Area Study's objective of developing the project site as an industrial park, is not a significant environmental effect because this particular Westside Industrial Area Study policy was not adopted for the purpose of mitigating an environmental effect. In any event, the Draft EIR addresses the environmental effects of the proposed project.

- 9-26 The comment states that future projects or projects in planning stages should be included in the cumulative impacts analyses. Cumulative Impacts are discussed in the Impact Overview on pages V-3 through V-5, as well as in each impact category section.

As stated in the Traffic Impact Study (Appendix K), the background traffic growth for the cumulative traffic analysis was estimated at 1.5 percent per year according to historic growth patterns and based upon published Caltrans traffic data, as well as actual traffic count data. This results in a 33 percent increase over existing conditions when compounded annually. The Humboldt County General Plan Update, and the City of Fortuna General Plan Update, which are not project-specific, are included in this background growth. Added to this 33 percent increase was the traffic added by the list of known projects included in the cumulative impact analysis growth scenario (included in Table V-1 on page V-4). Future, regional cumulative traffic is analyzed in Chapter IV.O, Transportation, page IV.O-48 under Cumulative Impacts. The Ridgewood Village project (previously known as "the Forster-Gill project") and the City of Fortuna are more than 5 miles and 19 miles away from the project site, respectively, and thus are not within the

“immediate vicinity.” Please also see Master Responses 6 and 7 regarding trip distribution and cumulative traffic growth.

Regarding cumulative urban decay impacts, please see Master Response 1, which explains that 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. Despite these irregular periods of decline, per capita retail sales in Eureka have increased on a real basis over time. The Humboldt County General Plan Update, and the City of Fortuna General Plan update, would not affect this trend.

Also, as stated in Master Response 1, to the extent that the proposed project causes residents to 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, however, 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.

Finally, as stated in response to comment 80-5, the Ridgewood Village Project has only just begun the environmental review process. It is not clear, and indeed speculative, as to the amount of that development expected to occur within the foreseeable planning horizon. Consequently, it cannot, in its entirety, be considered a reasonably foreseeable probable future project warranting a full cumulative effects analysis.

The Draft EIR adequately addresses cumulative impacts (e.g., traffic and urban decay).

9-27 The comment relates to housing demand and employment. Regarding housing, the comment is referred to response to comment 9-5. Please see Master Response 1 regarding employment in the area related to the proposed project. The proposed project’s potential impacts to traffic are discussed in Chapter IV.O.

9-28 The comment states that the traffic analysis does not include a sufficient number of intersections. Study intersections in the Draft EIR were selected on the basis of consultation among the City of Eureka, Caltrans District 1, and the traffic consultant for the Draft EIR. Subsequently, the traffic consultant looked at potential impacts from project-generated traffic on intersections beyond the EIR study area, including U.S. 101 and State Route 255 (Fourth and Fifth Streets at R Street), F Street south of Downtown, and Herrick Avenue at U.S. 101 and at Elk River Road. For project trips at U.S. 101 and State Route 255, there would be about 40 trips in the a.m. peak hour and about 73 trips in the p.m. peak hour. At F Street south of Downtown, there would be about 5 trips in the a.m. peak hour and 9 trips in the p.m. peak hour. At Herrick Avenue at U.S. 101 and at Elk River Road, there would be about 13 trips in the a.m. peak hour and 17 trips in the p.m. peak hour.

Finally, a subsequent review of the LOS in 2025 with the Marina Center using the new 2030 version of the countywide model – a model that was not available at the time that the Marina Center traffic study was completed in 2008 – shows that R Street at Fourth

- and Fifth Streets would operate better than LOS D in the a.m. and p.m. peak hours. Consequently, the project impacts associated with these intersections would remain less than significant, no additional mitigation would be required, and no changes to the Draft EIR text are necessary.
- 9-29 The comment questions the Urban Decay analysis in light of the recent economic downturn. Please see Master Response 1, under the subsection “New Recessionary Conditions.” CBRE reassessed the region’s economic conditions in light of the economic downturn, and found that its original analysis and conclusions in the Draft EIR still hold true.
- 9-30 The comment suggests methodologies for determining the potential for the proposed project to result in vacancy in other retail spaces in the City of Eureka. Please see Master Response 1, under the subsections “Vacancy in the City of Eureka,” as well as “Potential Local Store Closures.”
- 9-31 The comment states the Cumulative Impact analysis of Urban Decay should include the possibility of re-tenancy of the anchor tenant location in the project at an undetermined future date by some undetermined future tenant.

No future tenant is anticipated for the large anchor store beyond that analyzed in the EIR. It would be speculative of the Lead Agency to first predict changes in the anchor retail market—which is dynamic and in a continuous state of evolution—and then estimate every potential anchor tenant that would occupy the anchor retail space in the proposed project at some undetermined future date.

It is likely that any future tenant using the anchor tenant space would use it at the same intensity as the proposed home improvement tenant, which would generate a comparable level of environmental effects. For example, it is unlikely that a future tenant would choose to locate at the project site if it would not meet the square footage, parking capacity, and circulation requirements of the future tenant’s operations. In any event, physical changes in the project site to accommodate a future tenant may be subject to subsequent environmental review if the triggers under Section 21166 of the Public Resources Code are met.

A future tenant’s operations would likely generate comparable environmental effects to those of the proposed project, and those effects are incorporated into the urban decay cumulative impacts analysis.

- 9-32 The comment states that the Draft EIR should have included further discussion regarding the existing setting of the Elk River Wastewater Treatment plant. Please see staff-initiated changes to the Draft EIR, included in Chapter 2 of the Final EIR, and response to comments 24-25 through 24-28, which explain that (i) the nameplate capacity of the Elk River Wastewater Treatment Plant will remain at 5.24 mgd through the next permit cycle, (ii) the City of Eureka has not exceeded its agreed-upon allocated capacity from

the Elk River Wastewater Treatment Plant, and (iii) the proposed project would have a less-than-significant impact on wastewater treatment and conveyance.

- 9-33 The comment states that the Draft EIR should include an assessment of current and historic wastewater flows from the project site and compare them to the proposed project anticipated wastewater flows.

As stated on Draft EIR page IV.Q-2, “the project site is undeveloped and is [currently] not served by onsite wastewater infrastructure. However, wastewater infrastructure sufficient to serve the project is present along the project site boundaries.” In addition, as stated on Draft EIR pages IV.H-10 and IV.H-11, surface runoff on the project site is drained and channeled to ditches. This runoff is generated slowly, after long periods of intense rainfall, and is likely to infiltrate the subsurface, although some sheet flow enters municipal drainage facilities, which discharge at various points along the Humboldt Bay and sloughs surrounding the City.

Given that (1) the project site does not have onsite wastewater infrastructure, (2) most runoff on the site infiltrates into the ground, and (3) the nominal amount of surface runoff generated by the site does not all enter the wastewater conveyance or treatment system, the Draft EIR conservatively assumes that the project site does not currently generate measureable wastewater flows, and therefore all flows generated by the proposed project would be an increase above the existing conditions. Moreover, whatever wastewater flows are currently generated by the project site, however nominal, are included in the Elk River Wastewater Treatment Plant’s current operation at 81.2 percent capacity during dry weather conditions and at 100 percent capacity during peak wet weather conditions.

Regarding average dry weather flows (ADWF), please see response to comment 9-34, below, which explains allocated ADWF capacity at the wastewater treatment plant and the proposed project’s potential use of that capacity.

Finally, although historic uses at the project site may have had onsite wastewater infrastructure and/or been connected to the City of Eureka’s wastewater conveyance system, a discussion of the historic generated wastewater is not relevant to the environmental setting or analysis because it does not adequately describe existing wastewater flows generated by the project site, nor does it ensure a conservative impact analysis of project-generated wastewater flows.

- 9-34 The comment states that the wastewater capacity analysis should subtract out both capacity allocated to HCSD and capacity that could be used by other planned or developing projects.

As stated on Draft EIR page IV.Q-1, the Elk River Wastewater Treatment Plant (WWTP) provides service to both the City of Eureka and the surrounding unincorporated areas of the Humboldt Community Services District (HCSD). The WWTP permitted average dry weather capacity is 5.24 mgd. According to City Engineer staff-initiated changes to the

Draft EIR, the average dry weather capacity would remain at 5.24 mgd for the next permit cycle (2009–2013).

The HCSD contracts with the City of Eureka for sewer wastewater services and is allocated up to 30.5 percent of the WWTP permitted capacity for average dry weather flows to HCSD, which translates to 1.5982 mgd of the current WWTP permitted average dry weather capacity of 5.24 mgd. The remaining 3.64 mgd is allocated to the City of Eureka.

According to City Engineer staff-initiated changes to the Draft EIR (see Chapter 2), the proposed project would generate 58,563 gallons per day of wastewater, and this wastewater would be accommodated within the 5.24 mgd permitted capacity of the WWTP. Flow records indicate that in 2008 the City was utilizing about 83.6 percent of its contractual 3.642 mgd average dry weather flow capacity. The remaining capacity of 0.597 mgd, which equates to about 2,457 available connections for equivalent single-family dwellings (EDUs).

In January 2009, a revised estimate was provided of the number of wastewater EDUs the Marina Center development is anticipated to produce. The new total, 241 EDUs, is well below the previous estimate of 625 EDUs cited in the December 4, 2006 will-serve letter for the Marina Center development. The City's wastewater commitments to the Bayshore Inn Expansion (28 EDUs) and Lunbar Hills Unit 6 (56 EDUs) totals 296 EDUs. The County's General Plan update, including the Ridgewood Village (also known as Forster-Gill), was included in the master plan for the wastewater agency provider. As stated in response to comment 80-5, the Ridgewood Village project has only just begun the environmental review process. It is not clear, and indeed speculative, as to the amount of that development expected to occur within the foreseeable planning horizon. Consequently, it cannot, in its entirety, be considered a reasonably foreseeable probable future project warranting a full cumulative effects analysis.

Therefore, the balance of available uncommitted connections contractually available to the City at the WWTP is approximately 2,161 EDUs. Consequently, there is sufficient capacity at the WWTP to serve the Marina Center development within the City's contractual capacity.

In addition, the wastewater master plan looks at a 20-year planning horizon, and it lays out the anticipated improvements that will need to be constructed at the WWTP to stay ahead of the projected growth rate for the next 20 years. The improvements to the wastewater treatment system over the next 20 years are a part of the WWTP's regular maintenance process and would occur regardless of the proposed project. The City is currently securing funding to construct the required improvement projects in the entire wastewater system to through the next 5 years. In 5 years it will again renew its NPDES permit for another 5 years, and at that time will undertake another cycle of planning.

- 9-35 The comment states that the proposed project would weaken the retail and employment position of the City and County. As stated in Chapter IV.P, Urban Decay, the proposed project is anticipated to result in a net increase in employment, and it is not expected to

result in significant adverse urban decay or dislocation impacts. In addition, the Draft EIR analyzes the potential physical impacts of the proposed project, including increased employment on the project site, and no further analysis is required. Further, it is entirely speculative that job transfer or relocation would occur as suggested by the comment. Recent data indicate that there is an excess of currently unemployed local workers available to assume positions at the Marina Center. In addition, the local inventory of housing appears to be sufficient to accommodate new workers moving into the local area. Even if job transfer or relocation does occur, however, it may reduce greenhouse gas (GHG) emissions by co-locating jobs, retail, and housing in the urban core.

As stated in response to comment 9-10, the Greater Eureka Area is the population, government, and employment hub of Humboldt County. Therefore, the probability is high that the worker population for the proposed project would reside within reasonable proximity to the project site. Also, the project's location near the Downtown area of Eureka, which is the population and retail hub of Humboldt County, would indicate that physical changes—such as GHG emissions—would be more beneficial to the environment than locations elsewhere. As described in responses to comments 16-286 and 9-10, an estimated \$4.3 million in credit card purchases were made at the Crescent City Home Depot in 2008 by residents of the Greater Eureka Area. This suggests that vehicular miles driven, and consequently GHG emissions, would be significantly reduced as a result of a local Home Depot.

- 9-36 The comment states that the Draft EIR should include an alternative to analyze an increased residential component in the proposed project, stating that this could result in decreased vehicular trips and could result in a “critical mass of residential development” on the waterfront to ensure long-term economic viability.

Although some of the residents of the units in the proposed project could work in the Marina Center development, it is unlikely that all of the residents would choose to do so, due to a variety of economic, social, and practical factors. Therefore, pursuant to transportation impact methodology, the addition of 200 or more residential units to the project would not necessarily result in decreased automobile use because these residents would travel to employment locations outside of the project site on a daily basis, resulting in a net addition in the total number of vehicular trips generated by the proposed project.

It is beyond the scope of this EIR to determine the economic merits or thresholds of creating a “critical mass of residential development” on the project site. However, as stated in Chapter VI, Alternatives, alternatives selected for evaluation should meet the basic project objectives, which include the creation of a destination retail center, and seek to reduce the project's environmental impacts. Pursuant to transportation impact methodology, it is not possible to substantially increase the number of residential units in the proposed project and meet the objective of creating a major retail destination while also reducing the level of significant environmental impacts. Dislocating employment, housing, and retail would result in increased impacts. Therefore, an alternative with increased residential units is not explored.

Comment Letter 10

Comment Letter 10



ARCATA/EUREKA AIRPORT TERMINAL
McKINLEYVILLE
AVIATION 839-5401

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HUMBOLDT
MAILING ADDRESS: 1106 SECOND STREET, EUREKA, CA 95501-0579
AREA CODE 707/FAX 445-7409

PUBLIC WORKS BUILDING
SECOND & L ST., EUREKA

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LAND USE 445-7205

January 13, 2009

Ms. Sidnie L. Olson
Community Development Department
531 K Street
Eureka, CA 95501-1146

RECEIVED
JAN 15 2009

RE: **DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)**
MARINA CENTER MIXED USE DEVELOPMENT PROJECT, APN 003-041-007

Ms. Olson:

The Department is in receipt of the Draft Environmental Impact Report for the Marina Center Mixed Use Development Project prepared by ESA, dated November 2008. The Department offers the following comments:

1. A review of the Traffic Impact Study included within the DEIR suggests that that project will have significant impacts to the overall operational performance of Broadway that cannot be mitigated. This significant impact will still exist after completion of proposed mitigation measures outlined in the study.

As congestion on Broadway increases, traffic will seek other less congested routes to bypass the congestion on Broadway. One of these routes is the "F" Street / Fairway Drive / Herrick Avenue corridor. A portion of this route is within unincorporated Humboldt County. The Department recommends that the Traffic Impact Study address this corridor and recommend mitigation as necessary. In particular, the following intersections should be assessed: Herrick Avenue /Elk River Road; Herrick Avenue / Vance Avenue; Herrick Avenue / Meyers Avenue; and "F" Street / Oak Street.

10-1

2. It is hoped that the City of Eureka will address the cumulative impacts of traffic in the same manner that the City has requested the County to do. This was previously included within the Department's April 28, 2006 letter to you in regards to the Marina Center project.

10-2

If you have any questions please free to call me at (707) 445-7205.

Sincerely,

Robert W. Bronkall, PE, LS
Associate Engineer
Land Use Division
3033 H Street, Room 17
Eureka CA 95501

c Michael Wheeler, Senior Planner, Humboldt County Community Development Services
Department-Planning Division

5-93

Letter 10: County of Humboldt, Department of Public Works (Robert Bronkall)

- 10-1 The comment states that other routes and intersections would be impacted due to vehicles bypassing Broadway with the proposed project. A review of the 2030 model results, in which Marina Center traffic zones and trips are added, shows that very few project trips would be added to the routes and intersections identified by the comment. And the assigned trips would not result in any changes to the levels of service for the identified county intersections. Consequently, the project impact would remain less than significant, no additional mitigation would be warranted, and no changes to the Draft EIR text are necessary.
- 10-2 The comment states that cumulative traffic impacts should be addressed in the same manner as is required of the County. The Final Traffic Impact Study for the Proposed Balloon Track Mixed-Use Development prepared by TJKM dated October 24, 2007 does a clear and comprehensive job of addressing the cumulative traffic impacts of the proposed project. The section titled 'Cumulative + Project 2025 Conditions' on pages 42-46 of the study does a thorough analysis of service levels on all major streets and intersections affected by the project through the year 2025. City staff believes this analysis is similar in scope and breadth to what the County would be required to prepare for similar projects.