

Comment Letter 21

Comment Letter 21



Our goal: To improve and encourage bicycle commuting
P.O. Box 9054, Eureka, CA 95502-9054

January 31, 2009

City of Eureka
Community Development Department
Sidnie L. Olson, AICP
Principal Planner
531 K Street
Eureka, CA 95501-1165

Re: MARINA CENTER DRAFT EIR

Dear Ms. Olson:

This letter reflects our comments on the proposed Marina Center project as presented in the Draft Environmental Impact Report.

1) Impact O-1, Increased Traffic: Concerns (4):

21-1

- a. We have concerns about increased traffic on all streets surrounding the project, especially those that lack Class I or Class II bike facilities, creating increased hazards for cyclists.
- b. We have concerns about the lack of convenient and safe bicycle access to 7th Street for eastbound egress from the site. Seventh Street is the primary Class II route for eastbound bicyclists. It is bad practice and unsafe, if not unlawful, for bicyclists to use the sidewalk, as suggested in the Traffic Impact Study (Appendix P). It is especially dangerous to ride on the left side of the roadway against traffic, even if on the sidewalk, as motorists don't expect traffic approaching from the right upon first entry into an intersection.

A bicyclist leaving the site at the 6th Street access would have to perform the following movements to get to 7th Street (as suggested in the Traffic Impact Study) This is not an acceptable solution:

- 1. Dismount the bike at the SW corner of 6th and Broadway.
- 2. Push the pedestrian call button and wait for the signal to cross to the NW corner, as a pedestrian.
- 3. Push the pedestrian call button and wait for the signal to cross to the NE corner, as a pedestrian.
- 4. Push the pedestrian call button and wait for the signal to cross to the SE corner, as a pedestrian.

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- 5. Walk the bike on the sidewalk on the east side of Broadway from 6th to 7th.
- 6. Wait for traffic to allow the crossing of 7th and Broadway from the NE corner to the SE corner, as a pedestrian.
- 7. Mount bike and ride east on 7th Ave. in the class II bike lane.

Expecting bicyclists desiring to connect with 7th Street to use any other proposed access points, other than 6th Street, creates out of direction travel and presents increased hazards. The streets off site, used by a bicyclist to connect to 7th street are typically narrow, may see increased traffic as a result of the project, do not offer Class I or Class II bicycle facilities, and are lined with parked cars, which present hazards from vehicle occupants opening doors in the path of bicyclists.

- c. We have concerns due to the Class II Bike Lane on 6th Street ending at Commercial Street, one block short of reaching the project site. This will require bicyclists desiring to enter the project site to merge left into the middle traffic lane to avoid being cut off by traffic turning right onto Broadway. This movement is intimidating to most bicyclists. We suggest a Class II Bike Lane be added to the immediate left side of the right turn lane on 6th Ave at Broadway, to accommodate bicyclists moving straight through the intersection to enter the project site.
- d. We have concerns regarding increased conflicts between vehicles and bicyclists at the 5-point intersection of Broadway, Wabash, and Fairfield. Currently, this intersection has recorded a higher than average number of bicycle (and pedestrian) collisions. It is difficult, if not impossible, for a bicyclist northbound on Broadway to clear the intersection if entering on a green signal just prior to changing to yellow, before the cross traffic on Wabash gets a green signal. We suggest the complete closure of Fairfield from this intersection be investigated (not just closed for northbound traffic, as stated in Mitigation Measure O-1b) to make the intersection safer for bicyclists, by bringing the stop bar for northbound Broadway traffic up to Wabash.

2) Impact O-7, Conflicts with Alternative Transportation Plans and Policies:

21-2

Comment:

- a. Mitigation measures O-7a (Maintaining Adequate Railroad Right of Way), O-7c (Smooth and perpendicular RR crossings), & O-7e (Bicycle parking spaces per the Regional Transportation Plan) are important and should remain in the final EIR. The following text from Section IV.O-46 is also important and should remain in the final EIR:

Bicycle Access

The proposed project could generate bicycle traffic, and would provide both short-term and long-term parking for bicycles. Secure racks would be

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located near building entrances. Bicyclists would be attracted to the proposed project for employment, shopping, dining, and entertainment. Adequate, safe, and secure bike parking should be provided according to 2004 Regional Bicycle Transportation Plan Update (Humboldt County). To be secure, bicycle parking facilities would be in front of the store and visible to customers entering and exiting stores, to minimize the potential for theft and vandalism. Bike parking for employees would be provided as an incentive for employees to ride bikes to work. Bike lockers or a fenced in, covered enclosure with bike racks within, can be locate behind businesses or in the parking structure. With the implementation of Mitigation Measure O-7e (bicycle parking spaces), sufficient bicycle parking would be provided on-site. The project proposes to develop a section of the Waterfront Drive multi-use path, which the City has proposed for installation north of Del Norte Street along Railroad Street and Waterfront Drive. The planned path would extend east along Waterfront Drive to meet up with the soon-to-be-constructed trail along the Old Town Boardwalk east of C Street. The Waterfront Drive pedestrian and bicycle path through the project limits would be beneficial to the community and provide connectivity for further development of the path beyond the project site boundary. The path would be designed to meet the requirements of Chapter 1000 of the Caltrans Highway Design Manual (2004).

Thank you for giving us the opportunity to provide comments on this important project. Please contact us if you have any questions regarding these comments.

Sincerely,



Scott Kelly, President
Humboldt Bay Bicycle Commuters Association

cc: Board of Directors, Humboldt Bay Bicycle Commuters Association

Letter 21: Humboldt Bay Bicycle Commuters Association (Scott Kelly)

- 21-1 The comment suggests an alternate route for biking by guiding bicyclists through the Marina Center site to the Fourth Street exit, then to turn right on Broadway to go south, turn left to eastbound Fifth Street, turn right on B Street to go south, and finally turn east on Seventh Street to access the Class II bike lane.

Bicyclists at the Marina today must travel either south to Washington Street or north to Commercial Street, negotiate railroad crossings, and then head either east on Washington Street to Summer, and then north to Seventh Street to get to the bike lanes, or south on Commercial to Seventh Street, then east on Seventh Street. The proposed project would improve this travel by opening a route directly across the project site to Fourth Street and Broadway. It should be noted that in future, when the mitigation measure is triggered, all project related traffic (except bicycles) going south or east on U.S. 101 would be subject to “out of the way” travel by being routed away from Broadway to Waterfront Drive.

The width of Sixth Street appears sufficient to accommodate the suggestion of the comment, in regards to provision of a Class II bike lane immediately to the left of the westbound right turn lane to accommodate bicyclists intending to enter the project site at Sixth Street. This is something the City can evaluate in its citywide bicycle plan. The proposed project does not preclude the suggested changes.

The clearance interval can be designed to be extended for bicyclists at Broadway, Fairfield Street and Wabash Avenue. The technology now exists so that greater green light extension is provided for bikes detected in the “dilemma zone” so that the light goes yellow for bicyclists less often. However, additional all-red clearance time could also be provided in the event that bikes are detected when the signal “maxes out” its green time. This would be a requirement in the redesign of signal controls for this intersection. Full closure of Fairfield Street is subject to local concurrence and review. There is sufficient capacity for traffic turning onto southbound Fairfield Street at Wabash Avenue to be diverted to southbound left turns at Hawthorne Street, and then to Fairfield Street. The comment is correct that the stop bar could be moved closer to Wabash Avenue with full closure, and this would also lessen pedestrian clearance times. This is something that Caltrans can consider. The proposed project does not preclude the suggested changes, but they would be subject to City review.

- 21-2 The comment states that bicycle parking spaces are important and should remain in the Final EIR. The comment is noted.

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

RECEIVED
JAN 30 2009
DEPARTMENT OF
COMMUNITY DEVELOPMENT

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

Ms. Olson:

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

Our specific comments are outlined below.

I. Humboldt Baykeeper's Involvement with Project Site

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

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¹ Cal. Pub. Res. § 15002(a).

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

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

22-1 cont.

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

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

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

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

a. Section IV.A: Aesthetics

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

22-2

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

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

b. Section IV.C Air Quality

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

22-3

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

22-4

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

22-5

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

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

c. Section IV. D: Biological Resources

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

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

Although the DEIR presents a reasonable overview of conditions found onsite, there are a number of omissions of note. The DEIR states that no mammals have been observed on the site, in fact a striped skunk and the remains of a Virginia Opossum were observed on the site in January of 2008.⁵ Additionally, the DEIR gives little consideration to the habitat value provided by Clark Slough itself. There is no discussion of invertebrate species found in the Slough, nor was there an assessment of what fishes currently, or potentially, reside there. On July 31, 2007 a fish survey of Clark Slough was conducted. This fish survey found a variety of species to be using the slough, most notable being the large number of juvenile Dungeness crab – there were 243 juvenile Dungeness crab found within the stretch of Clark Slough that extends from the tide gate to the box culvert on the property under the gravel road that runs roughly parallel to Waterfront Drive.⁶ Although Dungeness crab is not an endangered, threatened, or special concern species, its commercial and recreational value within the Humboldt Bay and surrounding communities is exceptional.

The DEIR characterizes the wetlands found onsite as being limited in "value" and "function".⁷ Though these wetlands may not provide optimum habitat, their value as foraging areas and freshwater sources for a variety of avian species, as well as habitat (in the case of Clark Slough) for fishes and crustaceans⁸ should not be minimized purely to support their conversion into retail space for the human residents of this area. The proper ecological assessment of the wetland functions present onsite has not even been conducted. According to the California Coastal Commission, in order to determine the function of a wetland an assessment should be made that determine the chemical, biological and physical functions of the specific wetland. Assessment of the biological functions of a wetland, for example, "would include identifying the species of fish that occur in the wetland, identifying their life stages (e.g., young-of-the-year, juvenile, or

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

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

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

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

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

22-7
cont.

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22-9

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

⁹ California Coastal Commission, *Procedural Guidance For Evaluating Wetland Mitigation Projects In California's Coastal Zone*, section 4.2.1.2, available at <http://www.coastal.ca.gov/weteval/wet4.html>.
¹⁰ DEIR at IV.D-20.
¹¹ City of Eureka Policy Document at 6.A.6.
¹² DEIR at IV.D-21.
¹³ DEIR at IV.D-21- IV.D-30.
¹⁴ DEIR at IV.D-22.
¹⁵ DEIR at IV.D-22.

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

22-9
cont.

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

22-10

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

22-11

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

22-12

¹⁶ California Coastal Commission, *Procedural Guidance For Evaluating Wetland Mitigation Projects In California's Coastal Zone* at 4.2.3.3

¹⁷ See DEIR at III-14.

¹⁸ City of Eureka Policy Document at 6.A.19; California Coastal Commission, *Procedural Guidance For Evaluating Wetland Mitigation Projects In California's Coastal Zone* at Ch. 1, § V, available at <http://www.coastal.ca.gov/wetrev/wetchl.html>.

¹⁹ DEIR at IV.D-24.

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

d. Section IV.G: Hazards and Hazardous Materials

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

22-12
cont.

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

22-13

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

²⁰ See e.g. DEIR at I-1, III-2, and III-16.

²¹ See DEIR at IV.G-4- IV.G-11.

²² *Californians for Alternatives to Toxics v. Department of Food and Agriculture*, (2005) 136 Cal.App.4th 1, at 13 (citing *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1381-1382, 111 Cal.Rptr.2d 598.)

²³ “Dioxins and furans” as used in this letter refers to the full range of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-p furans and their congeners.

²⁴ DEIR at IV.G-6.

²⁵ See Expert Reports of James Rogers, attached as Exhibits 5 and 6.

²⁶ Provided to Sidnie Olson on May 13, 2008 by Michelle Smith of Humboldt Baykeeper. See letter attached as Exhibit 2. The documents provided at that time included the entire Regional Board file, all documents provided from Union Pacific and CUE V1 to Humboldt Baykeeper through discovery, a DEIR

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An additional problem found within this section of the DEIR is its reliance upon one Health Risk Assessment (“HRA”) and an Addendum to that HRA prepared for the property on behalf of its former owner Union Pacific. These documents were prepared in 1996 and 2000.²⁷ This HRA and the HRA Addendum were prepared based upon the known contaminants found at the site at that time, the uses of the property at that time, and upon the hazard levels established for those contaminants in 1996 and 2000. The HRA’s did not assess the hazards posed by dioxins, furans and PCBs, as no sampling had been conducted for those substances. It additionally assessed the property based upon its status as a vacant lot – it looked at the hazard posed to current youth trespassers, future onsite construction workers, and offsite receptors, for example.²⁸ What those HRAs did not evaluate was the hazard posed to the proposed uses of the property found within the project – it did not look at the hazard posed to residential uses, or use of the property as a Discovery Museum for children, for example.²⁹ This flaw is considerable and undermines the ability to rely upon the studies for virtually any purpose in this DEIR. The HRAs are additionally based upon outdated hazard values for many of the substances analyzed. The hazard value for arsenic, for example, is now approximately 5 times more stringent.³⁰ The project proponent does include an HRA prepared specifically for the project, but this HRA only looks at the health hazards posed by diesel emissions from the remediation of the wetlands and from eventual use of the project.³¹ This HRA does not assess the risks posed by the full range of contaminants found onsite, including dioxins, furans, and PCBs, even though it acknowledges that after remediation contamination may still remain onsite.³² It also fails to address all potential pathways of exposure, such as digestion of contaminated fish and shellfish, and contact with contaminated sediments in wetland areas and the slough.

22-14

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

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

²⁷ DEIR at IV.G-11- IV.G-14.

²⁸ DEIR at IV.G-13.

²⁹ DEIR at IV.G-13

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

³¹ DEIR at IV.G-14.

³² DEIR at IV.G-19.

³³ DEIR at IV.G-20.

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

22-15 cont.

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

22-16

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

³⁴ *Californians for Alternatives to Toxics v. Department of Food and Agriculture*, (2005) 136 Cal.App.4th 1, 17 (citing *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882).

³⁵ DEIR at IV.G-21.

³⁶ *Native San/Lyon Communities v. City of Escondido*, (4th Dist. 1993) 15 Cal. App. 4th 892, 908.

³⁷ Cal. Pub. Res. § 15126.4(a)(1)(B). See also *San Joaquin Raptor Rescue Ctr. v. County of Merced*, (2007) 149 CA4th 645, 669; *Endangered Habitats League v. County of Orange*, (2005) 131 CA4th 777, 794.

³⁸ See *San Joaquin Raptor Rescue Ctr. v. County of Merced*, (2007) at 670.

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

22-17

e. Section IV. H: Hydrology and Water Quality

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

22-18

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

³⁹ See documents provided by Humboldt Baykeeper from the files of the North Coast Regional Water Quality Control Board.

⁴⁰ California Water Code § 13360(a) "No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner."

⁴¹ DEIR at IV.H-3.

⁴² Dioxin Reassessment NAS Review Draft 2004. *available at* <http://cfpub.epa.gov/ncea/cfm/recondisplay.cfm?deid=87843>. See also Exhibit 7 at 12.

⁴³ Exhibit 5 at 14.

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

22-18
cont.

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

22-19

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

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

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

22-20

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

22-21

⁴⁴ DEIR at IV.H-15-1V.H-18.

⁴⁵ DEIR at IV.H-14.

⁴⁶ DEIR at IV.H-16.

⁴⁷ DEIR at IV.H-10.

⁴⁸ Expert Report of Benjamin Ross attached as Exhibit 9 at 7.

Letter 22: Humboldt Baykeeper (Pete Nichols)

Attachments to Letter 22 are presented in Appendix W.

- 22-1 The comment outlines the ongoing federal court proceeding in the *Humboldt Baykeeper v. Union Pacific* case initiated by the comment under the federal Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA), as well as the current and prior conditions at the site. The comment also lists a series of reports and other materials that have been introduced in the federal court proceedings and provided to the City of Eureka, and the comment complains that none of those materials are referenced in the Draft EIR.

The comment does not cite any particular evidence contained in the thousands of pages submitted to the City, and the comment does not explain the relevance of the submitted materials to the City's consideration of the Marina Center Draft EIR. Nevertheless, several general responses can be made about the mass of information and reports submitted with the Comment. First, the files of the RWQCB document the extensive investigation of the site. The files include many dozens of reports on contamination in soil, surface water, and groundwater. These reports identify samples taken from wells in the A and B aquifers, in stormwater, and in soils at the surface, in borings, in pits, and in trenches dug across the site to assess the nature and extent of contamination. These reports establish that contamination is present throughout the site, including the existing wetlands. Second, the files of the RWQCB also show that RWQCB staff are and consistently have been actively involved in the oversight of the investigation and remediation, and they frequently adjust the requirements being imposed on the site owner in response to the data collected. Third, the reports prepared for and submitted with the comment support the conclusion reached in this EIR that the site is contaminated, especially in the wetlands. Fourth, the two principal threats identified by the reports are a threat to Humboldt Bay from stormwater potentially carrying contaminants off the site into Clark Slough, and a threat to birds, wildlife, and people using the site who ingest contamination. Fifth, the interim remediation would resolve the two key threats identified by the reports. Stormwater would no longer be able to carry contaminants into Humboldt Bay, and birds, wildlife, and people who use the site would no longer be exposed to contamination. Sixth, the reports submitted with the comment show that the project would greatly improve baseline conditions related to contamination at the site.

Moreover, despite the fact that materials may not be referenced explicitly in the Draft EIR, they were nonetheless reviewed and considered in preparing this EIR. Some of those materials, including the wetland delineation prepared by the Huffman Broadway Group identified by the comment, are explicitly referenced in the Draft EIR. (See, e.g., Draft EIR, page IV.D-35, referencing the Huffman Broadway Group, Inc., *Investigation of the Presence of Wetlands and Other Waters of the U.S., Balloon Property, Eureka, Humboldt County, California, May, 2006(b)*.) Much of the information simply confirms the information and conclusions already reached in the Draft EIR – that there are contamination issues that remain throughout the project site and that there would be

impacts associated with biological resources, hydrology and water quality, and hazards and hazardous materials. To the extent that the information merely pertains to past uses or prior conditions of the project site, they may be considered part of the environmental baseline but do not represent environmental effects caused by the proposed project. In any event, the materials cited by the comment do not involve any significant new information, and further document references are not warranted.

Please also see Master Response 4 and Appendix S regarding remediation plans for the project site.

- 22-2 The comment states that the Aesthetics chapter of the Draft EIR should include an analysis that gives greater weight to the value of having a large open space (the existing project site) between U.S. 101 and the Bay. The comment states that the proposed project would obstruct those views.

As stated on Page IV.A-16 of the Draft EIR, visual quality is subjective. Visual impact is measured by the amount of visual change adversely affecting an area's perceived aesthetic value or conditions of the setting. Development of the proposed project would result in a change to existing views of and through the project site from public view points in the project vicinity, including U.S. 101.⁷ The project site is currently undeveloped (although previously developed and consequently in a visually degraded state) and does not provide any view corridors that direct ones line of sight toward specific scenic resources. Some views of Humboldt Bay are available between existing buildings along Broadway, and the outline of the distant hills is visible from Waterfront Drive over existing urban development. The proposed project would continue to provide view corridors through the project site from the Fourth Street extension, between the proposed buildings along Waterfront Drive, and from the proposed multi-use trail along Waterfront Drive. Therefore, the project would not substantially impair scenic view corridors.

- 22-3 The comment suggests that implementation of mitigation measures, such as requiring the installation of solar electric panels and solar water heaters, could reduce the project emissions to below the significance level. However, the vast majority of emissions that would be associated with the operations of the project would be related to mobile sources (e.g., automobile and truck traffic) of emissions. Therefore, the suggested mitigation measures would do little to reduce the emissions presented in Draft EIR Table IV.C-5 to a level that would be less than significant. The Project Applicant may chose to utilize these devices, but it is not required mitigation to reduce on impact.
- 22-4 The comment points out that indirect emissions associated with electricity consumption are not quantified or presented in the Draft EIR. It also states that the Draft EIR does not include an analysis of air quality and greenhouse gas (GHG) emissions associated with deliveries.

⁷ View corridors are formed by buildings or other physical elements that guide lines of sight and control view directions available to pedestrians and motorists. View corridors include the total field of vision from a specific viewpoint.

Because power is provided over an integrated electricity grid, indirect emissions from the use of electricity could occur at any of the fossil-fueled power plants in California or neighboring states, or from hydroelectric or nuclear plants or renewable energy sources. For all power plants, it can be assumed that the emissions are reviewed as part of the permitting process before the power plant is built or expanded. In California, the California Energy Commission uses the Application for Certification (AFC) process for major power plants that are greater than 49 Megawatts. The potential impacts of criteria pollutants are reviewed in the local context prior to plants being permitted and licensed. Therefore, indirect emissions of criteria pollutants associated with electricity usage are typically not quantified in CEQA documents, such as the Draft EIR.

Subsequent to the release of the Draft EIR, The Governor's Office of Planning and Research (OPR) has developed preliminary Draft amendments to the CEQA Guidelines for regulatory guidance with respect to the analysis and mitigation of the potential effects of GHG emissions (OPR, 2009). The preliminary Draft CEQA Guidelines Section 15064.4 recommends that lead agencies make a good-faith effort, based on available information, to describe, calculate, or estimate the amount of GHG emissions that would be associated with a project, including emissions associated with energy consumption.

Therefore, although not required, the City believes it would be prudent for the EIR to include the indirect GHG emissions associated with the project's estimated energy consumption. According to Draft EIR Appendix Q, the average daily energy consumption that would be associated with the project would be approximately 23,000 kilowatt-hours (kW-hrs), which is equivalent to approximately 8,395,000 kW-hrs per year. Using an emission factor (0.524 pounds of CO₂ emissions per kW-hr) developed from Pacific Gas and Electric (PG&E)'s carbon footprint calculator (PG&E, 2009) that accounts for PG&E's entire power generation portfolio and other emission factors for CH₄ and N₂O (CCAR, 2008), it is estimated that energy consumption associated with the proposed project would result in approximately 2,000 additional metric tons of indirect GHG emissions per year. This brings the total estimated annual operational emissions to GHG to approximately 22,000 metric tons annually, which would continue to be below the reporting threshold of 25,000 metric tons per year. Therefore, cumulative impacts associated with the project's contribution to GHG emissions would continue to be less than significant.

The following revisions are made to Draft EIR pages IV.C-19 through IV.C-21:

The URBEMIS2007 model also estimates CO₂ emissions from natural gas combustion for space and water heating and fuel combustion for landscape maintenance, based on land use size (number of dwelling units or commercial square footage). Again, the appropriate scaling factors from the State Inventory of GHG Emissions were used to determine the relative amounts of CH₄ and N₂O emitted from residential and commercial fuel combustion. Table IV.C-8 presents the estimated GHG emissions that would result from motor vehicle trips, natural gas usage, ~~and~~ landscape maintenance activities, and energy consumption that

would be associated with the proposed project. In addition to the emissions presented in Table IV.C-8, other GHG emissions would be generated by the proposed project to a lesser extent through indirect sources, including ~~electricity generation and solid waste decay...~~

**TABLE IV.C-8
ESTIMATED EMISSIONS OF GREENHOUSE GASES FROM PROPOSED PROJECT**

Emission Source	Emissions (metric tons of CO ₂ per year)			
	CO ₂	CH ₄	N ₂ O	Total eCO ₂
Motor vehicle trips	17,801	57	1,118	18,976
Natural gas usage	1,028	48	7	1,083
Landscape maintenance	2	<1	<1	2
<u>Energy Usage</u>	<u>1,995</u>	<u>1</u>	<u>4</u>	<u>2,000</u>
Total Operational GHG Emissions	48,834 <u>20,826</u>	405 <u>106</u>	4,425 <u>1,129</u>	20,064 <u>22,061</u>

... With regard to Item B, project long-term GHG emissions would be approximately ~~20,000~~ 22,000 metric tons per year CO₂e emissions from operations (including emissions from vehicle trips, natural gas usage, ~~and~~ landscape maintenance, and energy consumption). The project would not be classified as a major source of GHG emissions because emissions would be less than the lower reporting limit for industrial stationary sources, which is proposed to be 25,000 metric tons per year of CO₂e.

When compared to the overall State reduction goal of approximately 174 million metric tons per year of CO₂e, the GHG emissions for the project (~~20,000~~ 22,000 metric tons per year of CO₂e or 0.0001 percent of the State goal) are quite small and should not conflict with the State's ability to meet the AB 32 goals.

While this information is provided for informational purposes, it remains speculative as to the precise mix of energy sources that may be relied on by the project and other existing development in the City. With California utilities relying more and more on renewable energy sources (e.g., wind, hydropower, solar, and geothermal), it is entirely possible that the energy provided to this project could come from one or more of those sources and thus would not result in the indirect GHG emissions identified in the new Table IV.C-8. This information does not constitute significant new information and therefore further analysis or mitigation is unwarranted.

Finally, the comment is incorrect in stating that emissions from deliveries were not included in the air quality and GHG emissions analyses. Deliveries are included in the modeling of motor vehicle trips emission sources (see revised Table IV.C-8, above). The URBEMIS 2007 model attributes 6.2 percent of all trips to heavy trucks.

22-5 The proposed Redwood Marine Terminal would increase cumulative air quality impacts as the comment suggests. The Harbor District is currently planning to prepare a comprehensive EIR/EIS to address the environmental consequences, including air quality, of the Terminal expansion. The Terminal project is not included in the Draft EIR's cumulative impacts analysis because it was not yet proposed when environmental review of the Marina Center commenced. Moreover, the Terminal project is uncertain due to a lack of funding and current economic climate. Consequently, it is not considered a reasonably foreseeable probable future project, and no further review is warranted.

22-6 The comment states that the Draft EIR reported that no mammals were observed onsite, and yet the commenter's investigators found a striped skunk and remains of a Virginia opossum. The comment states that there is no discussion of invertebrates or fish in Clark Slough, and yet the commenter's investigators prepared an assessment of Clark Slough in July 2007 and found a number of fish species and a large number of juvenile dungeness crab.

No mammals were observed at the project site when either HBG or ESA conducted field work or reconnaissance surveys at the site. The text of the Draft EIR lists several mammals that would be commonly found at the project site (including Virginia opossum and striped skunk), and these species are listed along with a number of other mammals in Appendix G, Attachment 2, Table 3 of the Draft EIR Volume 2, showing mammals that might occur at the project site. The preparers of the Draft EIR acknowledge that these two species were observed by H.T. Harvey and Associates during their field studies in the project area. It is also acknowledged that the H.T. Harvey study included a wildlife assessment of Clark Slough and that dungeness crabs and a number of fish species were found in the Clark Slough remnant including threespine stickleback, starry flounder, two or three species of sculpin and saddleback gunnel. All are common species. The Draft EIR accurately describes the site conditions and key species, and properly concludes that the project is not anticipated to have any significant adverse effects on special-status or sensitive species or their habitats.

22-7 The comment states that the Draft EIR characterizes the wetlands as limited in value and function, and that although the wetlands are not optimum habitat, habitat value should not be minimized. The comment states that a proper assessment of wetland functions has not been conducted, and that a proper assessment of wetland values must be completed to determine the true impacts of the project and for assessing the sufficiency of proposed mitigation measures.

Although not typically completed as part of analysis pursuant to CEQA, a preliminary functional assessment was performed by HBG and the results were included as shown in Table IV.D-1 of the Draft EIR and the HBG Biological Assessment report at pages 16 through 23. This analysis shows that some functions are provided by the existing palustrine and estuarine wetlands, and that many of the functions are limited by the degraded conditions at the project site, including soil contamination, unchecked off-site

pollutants coming onto the project site in stormwater runoff, and the relatively unvegetated and rip-rapped side walls of the estuarine channel of the remnant of Clark Slough. All of this information and analysis has confirmed that the existing wetlands onsite provide less than optimum function and value, and that the proposed wetland reserve and site remediation would significantly improve the site conditions for species, habitats, and water quality.

The comment states that there should be an identification of the species and life stages of fish occurring in the wetlands. The reports submitted with the comment, however, confirm that there are no fish in the low-quality wetlands to be filled. For example, no sensitive species of fish or wildlife were identified during the site visits identified in those reports. The only fish present are in Clark Slough, which is proposed to be expanded and improved.

- 22-8 The comment states that all wetlands and riparian areas on the project site, including Clark Slough, should be treated as ESHA. The comment states that the Draft EIR states that project impacts on riparian habitat or other natural communities would be beneficial, and yet only Clark Slough is identified as a riparian habitat, even though wetlands along the southern boundary of the project site should be included in this definition. The comment states that the Draft EIR needs to give proper weight to existing beneficial values to assess effects of project.

The Draft EIR correctly points out that the project site does not contain the essential elements of an Environmentally Sensitive Habitat Area (ESHA) as defined by the Coastal Act. The Coastal Act defines environmentally sensitive areas as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments” (Public Resources Code Section 30107.5). The Draft EIR discusses the project site in relation to this definition on page IV.D 20 to 21. This discussion acknowledges that a portion of the project site may be designated as an ESHA under the Coastal Act, but points out that the wetlands at the project site are highly scattered, degraded and largely created from past industrial use of the project site. The project site is dominated by invasive, non-native plant species and lacks suitable habitat for sensitive or special status species.

The preliminary functional analysis contained within the Draft EIR and the accompanying Biological Assessment shows that some functions are provided by the existing palustrine and estuarine wetlands, but that many of the functions are limited by the degraded conditions at the project site, including soil contamination, unchecked off-site pollutants coming onto the project site in stormwater runoff, and the relatively unvegetated and rip-rapped side walls of the estuarine channel of the remnant of Clark Slough. However, the Project Applicant has provided a plan to remediate the contamination associated with the degraded seasonal wetlands and remnant of Clark Slough on the property and replace them with a valuable contiguous estuarine community (see Appendix S). Despite the limited functions provided by the existing wetlands at the

project site, the estuarine restoration would be considered preferable given considerations as indicated on page IV.D-22 to 23 of the Draft EIR and iterated in response to comment 3-9: (1) the 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 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 on project site. After soil remediation throughout the site and creation of contiguous estuarine wetlands at the south end of the project site at an acreage exceeding the extent of the existing combined degraded seasonal and estuarine wetlands, it can be stated that the proposed project would have a beneficial impact on wetlands and natural communities within the property.

Finally, it should be noted that wetlands are not technically defined as “riparian habitat” under state or federal regulatory definitions, and thus the Draft EIR accurately described the biological resources present onsite.

- 22-9 The comment states that the Draft EIR is not entirely clear where the wetlands that would be filled and where the wetlands that would be created occur on the project site. The comment states that because the wetland reserve would surround Clark Slough, the acreage in the wetland reserve should include Clark Slough in its total acreage.

Please see response to comment 1-2, which explains that the project would result in the permanent filling of 6.15 acres of wetlands and temporary filling of 1.45 acres. Mitigation includes establishment of a wetland restoration area of 11.89 acres containing 8.98 acres of estuarine wetlands. The proposed wetland reserve does include the estuarine acreage within Clark Slough in its total acreage. The locations of the existing wetlands are depicted in Figures IV.D-1 and IV.D-2 on pages IV.D-9 and IV.D-10, while the locations of the proposed wetlands are depicted in Figures D IV.D-3 on page IV D-26 of the Draft EIR.

- 22-10 The comment states that without a complete ecological assessment, conclusions regarding the benefits of the proposed wetland reserve are unsubstantiated. In addition, the comment states that the mitigation ratio should factor in function and value information gained from an ecological assessment.

Please see response to comment 22-7, which confirms that the existing wetlands onsite provide less than optimum function and value, and that the proposed wetland reserve and site remediation should significantly improve the site conditions for species, habitats, and water quality. A biological assessment and a preliminary functional assessment of the palustrine and estuarine wetlands have been performed by HBG and the results of the functional assessment are included as shown in Table IV.D-1 of the Draft EIR and the HBG Biological Assessment report at pages 16 and 23. This analysis shows that some limited functions are provided by the existing palustrine and estuarine wetlands, and that many of the functions are limited by the degraded conditions at the project site, including soil contamination, unchecked off-site pollutants coming onto the project site in

stormwater runoff, and the relatively unvegetated and rip-rapped side walls of the estuarine channel of the remnant of Clark Slough. With the planned soil remediation and the creation of contiguous estuarine wetlands at the south end of the project site (mitigation ratio of 1.05:1), the proposed project would have a beneficial impact on wetlands and natural communities within the property. Thus, the proposed mitigation ratio does factor into the function and value of the existing wetlands, as well as the function and value anticipated for the proposed wetland reserve.

- 22-11 The comment states that the buffer area of 50 feet is smaller than required by the LCP. The comment further states that a mitigation measure provides for preparation of a restoration plan, but complete restoration that would allow public review is not included.

As indicated in response to comment 3-10, the buffer zones between commercial land uses developed as part of the Marina Center project and restored wetlands is proposed to be a minimum of 50 feet. Buffers of less than 100 feet are allowable under the LCP where the reduced buffer is deemed adequate to protect the resource. Reduced buffers are included in the proposed project where existing streets, existing rail rights of way, or planned pedestrian trails adjacent to Clark Slough necessitate narrower buffers, and only as long as they provide visual screening and other attributes that help to protect the resource (e.g., earthen berms and native vegetation to minimize disturbing water birds).

A conceptual restoration plan sufficient for CEQA review is included in the Draft EIR (see for instance Figures IV.D-4 and IV.D-5 on pages IV.D- 27 and 28) and is discussed in the Biological Assessment (Appendix D of the Draft EIR). A detailed mitigation/restoration plan would be developed during permit review of the environmental cleanup phase of the Marina Center project, which would include, at a minimum, the elements set forth in Mitigation Measures D-3a through 3f in the configuration shown in Figure IV.D-4.

- 22-12 The comment states that construction of wetlands in known contaminated soils is an issue, and that the remediation plan is crucial to assessing the benefit of the proposed wetland restoration. The conceptual mitigation/restoration plan for estuarine emergent wetlands at the project site assumes that the entirety of the site would be subject to soil remediation and other measures to eliminate potential pathways to sensitive receptors as part of the mandatory site cleanup that must be accomplished under the Regional Water Quality Control Board's Clean Up and Abatement Order before site development. Included in the remediation is removal of existing contamination in Clark Slough, and excavation of soils on both sides of Clark Slough to create the expanded high-quality wetlands. As a result, the new wetlands would not be created in contaminated soil.

Please also see Master Response 4 and Appendix S regarding the remediation of the project site.

- 22-13 The comment requesting additional detail about the existing contamination of the project site is noted. However as discussed in response to comment 6-3, the contamination of dioxins at the project site is disclosed and would be addressed by the Remedial Action

Plan. Although elevated levels of dioxins and furans were found onsite, the levels were within cleanup levels considered acceptable for commercial sites by the California Department of Toxic Substances Control, which recommend cleanup levels of 200-1000 ppt for commercial and industrial sites. The project nevertheless plans to excavate and dispose offsite any soils containing levels within this range, and then cover the remaining contamination with clean cover and, under future phases, parking lots and buildings. The project effect would be beneficial to human health and the environment. It would improve site conditions and prevent exposure to remaining contamination.

See also further discussion of the proposed remediation in Master Response 4 and Appendix S.

- 22-14 The comment states that the Draft EIR relies on the Health Risk Assessments prepared in 1996 and 2000. The comment states that those reports are both outdated and inadequate.

The comment is noted. Numerous investigations of the project site have been undertaken beyond the HRAs cited in the comment. For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S. The final cleanup plan would be based on future uses of the site, including any residential and museum uses. Because of the barrier created by the clean cover material and by future parking lots and buildings, future visitors to the site are not expected to be exposed to any quantity of any contaminants remaining in the soil below.

- 22-15 The comment states that the hazardous materials impact mitigation measures included in the Draft EIR are not sufficient because they do not include specific actions that would be required by the RWQCB.

The proposed project includes measures for remediation of contamination at the site and creation of barriers that would prevent any exposure to contamination remaining in the soils below. The RWQCB has concurred with the draft Supplemental Interim Remedial Action Plan for Phase 1 of the proposed project, and it would review and approve the detailed procedures for implementing these measures, and may impose additional measures in the Final Remedial Action Plan.

For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S. See also response to comment 22-14 above regarding the adequacy of the Health Risk Assessments.

- 22-16 The comment states that hazardous material mitigation measures are not adequate. The comment states that the Draft EIR includes mitigation measures that rely on future plans to be developed and approved by the Regional Water Quality Control Board, and that such dependence cannot be used as mitigation.

For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S. The RWQCB has the responsibility of

ensuring that any proposed remediation meets the requirements that protect human health which according to the Draft EIR would occur prior to any construction activities. According to CEQA Guidelines Section 15097, “In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects.” The Mitigation Monitoring and Reporting Program (MMRP) is included as Chapter 6 in the Final EIR document, and with the project’s conditions of approval, the project would be legally mandated to implement those measures in order to implement the project.

- 22-17 The comment states that hazardous material mitigation measures are not adequate. The comment states that the public and decision makers need to be able to review a Remedial Action Plan prior to determination of project approval or denial.

For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S.

- 22-18 The comment states that the Draft EIR does not include sufficient information regarding hydrology and water quality. The comment also states that the Draft EIR incorrectly characterizes the immediate effect of dioxin exposure on human health.

Dioxins and furans (often referred to collectively as “dioxins”) refer to groups of related compounds that are found in soil, sediment, air, and water all over the world. They are formed as a result of combustion processes, including commercial or municipal waste incineration, the burning of fuels like wood, coal, oil, gasoline, or diesel, and from some manufacturing processes. Dioxins can be formed as a result of natural processes such as forest fires.

There are over 200 different dioxins – all occur naturally in the environment, and only some are considered toxic. Studies have shown that exposure to dioxins at high enough doses may cause adverse health effects. The health effects associated with dioxins depend on a variety of factors including the level of exposure, when someone was exposed, and for how long and how often. There is some concern that exposure to low levels of dioxins over long periods (or high level exposures at sensitive times) might result in reproductive or developmental effects in animals.

Dioxins are associated with the treatment of wood by pentachlorophenol, and there are numerous locations in the Humboldt Bay area in which dioxin contamination has been found in association with former wood treatment facilities. These sorts of facilities are in the vicinity of the project site.

Sampling conducted at the project site has identified dioxins in surface sediment at levels modestly elevated above background levels. There is no evidence that the project site itself is the source of that dioxin. Instead, dioxin is more likely coming from nearby

properties. Dioxin flows into Clark Slough from the municipal stormwater system, which discharges stormwater from this part of Eureka into the upstream end of Clark Slough. There is no evidence that dioxin-containing sediments are moving from the project site to Clark Slough. Dioxins from aerial deposition and offsite sources are likely to collect in the onsite wetlands, which tend to settle out and retain particulate matter. Elevated dioxin levels in the wetlands on the project site could be a concern to birds and other wildlife present in the wetland areas.

Dioxins at the site are a part of the existing environmental setting, and are not a result of the proposed project. The proposed project is expected to reduce or eliminate threats from dioxins on site.

Existing site levels, although elevated, are within the cleanup levels recommended by the California Department of Toxic Substances Control for commercial and industrial settings. Nevertheless, as part of the implementation of the SIRAP, additional testing will be performed for dioxins, and sediments with dioxin concentrations above a cleanup level established by the Regional Board would be excavated and removed offsite. Existing sediments would be covered with clean material, which would act as a barrier and prevent people, birds, and wildlife from coming into contact with contaminated soils. As part of the Final Remedial Action Plan and final project, any additional requirements imposed by the RWQCB would be implemented, and contact would be prevented by the placement of asphalt and buildings. Dioxins are not expected to move offsite through groundwater. Additional testing would be performed to confirm the absence of offsite movement through groundwater.

See also response to comment 23-4.

- 22-19 The comment states that the Draft EIR incorrectly states that the City of Eureka is not currently regulated by an NPDES permit for discharges of stormwater from Municipal Separate Storm Sewer System (MS4 Permit).

The text on page IV.H-14 shall be revised as follows:

...The City of Eureka has ~~not yet~~ been issued a NPDES Discharge of Storm Water from a Small Municipal Separate Storm Sewer System (Small MS4 General Permit) from the SWRCB. The Small MS4 General Permit requires dischargers to develop and implement a Storm Water Management Plan (SWMP) to reduce the discharge of stormwater pollutants to the maximum extent possible. ~~The City has submitted a SWMP to the SWRCB (Knight, 2005). Following SWRCB approval of the SWMP,~~ Stormwater discharge in the City ~~will be~~ is subject to Small MS4 General Permit regulations. The City of Eureka stormwater drainage policies also require new development that would increase storm drainage runoff in a 10-year storm event more than 1 cubic foot per second (cfs) to provide retention/siltation basins to limit new runoff to pre-project flows.

- 22-20 The comment states that the Draft EIR incorrectly characterizes the A Zone, stating that it should be described as recharging primarily through onsite infiltration of groundwater.

As noted on Draft EIR page IV.G-11, the groundwater at the project site is not a source of drinking water. Any reduction of infiltration at the site because of impermeable surfaces would therefore not affect any source of drinking water. A reduction in infiltration at the site may reduce water levels in the A zone, which occurs only in the fill material at the site. Lowering water levels in the A zone would be beneficial, because any contaminant that is not in contact with water cannot be mobilized by water. Although contaminants at the site have not been mobilized by groundwater, and are not expected to be mobilized in the future, lowering water levels provides additional protection.

- 22-21 The comment states that the Draft EIR fails to estimate the increased levels of pollution in runoff that would be generated by the proposed project.

As stated on Draft EIR page IV. H-20, pollutants found in runoff from roofs, parking lots, and roads vary considerably and are dependent on a number of factors. The mitigation measures found in the Draft EIR, H-5a, b and c are designed to implement feasible means of treatment that have been proven as an effective means to control pollutants to the extent possible. See also Master Response 4 for additional discussion of the drainage plan for the proposed project during remediation of contaminants.

- 22-22 The comment states that the Draft EIR fails to analyze the potential impacts to water quality related to sea level rise and tsunamis.

The Draft EIR evaluates the potential for both tsunami and sea-level rise to impact the proposed project (See also responses to comments 3-14 and 3-15, which provide further discussion of tsunami and sea level rise impacts). The proposed project, if approved, would be largely developed and therefore the ability of a tsunami or sea-level rise to affect any residual contamination in the subsurface materials does not appear physically feasible. If the project site were to be inundated by either event, there would be no contact with the contaminated soils or groundwater that currently exists at depth.

- 22-23 The comment states that the Draft EIR did not include correct information regarding the average dry weather flow to be applied for in the next NPDES permit renewal process.

The Draft EIR Utilities and Service Systems section includes information that was accurate at the time of publication. In September 2008, the City of Eureka, as part of the NPDES permit renewal process for the Greater Eureka Area (Elk River) Wastewater Treatment Plant (WWTP), submitted a permitted capacity increase request to the California Regional Water Quality Control Board (RWQCB). The requested average dry weather flow capacity increase was to 6 mgd from the current 5.24 mgd. At the time of the publication of the Draft EIR, on December 1, 2008, that request was still current. As stated on Draft EIR page IV.Q-5, under Impact Q-1, the renewed NPDES permit would include the addition of 0.76 mgd of average dry weather capacity.

After publication of the Draft EIR, however, the City of Eureka elected not to pursue a requested permitted average dry weather flow capacity increase to 6.0 mgd. According to City Engineer Staff-Initiated Changes to the Draft EIR (Chapter 2 of the Final EIR), the 5.24 mgd permitted average dry weather flow capacity will be in effect from 2009 through 2013 and the City currently has adequate capacity under the existing permit to satisfy current and projected demands, including for the proposed project.

Please see responses to comments 9-34, 80-1, 80-6, and 80-9, which further elaborate on the NPDES permit and the capacity allocation agreement with HCSD. As stated there, adequate capacity exists in the WWTP and is allocated to the City of Eureka to serve the proposed project.

22-24 The comment states that the City of Eureka has been using waste water treatment capacity that is allocated to the HCSD. Please see responses to comment 9-34, 80-2, and 80-6, which address this issue and the capacity agreement with HCSD. As stated there, adequate capacity exists and is allocated to the City of Eureka to serve the proposed project.

22-25 The comment states that the cumulative impact analysis in Chapter IV.Q, Utilities and Service Systems, is not based on any analysis and is therefore inadequate.

As stated on Draft EIR page V-3, the cumulative impact analysis in each section is based on a growth scenario that incorporates approved, pending and proposed projects within the vicinity of the proposed Marina Center project, including projects in the General Plan and Redevelopment Plan. These projects are shown in Table V-1 on page V-5. As stated on Draft EIR page V-5, “water demand and wastewater generation, and solid waste generation were based on evaluating the project and the identified foreseeable future projects in the context of the Eureka General Plan, and master plans prepared by service providers.” Please also see responses to comments 9-34 and 80-5, which outline the capacity agreement with HCSD and cumulative projects and concludes that adequate capacity exists within the City’s allocated capacity to serve the proposed project.

22-26 The EIR satisfies CEQA and the comment provides no significant new information, and therefore no further analysis or mitigation is warranted.

Comment Letter 23



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DEPARTMENT OF
COMMUNITY DEVELOPMENT

January 30, 2009

City of Eureka Community Development Department
Ms. Sidnie L. Olson, Principal Planner
531 "K" Street
Eureka, CA 95501-1165

Dear Ms. Olson:

I write on behalf myself and the Mateel Environmental Justice Foundation. The comments herein are in response to the recent circulation of a Draft Environmental Impact Report ("EIR") for the Marina Center Project ("the Project") on the so-called Balloon Track. The Project is to be implemented adjacent to Clark Slough, an arm of Humboldt Bayll surface areas of the Project (as well as all sewage discharge) drain into Humboldt Bay.

Humboldt Bay is one of the premier estuarian resources on the west coast of the United States. It is home to many endangered species, such as the Green Sturgeon, Coho and King Salmon, the Marbled Murrelet. Clark Slough is a Dungeness Crab nursery and provides habitat for numerous species, including Great Blue Heron and River Otters. Humboldt Bay is also the largest mariculture center on the west coast of the United States. As the EIR notes, Humboldt Bay is listed under section 303(d) of the federal Clean Water Act as an impaired water body due to PCB and dioxin contamination. Recent studies have shown that Humboldt Bay oysters can have dioxin levels in them that the federal Environmental Protection Agency ("EPA") considers to be unfit for human consumption. A full description of the biotic resources of the Balloon Track and Clark Slough is included in H.T. Harvey & Associates, Biotic Characterization of Clark Slough and "Balloon Track", January 2008.1 In the opinion of these expert biologists, the Northern Harrier, White-tailed Kite, Short-eared Owls, Loggerhead Shrikes, Willow Flycatchers, and Yellow Warblers - all special status avian species - are likely to utilize the habitat provided by the Balloon Track and Clark Slough.

23-1

1 This document has been submitted in electronic form attached to the letter Michelle Smith has submitted on behalf of Humboldt Baykeeper. The electronic attachments to Ms. Smith's letter are incorporated by reference into this letter.

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The Project Description is Inadequate Such that it Provides No Basis for Analysis of Potential Adverse Environmental Effects from Site Remediation

According to the EIR, the three principle objectives of the Project are: 1.) Strengthen Eureka as the retail and employment center of Humboldt County; 2.) Develop an economically viable mixed use project; and 3.) Facilitate brownfield redevelopment and urban infill development of property in the redevelopment area of the City of Eureka, (EIR at VI-3.) The Project "would include remediation of the brownfield project site to meet federal and state environmental clean up and water quality standards." (EIR at III-2.) In other words, remediation of the site is not simply mitigation of adverse environmental effects from the Project; remediation itself is a key objective of the Project and an integral part of the Project. In spite of site remediation being a critical objective of the Project, and by definition an important part of the Project, the following is the sum total of the EIR's description of this aspect of the project:

23-2

The project would include remdiation of the existing brownfield site to meet federal and state environmental cleanup and water quality standards. This would include preparing a remedial action plan to be approved by the North Coast Regional Water Quality Control Board. The remedial action plan could require the removal of surface vegetation, the removal of contaminated fill materials, and the placement of cleqn soils on the property. (EIR at III-4.)

The EIR's description of the site remediation - an integral, critical component of the Project - is so cursory as to prohibit any meaningful analysis of potential significant adverse environmental impacts of the Project. As such, the EIR fails to set forth specific data, as needed to meaningfully assess whether the proposed activities would result in significant impacts. The evidence that is available demonstrates beyond cavil that soil at the Project site is both extensively and intensively contaminated with a complicated mixture of hazardous chemicals. Soil is contaminated to the extent that groundwater in both the shallower A-Zone and the deeper B-Zone test positive for various toxic hydrocarbons and heavy metals. Moreover, surface run-off from the site is also contaminated with a similar suite of toxic chemicals. Various congeners of highly toxic dioxins and furans (collectively "dioxin") have also been detected in Clark Slough sediment directly beneath the outfall from a ditch that runs across the Balloon Track. The same dioxin has been detected in the soil and sediment of the ditch. Indeed, sampling of the soils at the Balloon Track, Clark Slough Sediments, sampling of fish tissue taken from Clark Slough all test positive for dioxin and furans in every sample tested for these components. Together these data are evidence that dioxin contamination on the site is discharging into Clark Slough, into Humboldt Bay and is being taken into the food chain of greater Humboldt Bay.

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As for toxicity of the dioxin that flows from the Project site into Clark Slough and into the Greater Humboldt Bay food chain, the federal EPA has this to say:

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Some of the effects of dioxin and related compounds, such as enzyme induction, changes in hormone levels, and indicators of altered cellular function, have been observed in laboratory animals and humans at or near levels to which people in the general population are exposed. Other effects are detectable only in highly exposed populations, and there may or may not be a likelihood of response in individuals experiencing lower levels of exposure. Evaluation of effects in this health assessment document is based on the concept that lipid-adjusted serum levels approximate the body burden of dioxin and related compounds and that there will be a dose-response relationship between effects and body burden. . . . It is reasonable to assume that developing organisms may be particularly sensitive to adverse impacts from temporary increases above average background exposure levels. . . .

* * *

In TCDD-exposed [dioxin-exposed] men, subtle changes in biochemistry and physiology, such as enzyme induction, altered levels of circulating reproductive hormones, or reduced glucose tolerance, have been detected in a limited number of available studies. These findings, coupled with knowledge derived from animal experiments, suggest that potential for adverse impacts on human metabolism and developmental and/or reproductive biology and, perhaps, other effects in the range of current human exposures. *Given the assumption that TEQ intake values represent a valid comparison with TCDD exposure, some of these adverse impacts may be occurring at or within one order of magnitude of average background TEQ intake or body-burden levels (equal to 3-6 to 60 pg TEQ/kg body weight/day or 40-60 to 600 ppt in lipid). As body burdens increase within and above this range, the probability and severity as well s the spectrum of human noncancer effects most likely increase.* It is not currently possible to state exactly how or at what levels humans in the population will respond, but the margin of exposure (MOE) between background levels and levels where effects are detectable in humans in terms of TEQs is considerably smaller than previously estimated.

In other words, the already abnormally high dioxin levels in Humboldt Bay that render it impaired for these chemicals are exacerbated by any additional dioxin input.

Given the already admitted extensive and intensive and extremely toxic contamination at the Project site, its proximity to Humboldt Bay and Project plans to turn part of the site into residences and to invite thousands of consumers and office workers to visit the site every day, it is clear that an extensive and intrusive site remediation must be done.

As the EIR notes, the Project is proposed to be built on filled tidal marsh that was the site

of a railroad switching, maintenance, and freight yard. Locomotives, railroad boxcars and passenger cars were repaired and refueled at the site. Historically, contamination associated with rail yards as a result of railcar/engine maintenance includes the following:

- Oil and Grease Removal
- Painting
- Locomotive Maintenance
- Treated Railroad Tie Storage
- Track Maintenance
- Site Maintenance (weed removal)
- Waste Handling, Storage and Disposal

Typically, these activities release the following contaminants:

- diesel range organics
- total petroleum hydrocarbons
- polynuclear aromatic hydrocarbons ("PAHs")
- volatile organic compounds ("VOCs") including spent solvents
- heavy metals – antimony, arsenic, beryllium, cadmium, chromium (hexavalent and total), copper, lead, mercury, nickel, selenium, silver, thallium and zinc
- herbicide residuals, including 2,4-D, 2,4,5-T and their contaminants, which include dioxins and furans.

All of these typical contaminants have been detected at the Balloon Track site. In 2002, approximately 700 cubic yards (70 dump truck loads) of hazardous waste (lead and copper-contaminated soil) were removed from one part of the site. Substantial residual contamination remains at the site. Of 241 investigative soil samples taken at the site, there were 124 exceedances of USEPA Region 9 Preliminary Soil Remediation Goals ("PRGs") for arsenic and 19 exceedances for lead. The Project plans to build residences on the site. Since the most protective PRGs are for residential use, all of these constitute exceedances of residential PRGs.

According to Dr. Benjamin Ross, groundwater at the Project's site is also heavily contaminated with these chemicals, indicating that the soil is contaminated to some depth. Monitoring Well 2A ("MW-2A") is located along the western portion of the site and is hydraulically downgradient of a number of the samples exceeding impact to groundwater criteria. Concentrations of arsenic in 8 of 14 shallow groundwater samples collected from MW-2A exceeded the groundwater Water Quality Objective ("WQO") of 0.1 micrograms per liter ("0.1 µg/L").² This shows a potential completed pathway for arsenic soils to impact groundwater and

² Draft Final Remedial Action Plan UPRR Eureka Rail Yard and Adjacent Lease Properties Eureka, California, MFG, Inc., July 1, 2005.

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23-5
cont.

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migrate to Humboldt Bay. In addition, and once again according to Dr. Ross, groundwater from the northern portion of the northeastern portion of the site, which contains numerous samples with arsenic concentrations above the impact to groundwater criteria, flows to Humboldt Bay.³ As to lead, of the 241 investigation soil samples analyzed, 28 exceeded the residential PRG of 150 mg/kg. Soil samples collected at the site also show residential PRG exceedences for antimony, copper, iron, tetrachloroethalene ("PCE"), and PAHs.

Enough is known about the toxic profile of the site to make it clear that large amounts of soil will have to be removed from the site and trucked away. Yet, in spite of the many samples that have already been taken and analyzed, the site is in no way characterized in a way that would be sufficient to determine what kind of remediation would be sufficient. For example, the pipe at the property line of the site and the Del-Reka Distributing Corporation receives discharge from the southeastern ditch and discharges off-site. This discharge was never addressed in the currently existing Cleanup and Abatement Order ("CAO") nor has it ever been sampled by the Project proponents. Thus the water from this discharge location has never been characterized. Site groundwater enters the southeastern ditch from the Site and mingles with stormwater and surface water from the Site before discharging from the Site vi the pipe at Del-Reka Distributing Corporation. There are no monitoring wells that intercept this groundwater flow. Thus, there exists a data gap that prevents determination of pollutant concentrations in the groundwater entering the ditch directly and through discharge from the wetland. The EIR itself, at page IV G-6 admits that, "Recent sediment samples have identified dioxins, furans and PCBs in onsite ditches and in Clark Slough. The sources of these substances have not been identified."

Given that there is massive and highly toxic contamination at the site, that highly toxic chemicals are leaving the site, and the obvious need for an extensive clean-up, the EIR provides next to no information about this aspect of the project. The EIR states that the Project proponent plans to conduct a RWQCB-approved Site remediation. (EIR at IV.G-19.) Once approved, the soil and groundwater management aspects of the remediation component of the Project will finally be described. (*Ibid.*) This description will finally include information about those aspects of the Project that will keep toxic chemicals on-site after completion of the Project. (*Ibid.*) This puts the cart precisely before the horse. What the Project proponent seeks is to gain approval of the Project and then, after approval, finally describe what will be one of the principal components of the project and, at that (too) late date, finally conduct whatever analysis the Project proponent does. This remediation component of the project – and whatever mitigations are associated with it – may or may not mitigate adverse environmental impacts from the Project, but there is no way to make that determination now, at the pre-approval stage of the project. Any analysis of the site remediation component of the Project will thus be no more than a post-hoc rationalization. And by refusing to provide any meaningful description of this critical, environmental effect-laden

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portion of the Project, both agency decision makers and the interested public are deprived of any meaningful ability to review and comment on this the Project. CEQA does not permit an EIR to leave decision makers and the interested public to search outside the EIR for facts and analysis about the Project as if they were pigs rooting for truffles.

There is thus no information available to decision makers about whether soil will be removed from the site, how much soil will be removed from the site, how toxically contaminated that soil will be and thus where it will have to be taken. Decision makers and the public have no information about how many dump truck loads of soil will be carted from the site, where they will go. There is no information whatsoever in the EIR about the environmental effects of trucking soil, what the effect will be on air quality, how likely fugitive spills of contaminated soil will occur, what the effect will be on traffic. The public is given no information in the EIR about whether the site remediation aspect of the Project might include on-site incineration or on-site thermal desorption of hazardous waste. Decision makers and the public are thus deprived of any chance to understand what effects there may be on air quality from excavation of soil and/or incineration and/or thermal desorption of the toxins. The EIR provides no useful information whatsoever that would be of use in analyzing these potential activities for potential adverse environmental effects. The EIR provides no meaningful description of what toxic chemicals will be left at the site after completion of the (completely undescribed) remediation portion of the Project.

The EIR provides no information as to what concentrations there will be of these left-behind chemicals or where or at what depths or proximity to ground water they will be left. Decision makers and the public are thus given no meaningful analysis of potential environmental effects could result from this aspect of the Project. The EIR states that the project will create a "wetland reserve" of 11.89 acres, which will include restoration of the wetland enclosing Clark Slough. (EIR at III-14.) As discussed above, sediment in Clark Slough is already contaminated with dioxin and all available evidence points to the Project site itself as a source of at least some of this dioxin. There will be pedestrian paths along portions of the wetland reserve area. (*Ibid.*) Residences will be constructed nearby. These wetlands will be used as habitat by many of the aquatic and avian species discussed above. Failure to disclose the extent of the site remediation component of the project thus makes it impossible to analyze how the toxic chemicals left behind will affect the public and the wildlife that will be hiking near or using the wetland parts of the Project.

The EIR provides no information as to how long the remediation aspect of the Project will take. There is a currently a CAO pertaining to the Project site that has been in effect since 2001. The responsible parties have still not complied with that CAO. As part of my legal practice, I have reviewed the files of many site remediations conducted using the RWQCB as the lead agency. These remediations typically take years if not decades. For example, at the old Simpson Plywood Mill site at the corner of Waterfront Drive and Del Norte Street (the old Flea

23-11 (cont.)

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³ Benjamin Ross, PhD, Ground-Water Movement at the Balloon Tack Site, Eureka, California, January 28, 2008.

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Mart), the Regional Board began investigating that site in 1991. In July of 1995 RWQCB staff were already discussing with the land owner and Simpson potential methods to remediate soil and groundwater contamination at that site. As of the writing of this letter, more than thirteen years later – and after thousands of cubic yards of soil have been dug up and trucked away from the site and after acres of asphalt has been laid to “cap” contamination, thousands of cubic yards of highly contaminated soil still remain uncleaned up at the site. As of the writing of this letter, the RWQCB still has no idea when it will give a final sign-off on clean up at the old Simpson Plywood Mill site. My point is simply that these clean ups can take decades – as the one at the Balloon Track site seems to have already taken -- and the Balloon Track EIR gives no meaningful information about how long the remediation will take and thus how long dioxin will continue to spill off the site into Clark Slough during the duration of the remediation, how long groundwater contaminated with arsenic, lead, antimony, copper, petroleum hydrocarbons and trichloroethylene will continue to make its way into Clark Slough and into Humboldt Bay. Decision makers and the public thus has no way to analyze potential environmental effects of this critical component of the Project.

At a very minimum, the Project proponent should have to provide an adequate project description. This would require that the Project proponent have a RWQCB-approved work plan for final remediation of the site and this RWQCB-approved work plan should be incorporated into the EIR as at least part of the description of the site remediation aspect of the Project.

The EIR Fails to Analyze for Potentially Significant Adverse Environmental Effects and Fails to Describe Feasible Mitigations for those Potential Significant Adverse Environmental Effects.

For the reasons discussed above, the almost completely missing description of the site remediation aspect of the Project means that there is virtually no meaningful analysis of any potentially significant adverse environmental effects of the site remediation portion of the Project. The EIR’s cursory attempt to discuss potential mitigations suffers from many of the same shortcomings. As mitigation for potential exposures of humans and wildlife to the complex toxic cocktail at the site during the remediation aspect of the Project, the EIR simply notes that it will engage in a RWQCB-approved site remediation, and will do the following to mitigate:

Mitigation Measure G-1a: The project applicant will prepare a site-specific remediation plan and health and safety plan that meets the requirements of the Regional Water Quality Control Board (RWQCB) or other overseeing agency and shall comply with all federal and state regulations including Occupational Safety and Health Administration (OSHA) requirements for worker safety. Applicable regulations and methods of compliance shall depend upon the level of contamination discovered.

In other words, the EIR says that the Project proponent will comply with all applicable laws and that, therefore, all potentially significant adverse environmental effects (whatever those un-described and unanalyzed potential effects are) will be mitigated to insignificant levels. This is a fatuous statement. By the EIR’s logic, since there are laws and regulations in place everywhere, there can be no potentially significant adverse environmental effects anywhere from anything. If this approach were taken seriously, there would be no need for any EIR for any project, since any project proponent could simply say that a Mitigated Negative Declaration is appropriate since all applicable laws will be followed and, thus, there can be no potentially significant adverse environmental effects from any project. The falseness of the EIR’s obtuse approach is evidenced by the EIR itself which, though it notes that it will comply with all applicable laws and regulations, still concedes that there will be unmitigated, significant adverse effects to air quality.

There is nothing in the Water Code, nor in any State or Regional Water Board regulation that mandates that a RWQCB-approved clean up neither cause nor result in significant adverse environmental effects. Some RWQCB-approved clean ups have required that tens of thousands of cubic yards of highly contaminated soil be dug up and trucked to places as far away as Idaho. The simple act of excavating and hauling that much material would have potentially significant adverse environmental effects to traffic and air quality. The EIR’s reliance on the Project proponent’s willingness to “follow the law” and the requirements of unnamed “oversight agencies”, though laudable, when proposed as a catch-all mitigation for potential adverse effects of remediation, is risible.

Adverse Effects of Stormwater Runoff from the Project are not Adequately Mitigated

The EIR projects that there will be an additional 15,666 weekday trips on area roads caused by the project. (EIR at IV.O-21.) This increase in traffic near the Project site will result in unmitigated adverse impacts to local air quality. (EIR at IV.C-12.) These increased vehicle trips will cause a corresponding parallel and linearly-related increase in adverse impacts to water resources from toxic emissions from these vehicles. Vehicles emit, among other parameters, used motor oil, coolant, tire-dust and gasoline. Monitoring at the site shows that dissolved copper, lead and zinc at levels exceeding water quality objectives.⁴ In addition, the EIR states that the Project will use asphalt to pave a parking lot large enough for more than 1,800 vehicles. Attached is a US Geological Survey Report on polycyclic aromatic hydrocarbon run-off caused by asphalt. To mitigate for the already existing toxic run-off and any increase in toxic run-off, the EIR proposes to, “treat stormwater 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 proponent shall prepare and implement a permanent maintenance program for stormwater

⁴ Expert Report of Bruce A. Bell, PhD., In the Matter of Humboldt Baykeeper and Ecological Rights Foundation v. Union Pacific Railroad Company, et al., January 27, 2008.

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(cont.)

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23-15
(cont.)

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treatment facilities at the site.” (EIR at IV.H-20.) First, the EIR admits that the Project will cause significant increases in the concentration of vehicles on city streets in the vicinity of the project. This will cause a corresponding increase in the amount of motor oil, tire particles, coolant and gasoline that are deposited on the streets in the vicinity of the Project site and, thus, an increase in the concentration of those toxic constituents in the stormwater runoff that enters drop inlets to the city storm drain system in the area near, but not on, the Project site. The stormwater mitigation in the EIR – to treat water that enters drop inlets on site in no way mitigates the increased concentration in these pollutants in the storm drain system via storm sewer inlets on the streets near but outside the Project site. There isn’t even any analysis of this issue in the EIR. Second, the EIR does not specify how stormwater will be treated at the drop inlets on-site. This is problematic, since typical drop inlet stormwater treatment consists of oil-water separators and, perhaps, sand filters. This treatment system may, perhaps, be adequate to remove separate phase hydrocarbons and particulates, but this type of treatment is completely ineffective at removing dissolved phase metals, hydrocarbons and miscible pollutants such as coolant. A filtration system that utilizes carbon filters could, possibly, remove dissolved phase pollutants, but that method is not specified in the EIR. The EIR therefore does not provide adequate information to determine whether the on-site stormwater treatment will adequately mitigate for dissolved phase pollutants.

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23-16
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Thank you for considering these comments.

Cordially,

William Verick

Attachment

5-333

Letter 23: Klamath Environmental Law Center & Mateel Environmental Justice Foundation (William Verick)

- 23-1 The comment states that Humboldt Bay is a premier estuarine resource, and that Clark Slough is a dungeness crab nursery and habitat for numerous species, including Great blue heron and river otters. The comment also states that recent studies have found that Humboldt Bay oysters can have dioxin levels considered unfit for human consumption. Finally, the comment claims that several species of special status avian species are likely to utilize the habitat on the project site.

Please see responses to comment letters 22-6 and 26-3 for further discussion of dungeness crabs and special-status avian species. As the Draft EIR acknowledges, migrating special-status adult and juvenile chinook salmon (*Oncorhynchus tshawytscha*) and coho salmon (*Oncorhynchus kisutch*) are likely to be present in Humboldt Bay between December 1 and June 30 each year, and could be adversely affected by construction activities on the project site during this period. The Draft EIR thus proposes a series of mitigation measures to avoid or minimize potential impacts on these species, including for example Mitigation Measures H-3a, K-2a, and D-1a (Draft EIR, page IV.D-19).

Green sturgeon occur in nearshore marine waters and the lower reaches of large rivers, and are known to spawn only in the Rogue, Klamath, and Sacramento Rivers. Due to the presence of the tidegates and the marginal habitat conditions in the Clark Slough remnant represented by the channel configuration, rip-rapped banks, and other features, the green sturgeon would not occur at this location, and the proposed project is likely to have no effect on this species.

The marbled murrelet (*Brachyramphus marmoratus*) is a federally-listed seabird species that typically flies inland to nest on the mossy limbs of old-growth trees, and can forage in off-shore waters. The species is not expected to utilize the project site for nesting or foraging.

Dungeness crabs (*Cancer magister*) have been observed in the Clark Slough remnant. eelgrass (*Zostera marina*) can provide nursery habitat for dungeness crab. The lack of significant eelgrass beds or other similar aquatic vegetation limits the usefulness of the Clark Slough remnant for this species. Also, this species is common and abundant in the region, and thus the proposed project is not expected to have any significant adverse effect on dungeness crab. In any event, the Clark Slough remnant would be enhanced with the proposed wetland reserve.

Great blue heron (*Ardea herodias*) have been observed at the project site and flying overhead, and are most likely associated with the rookery located on nearby Indian Island about a half mile away. (Draft EIR, at IV.D-4.) While it is possible that herons could on occasion use the Clark Slough remnant as a foraging area and would be expected to occur in the project vicinity, the project site does not provide habitat suitable to support this

species. (Draft EIR, at IV.D-6.) For example, there are no appropriate nesting sites on the project site, and the narrow and rocky shoreline in this area provides limited feeding opportunities for this species. (Draft EIR, at IV.D-1, D-7.) Also, the great blue heron is common to and abundant in the region. (Draft EIR, at IV.D-3.) While the heavily disturbed project site may provide some limited foraging habitat for herons nesting at Indian Island, development of the project would increase the quality and quantity of appropriate wetland foraging habitat available to this species. Thus, the project would not result in significant adverse impacts on this species. (Draft EIR, at IV.D-19.)

River otters have never been observed onsite, and are not expected to occur in the Clark Slough remnant due to a lack of suitable habitat, the paucity of target prey species, and the existing tide gate which prohibits ingress and egress of this species.

As for dioxin levels in Humboldt Bay oysters, the comment does not list which studies have found that oysters can have dioxin levels at unsafe levels, or where those oysters may come from. While dioxin has been detected in samplings of Humboldt Bay oysters, the extent of the occurrences of dioxin is uncertain and Humboldt Bay oysters continue to be harvested commercially from Humboldt Bay for human consumption. The remediation proposed as part of the SIRAP and FRAP would reduce possible exposure to dioxins from the project site. Further, the project would not increase dioxin levels in Humboldt Bay; and therefore, would not result in adverse impacts to Humboldt Bay oysters, or the oyster industry that is dependent on the oyster cultivation.

As for other avian species identified in the comment as having some potential to occur onsite, a number of those species are addressed in response to comment 26-3, including the yellow warbler. There is a remote chance that some species may occur on rare occasions to forage or as transients, but none of those species are expected to nest or forage regularly onsite due to the lack of suitable habitat. (Draft EIR, Appendix G, Biological Assessment, Attachment 2 Table 4.) The loggerhead shrike (*Lanius ludovicianus*), for example, prefers desert, grasslands and savannah, and will nest in thickly foliated trees or tall shrubs. The project site does not contain thickly foliated trees or tall shrubs that would be considered suitable for nesting by this species. While transient loggerhead shrikes may utilize the project site during winter, the species is unlikely to nest or regularly forage onsite due to a lack of suitable habitat. (Draft EIR, Appendix G, Biological Assessment, Attachment 2 Table 4.)

Likewise, the northern harrier (*Circus cyaneus*) and short-eared owl (*Asio flammeus*), state species of special concern, would not nest onsite due to the lack of appropriate nesting habitat and general disturbance resulting from the urban setting of the project area. (Draft EIR, Appendix G, Biological Assessment, Attachment 2 Table 4.) While winter foraging is possible for the white-tailed kite (*Elanus caeruleus*, a California Fully Protected species), this species would not be expected to nest at the project site due to the lack of appropriate nesting trees and nesting habitat. (Draft EIR, Appendix G, Biological Assessment, Attachment 2 Table 4.) Consequently, the proposed project is not expected to have any significant adverse effects on these species or their habitats.

- 23-2 The comment states that the Draft EIR Project Description is not adequate and provides no basis of analysis of potential adverse environmental effects from site remediation. The comment quotes a summary paragraph in the Project Description and states that this paragraph composes the entirety of the EIR's description of the site remediation. The comment concludes that the discussion of site remediation is so cursory as to prohibit a meaningful analysis of the potential impacts of the proposed project.

First, it should be noted that the contamination at the project site is an existing condition and part of the environmental baseline. The proposed project did not create the existing condition, and is only proposing to improve the site from its current condition.

Second, the summary paragraph in the Project Description does not constitute the total discussion of remediation of contamination at the project site. This discussion is included in Chapter IV.G of the Draft EIR, as well as in the impact and mitigation discussions in that and other chapters (e.g., Impact and Mitigation Measure H-3).

Third, sufficient information has been provided to understand the proposed remediation and evaluate its effects. The proposed project includes measures for remediation of contamination at the site, including excavation of some contaminated soils, and creation of barriers that would prevent any exposure to contamination remaining in the soils below.

For further discussion regarding the remediation plans for the proposed project, please see Master Response 4 and the Supplemental Interim Remedial Action Plan (SIRAP) in Appendix S. A Final Remedial Action Plan (FRAP) will be submitted and must be approved by the RWQCB before development of the Marina Center project as required in Cleanup and Abatement Order (CAO) No. R1-2001-26. The preparation of this FRAP, however, is dependent on the final development plan, and the final development plan is dependent on any changes or conditions that may be imposed by the City Council at project approval. Because the FRAP must address the most current site conditions and project designs, it is impractical at this time to provide further details concerning the FRAP. Nonetheless, the purpose of remediation – to clean up the project site to levels appropriate for the proposed uses – as well as the measures required in this EIR, provide more than sufficient detail to allow a meaningful assessment of the proposed project's environmental effects.

- 23-3 The comment states that the Draft EIR fails to set forth specific data needed to meaningfully assess whether the proposed project would result in significant impacts. The comment also states that the evidence available demonstrates that the project site is extensively and intensively contaminated with a complicated mixture of hazardous chemicals.

All existing site-specific data is discussed in Draft EIR Chapter IV.G, as well as within Master Response 4 and the Supplemental Interim Remedial Action Plan (SIRAP) in Appendix S.

Although there is contamination throughout most of the project site, existing site data and the results of the two Health Risk Assessments (HRAs) prepared for the site show that the contamination is not “intensive.” The California Environmental Protection Agency agreed with the results of the HRA, which concluded that the potential risk for site users was within or below the range of acceptable risks. As a result, the RWQCB concluded that additional remediation was not required for existing site conditions, although additional evaluation would be needed when the site is developed.

- 23-4 The comment states that dioxins have been found at the project site and within the Humboldt Bay and states that the presence of dioxin in these areas is evidence that contamination is entering Clark Slough, the Bay, and the food chain.

Dioxins and furans (often referred to collectively as “dioxins”) refer to groups of related compounds that are found in soil, sediment, air, and water all over the world. They are formed as a result of combustion processes, including commercial or municipal waste incineration, the burning of fuels like wood, coal, oil, gasoline, or diesel, and from some manufacturing processes. Dioxins can be formed as a result of natural processes such as forest fires. There are over 200 different dioxins, all of which occur naturally in the environment. Studies have shown that exposure to dioxins at high enough doses may cause a number of adverse health effects.

Dioxins are associated with the treatment of wood by pentachlorophenol, and there are numerous locations in the Humboldt Bay area in which dioxin contamination has been found in association with former wood treatment facilities. Some of these locations are within the vicinity of the project site.

Sampling conducted at the project site has identified dioxins in surface sediment at levels modestly elevated above background levels. There is no evidence that the project site itself is the source of that dioxin. Instead, dioxin is more likely coming from nearby properties. Dioxin flows into Clark Slough from the municipal stormwater system, which discharges stormwater from this part of Eureka into the upstream end of Clark Slough. There is no evidence that dioxin-containing sediments are moving from the project site to Clark Slough. Dioxins from aerial deposition and offsite sources are likely to collect in the onsite wetlands, which tend to settle out and retain particulate matter. Elevated dioxin levels in the wetlands on the project site could be a concern to birds and other wildlife present in the wetland areas. Dioxins at the project site, however, are a part of the existing environmental setting, and are not a result of the proposed project. The proposed project is expected to reduce or eliminate any threat from the dioxins existing onsite.

Existing project site dioxin levels, although modestly elevated, are within the cleanup levels recommended by the California Department of Toxic Substances Control (DTSC) for commercial and industrial settings. Nevertheless, as part of the implementation of the SIRAP, additional testing would be performed for dioxins, and sediments with dioxin concentrations above a cleanup level established by the RWQCB would be excavated and removed offsite. Existing sediments would be covered with clean material, which would

act as a barrier and prevent people, birds, and wildlife from coming into contact with contaminated soils. As part of the final remediation and closure for the proposed project, any additional requirements imposed by the RWQCB would be implemented, and contact would be prevented by the placement of asphalt and buildings. Dioxins are not expected to move offsite through groundwater because they are insoluble.

- 23-5 The comment summarizes the findings of the U.S. Environmental Protection Agency (US EPA) regarding the toxicity of dioxin and related compounds on laboratory animals and humans. The comment further states that Humboldt Bay contains abnormally high levels of dioxins, and that additional dioxin input would exacerbate such levels.

The existing dioxin levels in Humboldt Bay originate from a number of sources, and are part of the existing environmental setting. The comment provides no evidence of dioxin leaving the site, as opposed to coming onto the site and settling in the wetlands, which tend to accumulate dioxin, and the site is not considered a source of dioxin contamination in Humboldt Bay. In any event, the proposed project would only improve or eliminate exposure pathways on this site as part of the proposed site remediation.

For further discussion of the existing contamination at the project site, please see Master Response 4 and the Supplemental Interim Remedial Action Plan in Appendix S.

- 23-6 The comment states that the Draft EIR admits “extensive and intensive and extremely toxic contamination” which makes it clear that extensive and intrusive site remediation must be done.

As stated in response to comment 23-3, contamination of the project site is not considered intensive. In addition, an extensive and intrusive remediation is not the only option available to remediate the project site, though excavation is proposed to occur within discrete areas of the site where higher concentrations have been detected. There are a variety of remediation methods, however, that can be effective at achieving cleanup and regulatory closure of the project site. The clean cover material and grading of the project site in the SIRAP, and the building, parking lot, and other urban foundations proposed for the Marina Center development, would all create a set of barriers so as to eliminate exposure pathways to humans and the environment.

For further discussion of the existing contamination at the project site, please see Master Response 4 and the Supplemental Interim Remedial Action Plan in Appendix S.

- 23-7 The comment states that typical contaminants associated with railroad use have been detected at the project site and that substantial residual contamination remains at the site. The comment further states that, because the project site would contain residential uses, the most protective US EPA Region 9 Preliminary Soil Remediation Goals (PRGs) should apply to the project site.

Please see responses to comments 23-4 and 23-6. Residual contamination exists at the project site as outlined in the Draft EIR and Master Response 4. These residual

contaminants must be addressed in accordance with the RWQCB's Cleanup and Abatement Order for the project site to receive regulatory closure, and would be required to meet the cleanup standards (both federal and state) necessary to accommodate the proposed land uses, including the proposed residential land uses.

Further, EPA's PRGs are screening levels, not cleanup standards, and do not apply to the site. Residential PRGs apply to situations in which residents have unrestricted exposure to site soils, which is not the case here. Some of the PRGs, including the PRG for arsenic, are routinely exceeded by natural background conditions. EPA recognizes these issues, which are inherent in any system of screening levels. When screening levels are exceeded, additional evaluation is necessary to determine whether a more appropriate number should be used. Final cleanup standards, which are based on considerations more appropriate for an individual site, can be very different from PRGs and other sets of screening levels. Cleanup standards take into account expected exposures to site soils. Here the barriers are expected to prevent any exposures, and cleanup to levels in the PRG range should not be required.

- 23-8 The comment refers to a statement of a consultant to the effect that groundwater at the site is heavily contaminated.

The groundwater is not heavily contaminated. Although groundwater has been contaminated by petroleum hydrocarbons, this contamination is found only in limited areas and has not been migrating offsite. Low levels of metals have been found in groundwater. Metals are naturally occurring, and are allowed in drinking water below prescribed levels. At the site, monitoring for all metals other than arsenic has been discontinued because ongoing monitoring has consistently failed to detect such metals or found them at very low concentrations. For example, arsenic levels at the site are present at concentrations typically found in groundwater and are within the range allowed by drinking water standards.

The comment asserts that arsenic concentrations are above a groundwater objective. Like the arsenic PRB, this objective is lower than natural background levels. It is lower than natural arsenic concentrations in the ocean, and natural arsenic concentrations in many sources of groundwater. The drinking water standard is 100 times higher. Because natural background conditions throughout the Humboldt Bay area are likely to be substantially higher than this objective, the objective is not likely to be applied to the site.

The comment also suggests that there is a potential completed pathway for arsenic to leave the site through groundwater. However, metals in groundwater tend to stick to soil, and there is no evidence that any groundwater leaving the property contains arsenic. The comment refers to a consultant who concluded that groundwater flows into Humboldt Bay, but this consultant did not conclude that the groundwater contains arsenic or any metals. The amount of groundwater leaving the site is very small, and even if it contained arsenic the amounts of arsenic reaching Humboldt Bay would be trivial. Because arsenic is a natural component of soil, Humboldt Bay naturally contains large amounts of arsenic, and more arsenic naturally flows into the bay whenever it rains. The project would not have any significant effect on arsenic in Humboldt Bay.

- 23-9 The comment states that contaminated groundwater from “the northern portion of the northeastern portion” of the project site flows into the Bay. The comment further states that soil samples collected at the project site exceed residential PRGs for lead, antimony, copper, zinc, tetrachloroethylene, and PAHs.

Contrary to the comment, there is no evidence demonstrating or establishing a clear connection between the “A” Zone groundwater aquifer and Humboldt Bay. If there was a connection, the distance between the groundwater and Humboldt Bay is sufficient (over 200 feet away) to protect Humboldt Bay because, as contaminants move through the subsurface, they attenuate naturally. Please also see response to comment 23-6 and Master Response 4 concerning the current site contaminant and remediation levels. These and other soil-related issues identified by the RWQCB would be addressed as part of the remediation and prior to construction of the Marina Center development. Please also see response to comment 23-7.

- 23-10 The comment states that the toxic profile of the project site makes it clear that large amounts of soil would have to be removed from the project site and trucked away. The comment also states that several aspects of the project site (e.g., the discharge of waters from the pipe on the property line), have not been characterized and therefore there is a data gap concerning pollutant concentrations in groundwater. The comment also notes that the EIR says the sources of dioxins “have not been identified.”

As stated in response to comment 23-6, extensive soil excavation is not warranted by existing site conditions. Although some excavation would occur in several discrete areas of the project site, other effective site remediation options are available and would be employed in order to clean up the project site to the applicable levels.

The comment also states that the site contamination is not sufficiently characterized to be able to determine what kind of remediation would be sufficient. On the contrary, the site has been characterized well enough to obtain RWQCB concurrence of the SIRAP, and to evaluate any potential adverse physical changes to the environment associated with the proposed Marina Center. The comment refers to one location, identified as a pipe at the Del-Reka Distributing Corporation, and asserts that the site has not been characterized. This is incorrect. A sample has been taken from the ditch in that area and analyzed for dioxins. The levels were low. Surface water samples are not needed from that area because the water there is located at a distance from the areas of railroad maintenance, and because the water reaching that area has passed through wetlands that would settle out contaminants such as dioxin, as confirmed by the soil sample from that location. In any event, the pipe in question would be removed as part of the interim remedial measures, and therefore any stormwater discharges associated with that pipe would be eliminated.

The comment also asserts that no groundwater monitoring wells have been installed at this location, and therefore there is a data gap. No groundwater monitoring well is needed in that area because it is far from the areas of historical railroad activity, and because groundwater quality in that area is adequately represented by a nearby well that has tested

clean. No information or other data has been produced suggesting that there would be any groundwater contamination at the proposed sampling point. Wells have been installed and adequate monitoring has been conducted at all areas where groundwater contamination was most likely to have occurred – for example, in areas associated with the historic railroad or other site-related activities that involved petroleum or other contaminants.

Please also see Master Response 4 and the Supplemental Interim Remedial Action Plan in Appendix S.

- 23-11 The comment states that “there is massive and highly toxic contamination at the site,” that such chemicals would leave the project site, and that there is an obvious need for extensive cleanup. The comment states that the Draft EIR does not provide sufficient information regarding the cleanup. The comment states that the EIR must include full details regarding the Remedial Action Plan prior to project approval in order to ensure that potential adverse environmental effects are adequately mitigated.

Please see Master Response 4 concerning details of the remediation plans and the current levels of contamination at the project site. The comment confuses and fails to distinguish the baseline conditions of the project site and the ultimate effects of the proposed project. The comment also exaggerates the current contamination levels at the project site. As the Draft EIR acknowledges and details, contaminants remain in the soils onsite. The project proposes to remediate those soils and eliminate exposure pathways and clean up the site to levels appropriate for the proposed land uses. Thus, the project would improve the current site conditions. Any effects of the first phase of the proposed project – Phase 1 – have already been addressed through the Draft EIR’s effects analysis and proposed mitigation measures (see, e.g., Mitigation Measures H-3, D-3, G-1, and O-1a, addressing remediation and construction-related impacts on stormwater, wetlands, worker health, and traffic). The Draft EIR provides more than sufficient information to meaningfully evaluate the effects of the proposed project. Nonetheless, the Final EIR adds information concerning Phase 1 of the proposed project (see Appendix S).

Further, the final remedial measures necessary to satisfy the RWQCB’s Cleanup and Abatement Order and to assure proper regulatory closer are dependent on further site design details that have not yet been developed. Until the proposed project is approved and those design details can be identified (e.g., what sort of foundation may be required for a particular building), it is impractical to add any further remediation details. For example, if building plans are developed and trenching must occur to a particular depth in order to accommodate a proposed building foundation, further remedial measures would likely involve confirmation sampling and, if sampling shows that elevated contaminant levels persist, further soil excavation, removal, or cover would be provided, all in accordance with existing mitigation in the EIR (e.g., Mitigation Measures G-1 and G-2). These sorts of measure are standard measures, and are generally known to be effective at addressing the risks associated with potentially contaminated properties. It is impractical to develop those sorts of design-level measures at this time when building plans have not

yet been developed and such measures may ultimately prove unnecessary depending on the final site and building plans. In any event, since the proposed project must clean up the project site to standards necessary to accommodate the proposed land uses – which itself is an element and objective of the proposed project – the public and agencies can rest assured that such cleanup would occur.

- 23-12 The comment states that the Draft EIR does not include a description of how much soil would be removed from the project site, where it would be hauled, and how many trucks would haul it. The comment states that there is no information on the environmental effects of trucking the soil (like air quality and traffic) or whether fugitive spills of soil would occur, whether soil disposal would include onsite incineration or thermal desorption of hazardous waste, or how much contamination would remain at the project site. Finally, the comment expresses concern about the level of remediation that would occur along with creation of the 11.89-acre wetland reserve.

Please see Master Response 4 concerning additional information on the SIRAP. Regarding soil excavation, excavating the whole project site is not feasible or necessary, and thus large-scale excavation is not proposed by the project. Discrete excavation would be sufficient, and any excavated material would be handled and disposed of in accordance with all applicable laws and regulations. The potential transportation and air quality impacts associated with any such excavation effort are already incorporated into the Draft EIR's traffic and air quality analyses associated with construction activities, and can be mitigated to a less-than-significant level (Draft EIR, Chapters IV.C, IV.G, and IV.O). The handling and disposal of contaminated soils is specifically addressed under Mitigation Measure G-1.

Onsite incineration or thermal desorption are not being considered as part of the project, and are not expected to be needed given the relatively low-levels of contaminants, types of contaminants, and limited amounts of soil that would be removed. Therefore, the air quality effects associated with those efforts are not discussed in the Draft EIR.

Finally, the existing levels of site contamination are adequately described in the Draft EIR. Analysis conducted to date and as part of the SIRAP (please see Appendix S) provides additional information on existing contaminant levels and the levels proposed to be left in place. Ongoing groundwater monitoring has demonstrated that groundwater contamination is minimal. Again, as part of the Cleanup and Abatement Order issued by and under the supervision of the RWQCB, soil contamination must be addressed in order for the project site to receive regulatory closure and to meet the standards and criteria necessary to accommodate the proposed land uses. Contaminated soils in the wetland reserve will be excavated and removed as part of the SIRAP, and the areas along Clark Slough will be excavated down to the natural uncontaminated former mudflats. Clean soils will be used for pedestrian pathways.

- 23-13 The comment states that the Draft EIR does not include information regarding the expected duration of site remediation.

The elapsed time for the remediation to be complete is partially dependent on agency decision making, and how quickly the approving agencies can issue the project's necessary permits. Until those approvals are issued, however, the existing contaminants would remain in situ. The Draft EIR estimates that, once all approvals are issued, Phase 1 of the project would span approximately 12 months (Draft EIR, at III-15). Final remedial action would depend on the time necessary to obtain all necessary entitlements and permits, and would occur concurrently with subsequent phases of the proposed project. This site does not appear to have the complexity or level of contamination at the Simpson Plywood Mill site, and therefore that site does not appear to be a useful analog for gauging how long remediation can take in this instance.

Please also see Master Response 4 and the SIRAP in Appendix S, which describe the proposed interim remediation efforts to be undertaken as part of the proposed project.

- 23-14 The comment states that the lack of information regarding the remediation timeline makes it difficult to assess how long contaminants, including dioxin, petroleum hydrocarbons, arsenic, lead, copper, antimony, and trichloroethylene (TCE) would be left to continue to enter Clark Slough and the Bay.

The contamination on the project site is an existing condition and part of the environmental baseline. Remediation efforts would reduce total contaminants at the project site and would not cause contaminants to spill into Humboldt Bay. Nonetheless, dioxin has been shown to be an insoluble compound (i.e., it absorbs onto soil and does not dissolve). Therefore, it is not expected to be released and transported into nearby water sources. Petroleum hydrocarbons have not been detected in surface water since 2005. The SIRAP addresses the contaminants at the project site. There is no evidence that impacted groundwater is reaching offsite receptors. Finally, there is no evidence to suggest that TCE is an issue at this project site.

- 23-15 The comment reiterates previous comments stating that an adequate project description and a RWQCB-approved work plan for final remediation of the project site should be incorporated into the EIR. The comment reiterates earlier comments that the Draft EIR fails to analyze potentially significant adverse environmental effects of the remediation activities, and that the proposed project cannot rely on compliance with existing laws to ensure that the proposed project has mitigated its impacts.

Please see responses to comments 23-2, -11, and -12 regarding the preparation of the final remedial actions and site closure, which are dependent on the final site plan as informed by potential changes and conditions that may be imposed by the City Council at project approval.

The comment further states that the Draft EIR "logic" implies that as long as all development projects follow laws and regulations pertaining to hazardous materials contamination, all development projects would result in less than significant impacts related to hazardous materials. The comment then states that the Draft EIR does not employ this logic in its finding of significant and unavoidable impacts to air quality.

The comment is incorrect in stating that compliance with existing laws can never serve as adequate mitigation. (See, e.g., *Leonoff v. Monterey County Board of Supervisor* (1990) 222 Cal.App.3d 1337 (court upheld mitigation measure requiring the project to comply with laws governing hazardous materials); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 (court upheld mitigation measures requiring compliance with air and water quality standards).) Still, adherence to laws and regulations has different effects on determinations of significance depending on the impact in question. As the comment notes for example, even if the proposed project complies with all regulations and laws regarding emissions, the proposed project would still result in a significant and unavoidable impact on air quality due to its emissions of PM10.

Contamination at the project site is part of the existing baseline condition. The proposed project did not create the condition and instead would remediate it. As stated in responses to comments 23-2, -11, and -12, the final remedial actions are dependent on City Council approval of the proposed project. The work plan would provide the steps to be taken to adequately remediate the project site. Until agency site closure is attained, future phases of the proposed project cannot developed. Therefore, ongoing and continued adherence to legal requirements within the regulatory structure is the only way that the proposed project would be completed. Moreover, Mitigation Measure G-1, as well as the fact that this project site is under an existing enforcement action by the RWQCB, would ensure that the requisite level of cleanup would occur.

Finally, the comment states that other RWQCB-approved cleanup plans have required massive excavation and transport of soils from the project site. Each site is unique, and it does not make sense to compare this site to other sites in regards to the type of remediation that was conducted at other sites, particularly since the level of excavation proposed and approved by the RWQCB for this site is significantly lower than most other remediation projects.

- 23-16 The comment states that the Draft EIR includes an inadequate analysis of the proposed project's impacts to stormwater quality in two respects. First, the comment states that implementation of drop inlets on the project site would not mitigate the potential effects of increased motor oil, tire particles, coolant, and gasoline that would enter storm drains off-site and throughout the City as a result of the proposed project. Second, the comment states that drop inlets would be ineffective in separation of dissolved phase metals, hydrocarbons, and miscible particles—like coolant—from the runoff. The comment states that other methods, such as a filtration system utilizing carbon filter could remove additional pollutants, but that those methods are not discussed in the Draft EIR, and therefore the Draft EIR does not provide enough information to determine whether onsite stormwater treatment would adequately mitigate for dissolved pollutants. Clark Slough receives stormwater runoff from an area of the City of approximately one square mile.

The comment attempts to equate the effects analysis associated with regional traffic impacts with the effects analysis applicable to stormwater quality. The two are distinct. Traffic impacts are measured by evaluating the increase in traffic on the surrounding street

and roadway system caused by the proposed project. Conversely, stormwater impacts focus on whether the proposed project itself would provide a substantial additional source of polluted runoff or cause or contribute to the violation of water quality standards. That analysis was completed, and the Draft EIR ultimately concluded that with the proposed mitigation, the proposed project's effects related to stormwater quality would be less than significant (Draft EIR, at IV.H-15 through IV.H-21). For example, once constructed and mitigated, the project is not anticipated to substantially degrade water quality, violate any water quality standard, or provide a substantial additional source of polluted runoff. (*Id.*) The City's municipal stormwater system is regulated separately under Section 402(p) of the federal Clean Water Act, and is operated by the City under its own municipal stormwater permit issued by the SWRCB. Any vehicle-related discharges of municipal stormwater throughout the City would be covered under this permit. Because the project would remain within the CEQA thresholds set forth in Appendix G, the project's effects on stormwater quality would be less than significant.

The comment also questions whether the project's mitigation will be effective at treating dissolved phase metals, hydrocarbons, polyaromatic hydrocarbons (PAHs), and miscible pollutants such as coolant at the drop inlets onsite. Mitigation Measure H-5a, which addresses treatment at drop inlets onsite, does not specify the specific treatment method. Treatment methods may depend on the specific design features surrounding the drop inlets, as well as the location of those inlets. Standard best management practices (BMPs) and other design features at these inlets such as those identified in the comment have shown to be quite effective at reducing or eliminating these sorts of contaminants from stormwater runoff. (See, e.g., U.S. Environmental Protection Agency, *National Management Measures to Control Nonpoint Source Pollution from Urban Areas*, Pub. No. EPA 841-B-05-004 (Nov. 2005).) The USGS study that focused on PAHs in stormwater runoff found that the PAHs originated from the abrasion of parking-lot sealcoat into pieces or particulates. Therefore, stormwater treatment facilities designed to reduce sediment particulates in stormwater would also reduce sediment-laden pollutants such as asphalt sealcoat which may contain PAHs. The following revisions to Mitigation Measure H-5a (Draft EIR, page IV.H-20) are proposed to help clarify and enhance this measure in line with what the comment has requested:

Mitigation Measure H-5a: The final applicant shall treat stormwater 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 stormwater treatment facilities on the project site. drainage plan shall include design features to capture and treat stormwater from roof drains, paved pedestrian areas, and parking areas before entering the City's storm drain system in accordance with the City's *Construction Low Impact Development (LID) Manual* (March 2009) and the California Stormwater Quality Association's *Stormwater Best Management Practice Handbook* for new development. Treatment methods shall include best management practices and design features that are effective at reducing or eliminating anticipated stormwater pollutants. The Project Applicant shall provide and put into place a funding mechanism to support ongoing maintenance of the stormwater treatment infrastructure on the project site.

Comment Letter 24

Comment Letter 24

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DEIR Comment Letter from Ralph Faust to Sidnie L. Olson

January 30, 2009

January 30, 2009

City of Eureka Community Development Department
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Eureka, CA 95501-1165



Dear Ms. Olson:

My name is Ralph Faust and I represent the Northcoast Environmental Center (NEC). The NEC is a coalition of environmental groups that has worked for almost forty years to conserve the area's biological interests in the public interest through environmental information and education and when necessary, activism and litigation.

The comments contained herein are in response to the recent circulation of a Draft Environmental Impact Report (DEIR) for the Marina Center Project on the so-called Balloon Track. The Balloon Track, or Tract, is the premier undeveloped piece of property in the City of Eureka, located in the coastal zone at the Northwest corner of the City. It provides a sweeping panorama of Humboldt Bay as well as being completely in the view shed of tourists and residents recreating on the Bay and along the shoreline. It is adjacent to the Core Area Old Town and Downtown of the City, and its location along Hwy. 101, the only north-south highway in the County, makes it uniquely accessible to tourists and residents alike.

The DEIR in its present form is completely inadequate. It misstates the nature and scope of a number of the project's impacts, and completely ignores others. It ignores the policies of the Coastal Act. It contains a completely inadequate range and discussion of alternatives. The project described in that report and the report itself have numerous problems, and it is our contention that either the project proponent should abandon the project in its present form, or the City should reexamine the project in light of these and other comments and redo the EIR to focus accurately on the impacts of the project and its potential approvability, as is required by law.

WETLANDS

The proposed project would fill wetlands in order to enable a big box commercial development. The DEIR contains two characterizations of the wetlands present on the site, one study based upon the Army Corps of Engineers criteria that identified 7.09 acres of wetlands, and another study based upon the State Coastal Commission criteria that identified 8.76 acres of wetlands. It does not present a third study, also based upon the Coastal Commission criteria, that is in the

possession of the developer if not of the City, that finds an additional 0.442 acres of wetlands on the site including in the turntable area ("Biotic Characterization of Clark Slough and 'Balloon Tract'", prepared by H. T. Harvey and Associates, January 29, 2008). In the absence of further information not presented in the Draft EIR, the largest delineated area of wetlands found in any of the studies consistent with the Coastal Commission criteria should provide the basis for the City's assessment of the project. That would appear to be about 9.2 acres.

In the face of this evidence of the presence of wetlands, the DEIR goes on to conclude, inexplicably, that the project is approvable under the Coastal Act. It does so despite a specific statement that it does not meet the allowable use criteria contained both within Public Resources Code section 30233, and in Policies 6.A.9 and 6.A.14 of the City's certified LCP. The City also completely ignores the fact that Policy 6.A.6 of its certified LCP declares sloughs and wetlands to be Environmentally Sensitive Habitat Areas (ESHA). Public Resources Code section 30240 is strong and explicit in stating that ESHA "shall be protected against any significant disruption of habitat values and only uses dependent on those resources shall be allowed within those areas". This state policy is mirrored in Policy 6.A.7 of the City's certified LCP. Further, the courts have definitively interpreted section 30240 to require the protection of ESHA regardless of the extent to which it may have become degraded. (See e.g., Sierra Club v. California Coastal Commission, 12 Cal. App. 4th 602 (1993); Bolsa Chica Land Trust v. Superior Court, 71 Cal. App. 4th 493 (1999). For a more recent discussion of the protection afforded ESHA in the context of a permit proceeding, see McAllister v. California Coastal Commission, Sixth Appellate District Case # H031283, 12/30/2008).

Apparently, though the decision path is not presented, the City appears to believe that it can find "overriding considerations" for this inconsistency, or that it can "balance" under the terms of Public Resources Code sections 30200 and 30007.5 (DEIR p. IV.I-14). The City has no such authority. "Overriding considerations" does not apply to the Coastal Act. Nor does the City have the ability to utilize section 30007.5 to approve the project. In order for the Commission to approve the project using these sections, it must identify a conflict between Chapter 3 policies, and then find that, on balance, the decision made is most protective of coastal resources. But there are no coastal resources protected by the fill of wetlands pursuant to this project, so no balancing can occur.

The City suggests that the developer's proposal would result in a "higher value" of wetlands on the site. Whether this opinion has merit is irrelevant; the Coastal Commission does not and cannot interpret the Coastal Act to allow fill of a wetland or destruction of an ESHA by a project on the basis that a newly constructed wetland would have "higher values". (See e.g., Bolsa Chica, supra, at 507: "...the language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects the area of an ESHA from uses which threaten the habitat values which exist in the ESHA" (emphasis in original)).

More to the point, the developer appears to have convinced the City that there can be no cleanup of the toxic contamination on the site without filling the wetlands. This is patently

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false. Both the present owner and Union Pacific, the prior owner, have an immediate enforceable legal obligation to clean up the site, independent of any proposed development. The particular cleanup plan, which is itself development under the Coastal Act (see Public Resources Code section 30106), will have to be approved not only by whatever relevant state and federal agencies have jurisdiction over the toxic cleanup itself, but also by the City and the Commission under the Coastal Act. Only then will decisions be made regarding the appropriate restoration of the site. In this regard, the City should review the language of its existing LCP Policy 6.A.11, regarding maintaining or enhancing the functional capacity of wetlands or estuaries. Because the site was originally sub-tidal and tidal waters as well as estuarine wetlands, and appears to remain subject to the public trust, there is no reason to suggest that restoration of the site, the Coastal Act basis for dredge of the toxic material from the existing wetlands, requires refilling of the site to eliminate the wetlands and allow for a concrete parking lot and big box commercial development. That isn't restoration.

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The City and the developer appear to confuse both the necessity for the cleanup with the desire for a particular project and the general requirements for a cleanup outside the coastal zone with the more stringent ones applicable in coastal zone wetlands. Contrary to the project proposal, the outcome of a legitimate "restoration plan" would be that Clark Slough and all of the wetland areas on the site are restored to their original status. The Marina Center only masquerades as a "restoration" project in an attempt to circumvent the clear standards of sections 30233 and 30240. For these reasons, this portion of the DEIR is fatally flawed. At a minimum, the project and the DEIR should be revised to remove all proposed development from the area that includes the slough and all delineated wetlands as well as from an upland buffer area of, at minimum, 100 feet from the boundary of any delineated wetland. There is clearly room for some development on the site, but it almost certainly will be mostly in the area north of the line drawn from 4th Street to the west to Waterfront Drive.

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COASTAL ZONE LAND USES

The DEIR is also flawed in that it does not discuss or take into account the preference of land uses declared in the Coastal Act for development planned in the coastal zone. The Coastal Act, in several sections, particularly Public Resources Code sections 30222 and 30255, sets up a ranking or prioritization of uses to be allowed. The uses proposed for the Marina Center, including private residential, general industrial and general commercial are the least favored uses under the law. Higher priority uses include coastal-dependent (both industrial and non-industrial), coastal-related (those that support coastal-dependent), and visitor-serving commercial and recreational. Although the DEIR notes that the site is not geographically appropriate for coastal-dependent industrial use, no further attempt is made to discuss the prioritization of uses under the Coastal Act. The project is adjacent to a number of parcels zoned coastal dependent industrial, including "a number of vacant parcels owned by the City of Eureka Redevelopment Agency". In this context, and given the City's ability to combine use of this property with that of parcels owned by the Redevelopment Agency, the DEIR is required to analyze these priority coastal uses. For this reason the DEIR is deficient.

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This is especially egregious for a project of this magnitude in a location of this significance. Most particularly, the City must consider the possibility of a visitor-serving use in this area. The City recognizes in various parts of its DEIR that restoration of the slough and creation of wetlands, even at the minimal level proposed by this project in its present form, will be a great attraction for residents and tourists in the area. Imagine: How much more attractive would genuine restoration of the slough and wetlands be? And when that could be combined with the magnificent location of the site that includes views across the Bay in two directions, how nice a location for a destination hotel and restaurant, something completely lacking in Eureka at the present time? The City might consider responding that this vision is beyond the scope of what is required in a DEIR, but it is certainly not beyond the scope of what is required by the Coastal Act; and Coastal Act approval is required for any proposed use on this site that is not consistent with the existing zoning.

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LAND USE AND IMPACTS

More generally, the City appears to take the view that its analysis of the economic impacts of the uses proposed in the project is limited to physical urban decay pursuant to the decision in *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184. The City has attached several lengthy analyses of this issue and appears to have concluded that whatever impacts might occur, they won't rise to the level of causing urban decay, because there is a very low commercial vacancy rate in the area and empty stores will quickly be filled with new tenants. With respect to physical urban decay, this assumes that all areas of the City are equally desirable, and thus that no particular less commercially desirable area will be abandoned. In this regard, the DEIR assumes that the economic effects of this project will be spread throughout the City, with all areas suffering some, but none to the extent that it will reach the level of urban decay. With respect to economics, this assumes that either many more shoppers will come who do not presently shop in Eureka, or that entirely different businesses will be invented. No evidence is presented to justify either of these assumptions.

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Further, the DEIR takes note in passing of the rapidly changing economic conditions that are presently closing stores and draining spending in the economy both locally and nationally, but all of the statistics presented are from the third quarter of 2007 or earlier, and thus completely fail to encompass the magnitude of the present economic shift. At this time, one of the "anchor" stores at the Bayshore Mall has closed and another is in bankruptcy, with no end in sight. Even Home Depot, mentioned in the DEIR as a possible anchor tenant for this project, has recently reported significant financial losses and closed a number of stores. There is no basis to assume at the present time that development of this project will not have a major effect upon other businesses in the City, and particularly in the City's Core Area. Since the new stores are unlikely to market goods different from those already sold in Eureka, the analytical flaw in the DEIR is the apparent assumption that there is an unlimited pool of shoppers, representing what the DEIR estimates to be about 10,620 vehicle trips per day specifically attributable to retail traffic, simply waiting for these new stores to appear. There is no evidence to support this assumption either.

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Thus, the statement that the proposed project is consistent with Policy 1.L.1 of the General Plan is simply wrong. The discussion notes that the project could draw some customers away from Core Area businesses, but then states that it would "add residents, day-time workers and visitors to an area within walking distance of the Core Area". This is absurd. The DEIR states that the project will generate about 15,700 vehicle trips daily, many of these presumably shopping at the Center instead of in the Core area. Meanwhile, only about 100 new residents will live in the Center. Even if every one of these new residents shopped only in the Core Area, these numbers do not approach equivalency. Nor are very many of the shoppers or office workers in the Marina Center likely to walk 6-12 blocks to eat lunch or shop in the Core Area when options will be immediately available in the Center; and as for driving to Old Town, that would be an unlikely nightmare given the traffic generated by this project.

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It seems clear that the Marina Center will economically bleed the Core Area by drawing away business. As quoted in the DEIR, Policy 1.L.1 states that the "City shall discourage new commercial development within the City that will adversely affect the economic vitality of the Core area. This City shall also encourage Humboldt County to discourage such development in adjacent unincorporated areas". What kind of development could be so detrimental to the commercial success of the Core Area that the City would adopt a formal policy to discourage such development in areas outside the City? Only one kind: the big box "category killer" development that is proposed for the Marina Center. Regardless of its strained interpretation of the City of Bakersfield case, and regardless of whether the big box turns out to be a Home Depot, a Wal-Mart, or something else, the City's support of this proposed project would undercut the economic vitality of its most critical commercial area, the Core Area, to which it has devoted substantial renovation efforts over the past 20 to 30 years, and would also directly contravene General Plan Policy 1.L.1, its primary commercial development policy.

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This raises a more general point with respect to the Land Use policies of the General Plan and the Land Use and Planning section of the DEIR. Simply, there is no analysis in that section. Most of the section, 56 out of 80 pages, consists of a table that quotes policies and then makes a summary conclusion regarding applicability (Consistent, Potentially Inconsistent, or Not Relevant). The discussion in support of these conclusions is summary and trivial at best, or non-existent. One example of this is the Consistency Analysis of Goal 1.B, and the various policies that implement that goal. This is the section that deals with the "Concentrated Mixed-Use Core Area". The Goal of 1.B is to create a "robust central Core Area that provides a clear geographic focus for attracting visitors and residents and for increasing private sector investment". In its analysis of a project within a mile of the Core Area that would build a big box "category killer" and generate about 15,700 vehicle trips a day, the EIR finds this goal and all of the policies that implement it to be "Not Relevant", because the "project site is not located in the area the General Plan defines as the 'Core' of Eureka". No further discussion is provided. This does not pass what lawyers and judges call the "straight face" test; it is, instead, absurd on its face.

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It is not the duty of a commenter to present an extensive analysis of topics that the City did not analyze itself. Suffice it to say that additional goals and policies that need further analysis and discussion, and that are not otherwise discussed in this letter include, but are not limited to:

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1. Goal 1.H and Policy 1.H.1 pertain to View Corridors. The analysis contained in the Land Use section and in Chapter IV-A is deficient in two respects. First, there is no showing that the project has been designed to protect view corridors to Humboldt Bay through the development. Contrary to the position stated in the Land Use section (p. IV.1-21) the view corridor policies are relevant to this proposed project. In addition, Public Resources Code section 30251 states that "the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance", and that "(P)ermitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas...". This does not apply only to the Core Area, but also to the project area. In addition, it appears that the project has been designed to present to viewers along the shoreline the unattractive backsides of its retail establishments and restaurants that border Waterfront Drive. The City should analyze how this is consistent with protecting views along the shoreline and from important coastal areas such as the Wharfinger Building and the shoreline access areas. Finally, there is presently a view from the shore area inland toward Old Town and to the mountains east of Eureka. The placement of a four-story parking structure and a five-story office building in the development, to be among the tallest buildings in the City, should be analyzed in terms of the policy directives of section 30251.
2. Goal 1.M and several of the related policies that follow pertain to Industrial Development. The elimination of the industrial zoned land along Broadway between 4th and 1st is inconsistent with the clear language of Policies 1.M.1, 1.M.2 and 1.M.10. In addition, the proposed project appears to undermine Policy 1.M.5 and would likely make realization of the goal of Policy 1.M.6 difficult, by changing adjacent uses. Further, if the railroad is again operational, as evidence suggests that the DEIR must assume (see below), it is unclear how the City intends to implement Policy 3.F.2 to ensure an adequate replacement of the railroad functions historically performed at the Balloon Tract. It is also not clear how the City intends to reconcile the proposed development with Policy 3.B.3, which calls for the development of an intermodal transportation center between A and Commercial Streets south of the railroad tracks. The DEIR states that this policy is "Not Relevant" because it contains "no directive for a project applicant", but this is the City's General Plan and the City's DEIR, and thus it is the City's responsibility to reconcile this conflict. All of these Policies require much more extensive analysis and discussion than is provided in the cursory table.
3. Goal 1.N relates to the provision of Community Facilities. Because the area is presently zoned "Public", the DEIR must analyze the rezone to another set of uses in terms of its ability to ensure an adequate supply of land for public or quasi-public community facilities. Why is it not important to keep all or a portion of this land zoned "Public", particularly after the cleanup of the site has been completed and a full range of potential uses can be examined? Contrary to the City's assertions, there appears to be almost no "public zoned" land in or adjacent to the Core Area or in the City's populated areas that is not already developed. [See the City's Zoning and Land Use Maps at: <http://info.ci.eureka.ca.gov/gis/maps/pdfs/zoning.pdf> and at <http://info.ci.eureka.ca.gov/gis/maps/pdfs/land use.pdf>]. The City dismisses this Goal as

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not relevant, but the removal of this large and unique parcel from "public" zoning without any identified alternatives makes this decision relevant to the DEIR discussion. The City must analyze and discuss this decision.

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TRANSPORTATION IMPACTS

The transportation analysis is, to say the least, opaque and bound up with conclusions that are driven by its assumptions. It is based upon traffic studies conducted in March and April, although residents know, as the City knows, that peak traffic use on Highway 101 is during the summer months when significant tourist traffic is added to the ongoing flow of local traffic. This baseline must be corrected. In addition, the transportation section of the DEIR is inadequate because: 1) it does not account for congestion and circulation difficulties caused by drivers trying to avoid or affirmatively being directed to avoid congestion at the project exits onto Broadway and instead using back routes accessed from Waterfront Drive to reach either Old Town or Broadway; 2) it counts already planned mitigation measures necessary to alleviate existing traffic congestion along Hwy. 101 as a result of existing conditions as measures to alleviate the congestion caused by this project, thereby using up all known available mitigation and precluding traffic impacts from any other possible project in the foreseeable future without further decreasing the level of service along 101 (cumulative impacts); and 3) it does not account for the known projected railroad trips along the right of way, particularly as the railroad crosses 1st Street, and also where Waterfront Drive becomes 1st Street and trains proceed along the middle of 1st Street through the Core Area, impacting traffic trying to move from the project site to the Core Area or using Waterfront Drive to get to street access to Highway 101.

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Anyone who presently uses the various north/south streets in the Core Area knows that it is harder and takes longer to get to and across Highway 101 than it does to proceed along 101. Put another way, the most troublesome existing congestion is in the north/south direction rather than in the east/west direction. It is rare for a driver to wait longer than the length of one stoplight as one proceeds in either direction along 101. The lights are not perfectly timed for synchronous flowing traffic, but they are long enough in the green cycle to allow large numbers of vehicles to move through the various intersections. On the other hand, to go north or south along any of the various streets in the Core Area from C Street through at least I Street, to try to get from, for example 3rd Street to 7th Street or beyond, takes much longer. The traffic volume is far heavier along 4th and 5th Streets, but because that road is wider and the green lights are longer, congestion is more troublesome along the north/south lettered streets.

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This is important because the DEIR does not account for all of the various vehicle trips that will be generated by the project. The DEIR assumes that the only traffic congestion that must be accounted for is that along Highway 101. But because the EIR does not account for the fate of the 15,700 daily vehicle trips that are projected to be generated by the project, it leaves the congestion on all of the various adjacent streets and intersections unanalyzed. The DEIR obliquely recognizes this problem when it acknowledges that Koster Street will be impacted at its intersection with Wabash. This recognizes that traffic generated by the project, desperately

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seeking access to Broadway, but unable easily to obtain it at the 4th or 6th Street exits, will try "back road" alternatives. In fact, using these "back road" alternatives as a way to relieve traffic congestion on Broadway is specifically encouraged by the City's traffic consultant, who goes on to recommend closing all direct project access to Broadway by 2025. These alternatives include Waterfront Drive to either Washington or Wabash, with various "shortcuts", e.g. Koster, used as well, and Waterfront and 2nd Streets into the Core Area, with drivers then desperately seeking access to Highway 101 at Commercial, C Street or further east. It is important to recognize and to attempt to alleviate the known problems along Highway 101, but it is not sufficient as a traffic analysis of the impacts of the project. A heavily congested Highway 101 with its lights timed to favor traffic flowing along it rather than onto and across it will inevitably cause serious congestion on all of the back streets surrounding the project. The DEIR does nothing to analyze or to propose to mitigate, if mitigation is possible, these impacts.

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The City is well aware of this problem in the Core Area, as is evidenced by its General Plan Policy 3.H.2, which requires the City to "balance north-south travel needs through the Core Area (i.e., along E, F, and G Streets) with east-west travel needs by modifying traffic control devices (i.e., traffic signals and stop signs), working with Caltrans as necessary". Thus the City is aware that this is an existing problem, but the DEIR proclaims that this policy is "Not Relevant" to the project because the "project site is not within Eureka's 'Core Area'". This statement completely ignores the fact that the traffic impacts of a project are not limited by the precise boundaries of the project site. Instead they will ripple out throughout the area around the project. The DEIR recognizes this with respect to Highway 101, but largely ignores it with respect to the roads that go to and across Highway 101. For this reason the DEIR analysis of traffic impacts is deficient and must be redone.

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Related to this problem of traffic on the surrounding streets is the issue of coastal access. The Coastal Act mandates the protection of access to and along the shoreline, and it is well recognized that the Coastal Commission focuses upon the relationship of traffic impacts to coastal access. In parts of the DEIR the City recognizes the importance of this coastal access, touting the existing and planned improvements to coastal access in the area. Coastal access presently exists at the foot of Del Norte, at the foot of Washington and north along the shoreline past the Wharfinger Building to the boat harbor, and then from Commercial all along the waterfront through the Core Area. But the DEIR says not a word about how the traffic exiting the project onto Waterfront Drive will affect this coastal access. This impact must be analyzed now, before the analysis is forced upon the City by the Coastal Commission's review of the proposed LCP amendment.

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This analysis is complicated by another potential impact to both traffic and coastal access that is not discussed in the Draft EIR. The Northwestern Pacific Railroad Co., in a memo from John H. Williams, its President to Allan Hemphill, the Chairman of the North Coast Railroad Authority dated January 8, 2009, (copy attached as Exhibit A) stated its intent to operate a "separate short line railroad that would provide both rail freight and excursion passenger train service in the Humboldt Bay Area extending from South Fork...to Samoa". The memo indicates that the project could generate about 6000 rail carloads of aggregate annually with the potential to

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attract additional traffic. Further, as the City is well aware, the Humboldt Bay Harbor District is proposing a shipping terminal at Samoa, the Redwood Marine Terminal, which would generate additional railroad traffic through the project, at least 12 train trips a week, as well as additional large truck traffic along the Highway 101 corridor. The DEIR indicates that the project would keep the rail line open and free to traffic along its western and northern edge, but provides no further analysis of the impacts of the railroad's actual operation in conjunction with the Marina Center. Because the railroad tracks cross Waterfront Drive in two places, and in particular move directly onto 1st Street near Commercial and then run along 1st Street through the City's Core Area, traffic impacts from the project will be significantly exacerbated by the railroad's operation. In addition to the traffic impacts caused by the renewed operation of the train, the traffic impact analysis must include the projected additional truck traffic generated by the proposed Redwood Marine Terminal. These impacts must be analyzed or re-analyzed, as appropriate, at a minimum from a traffic perspective, because both railroad operation and the proposed Redwood Marine Terminal will affect transportation on the project site and in the area surrounding it.

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In addition, further clogging of traffic along Broadway due to the proposed project will increase the likelihood that drivers in the City will seek alternative routes through the neighborhoods east of Broadway in order to avoid the traffic jams on Broadway itself. Drivers in Eureka know that this already occurs, but adding 15,700 vehicle trips to the mix, as the DEIR forecasts, will exacerbate the problem significantly. Yet the effect of the project's trip generation upon traffic in the neighborhoods east of Broadway was not studied or even mentioned in the DEIR. These impacts must be analyzed as well.

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Further, the project relies upon intersection changes and traffic flow modifications that have been long discussed as necessary to help move existing traffic through the urban area of Eureka along Highway 101, as mitigation for the impacts of this particular project. There are at least three of these that are particularly critical: changing the intersection at Broadway and Wabash to eliminate access from Fairfield, changing the intersection at Broadway and Henderson, thus eliminating what the traffic consultant characterized as "bottlenecks" at both intersections, and installing the electronics to provide for coordination and synchronization of the traffic signals along Highway 101 through Eureka south to Bayshore Mall. These are important changes that Caltrans and the City would have had to cooperate on in order to relieve the existing traffic problems on 101. The financial advantage to Caltrans and the City of having the project proponent finance these changes is clear. But the effect of this is to allow the project to absorb all of the feasible short-term traffic mitigation along this thoroughfare that is presently necessary to fix existing problems, and leave no traffic capacity margin for any other future development that may occur in Eureka or elsewhere that would have traffic impacts on Highway 101 at any time through 2025. Put simply, this project would take Highway 101 to the edge of or over the tipping point of its capacity in its present configuration.

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This is particularly problematic because all available traffic capacity, including that gained by the extensive mitigation that the City proposes, is being utilized for a project that is not a coastal priority use and it makes even more necessary a re-evaluation of the appropriate use

for this unique and critical site. Because there will be no traffic capacity left for Highway 101 that does not compromise levels of service, there can be no possibility that the City will be able to plan for and develop any coastal priority uses at other sites in the foreseeable future.

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As the traffic study makes clear, by 2025 additional mitigation will be necessary. The consultant makes suggestions such as extending Waterfront Drive, widening Broadway to six lanes or diverting Broadway traffic onto neighborhood surface streets, all of which the City is well aware are difficult or impossible for legal, financial and/or political reasons. Particularly egregious in this context is the suggestion of reliance on building Waterfront Drive through existing preserved wetlands when the City has already been put on notice by the Coastal Commission that this is prohibited by the Coastal Act. For all of these reasons, the City cannot use these particular mitigations as the basis upon which to discount the very significant traffic impacts of the project without a much more extensive cumulative impacts analysis, including an examination of all known development plans of all jurisdictions the traffic of which could impact Highway 101 in Eureka.

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WASTEWATER TREATMENT

The DEIR is flawed in that it incorrectly states the existing permitted capacity of the Elk River Wastewater Treatment Plant, incorrectly states the existing legal and contractual capacity of the City to utilize that plant, appears to ignore the fact that the plant already operates at or in excess of full capacity during peak wet weather events, and does not take into account proposed development in the County that has received "will serve" letters from the Humboldt Community Services District that will utilize existing District capacity that the City appears to rely upon to support this project. For all of these reasons the City must revise the DEIR to properly consider this impact prior to approval.

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On December 4, 2008, the City submitted a letter to the North Coast Regional Water Quality Control Board (copy attached as Exhibit B) withdrawing a previous request to increase capacity at the Greater Eureka Area (Elk River) Wastewater Treatment Plant from 5.24 mgd to 6.0 mgd. This is significant in several respects. First, the DEIR finds a "less than significant" impact with respect to the treatment of wastewater from the Marina Center project based upon the assumption that the renewed NPDES permit would allow 6.0 mgd capacity for the plant. Assuming that the projected wastewater of the project would be accommodated with the additional 0.76 mgd that had been applied for, the DEIR concludes that "implementation of the proposed project would not result in the construction of new or expanded wastewater treatment facilities". Because this assumption no longer can be maintained, the City must reanalyze its conclusion.

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The situation is compounded by the fact that the City has been continually and substantially exceeding its allowed capacity at the treatment plant. A letter dated August 2, 2007 from Mark Bryant, General Manager of the Humboldt Community Services District, to David Tyson, City Manager, (copy attached as Exhibit C) describes a continuing practice of the City over a number of years to utilize capacity at the plant that contractually belonged to the District. At the time of that letter the City had been exceeding its capacity rights over a period of six years by

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"190,000 to 330,000 gallons dry weather flow" per year. (By way of comparison, the project, according to the DEIR, is estimated to produce approximately 130,000 gallons per day of wastewater.) The District indicated in that letter that it needed to utilize its currently unused capacity in the near future. This is because the District has been giving "will serve" letters to various property owners/developers within the district who are planning major subdivision developments (e.g., Forster-Gill).

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Taken together, this means that the City not only does not have the wastewater treatment capacity that it represented in the DEIR but it also does not legally possess the capacity that it actually has been using for a number of years. For this reason the DEIR must analyze not only the proposed usage of this project in relation to the actual capacity of the Elk River plant, but also the cumulative effect of the District's contractual rights and intent to serve all known future development within its service area and any known future development that the City itself foresees within its boundaries. Based upon the facts in the DEIR and those cited above, the City cannot permit the project because it does not have the available treatment capacity to handle the needs of the project.

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ALTERNATIVES

The Alternatives chapter of the DEIR is deficient in several respects: its definition of the basic objectives of the project is far too narrow, making it suitable only for the proposed project; its screening of the identified alternatives improperly eliminates feasible alternatives; and most importantly, it abdicates the responsibility of the City to actually plan for the site.

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Beginning with the last point, the City's analysis of alternatives is based upon the limiting assumption that a zoning change can be considered for the particular project proposed but not for the "no project" alternative, having the effect of unduly straining the analysis of the latter alternative. The DEIR states (at p. VI-17) that "if the project does not go forward, the property would remain zoned and planned predominantly for Public uses". It then analyzes the possible uses in the Public zone, as if those were the only option to the proposed project. But this is not the case. If the proposed project were fully consistent with the General Plan and Local Coastal Program, and thus did not require an amendment, this analysis might well be appropriate. In that situation, analysis of the alternatives, including the "No Project" alternative, would require alternative uses to be consistent with the existing Plan. But here the Developer is proposing a project that requires a significant amendment to the General Plan and the Local Coastal Program. This means that the alternatives, including the no project alternative, can include any use. The City is not constrained by the proposal of a developer to build something consistent with its Plan. Instead the City can actually plan.

24-30

Limiting the analysis in this way, particularly with respect to the no project alternative, is an abdication of the responsibility to plan for the site. In short, the "No Project" alternative should not assume that only development consistent with the existing zoning will occur on the site. Land Use Planning was conceived and developed in the early 20th century precisely to allow communities to determine their own future rather than having development based solely upon the interests or desires of the landowner, as previously had been the case. The real

24-31

opportunity for the City in the "No Project" alternative is that it can plan what it thinks is best for the site, rather than simply respond to whatever the owner puts forward as its plan. As noted above, this property is probably the premier piece of undeveloped land in the City of Eureka. If the City determines a vision for this site that reflects both the will of the community and an economic opportunity for the landowner, healthy development will follow.

24-31
cont.

The definition of the project objectives is hopelessly stilted. Three objectives are identified but all of them are defined in ways that skew the analysis in favor of this particular project as the developer proposed it, rather than looking at a more broad definition of how the interests of the City could most benefit from some project on the site. The first objective is to "strengthen Eureka as the retail and employment center of Humboldt County". Taken at face value, this requires only that whatever project is approved create jobs. It could include but does not require a retail component.

24-32

The second objective is to "develop an economically viable mixed use project (e.g., retail, office, residential, industrial)". This is an attempt to limit the consideration of alternatives to what the developer proposes, but it is disingenuous and ultimately meaningless, because the development proposed here is not real "smart growth" or mixed use growth. Smart growth requires bringing a mix of uses into a residential sector. It was developed specifically as a conceptual attempt to mix other uses into the monoculture of suburban residential development. The Smart Growth Network states:

"Smart growth supports the integration of mixed land uses into communities as a critical component of achieving better places to live. By putting uses in close proximity to one another, alternatives to driving, such as walking or biking, once again become viable. Mixed land uses also provide a more diverse and sizable population and commercial base for supporting viable public transit." (Emphasis added).
<http://www.smartgrowth.org/about/principles/principles.asp?prin=1&res+1280>

24-33

Precisely the opposite is done in this development. Here a few residents are brought into a huge commercial development so that it can be called "smart growth" and "mixed use". But the essence of the development, big box commercial with large parking lots to accommodate the estimated 15,700 vehicle trips daily, remains decidedly not "smart growth". This proposal introduces 54 apartment/condominium units (perhaps 100 residents at most) into a project that includes over 300,000 sq. ft. of retail commercial, and over 100,000 sq. ft. of office space. It actually reduces the amount of industrial use on the site. It is unlikely that even one of the project's two proposed 7000 sq. ft. restaurants could be filled by the residents even if they all decided to eat at the same time. This is big growth, but it is not smart growth.

The third objective, to "facilitate brownfield redevelopment and urban infill development of property in the redevelopment area in the City of Eureka", is also at best misleading in its language. It has two components. The urban in-fill component can be satisfied with any development on this site, as well as in any similar site in Eureka. On the other hand the key to facilitating brownfield development is the cleanup of the toxics on the site, and this is completely unrelated to this or any other development. As the DEIR concedes, the landowner,

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as well as Union Pacific, the prior landowner, is under a legal mandate to clean up the site. It is not necessary that this or any other particular development be approved to secure a cleanup. Therefore, it has become an objective of the project only because the developer might hope to link a reduced cleanup obligation to some particular form of development (such as a concrete cap upon which a big box commercial development can be placed), as well as to finance the cleanup through the development. Whatever the reasons for this preference of the developer, it is not an essential project objective that can be used to drive the alternatives analysis for the use of the property.

24-34
cont.

Because all of these objectives have been skewed toward approval of the proposal, in ways that are meaningless upon further analysis, the City should redo the alternatives analysis. However, even using the objectives that the City used, the analysis unreasonably excluded some project alternatives. For example, as noted earlier, one possible use for the site that would be a preferred use under the Coastal Act would be a visitor-serving commercial or recreational use. This is presumably what is meant in the Alternatives analysis as a Tourism Use. The Tourism use was found not to meet the Feasibility Screening because it was not "economically" feasible. The explanation given was that "[T]he tourism use would be a public project. The cost to acquire the land, remediate the site and construct the tourist use is economically prohibitive". But this is simply wrong, invented without significant thought. There is no requirement that a tourism use be a public project; private developers do this all the time. Further, as noted earlier, remediation of the site must occur regardless of the future use of the property, so this is no more significant a deterrent than it is to any other possible use. The only reason that the use might be infeasible is that the developer would prefer not to do it; but that hardly satisfies the City's obligation to plan for the site.

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In conclusion, the Marina Center DEIR is inadequate for the following reasons:

1. The project proposes to fill wetlands and eliminate ESHA without taking into account the standards of the Coastal Act and the City's General Plan with regard to those habitat types; if the project is going to go forward, the proposed development must be sited outside of the area of delineated wetlands, including an appropriate buffer.
2. The DEIR assumes that cleanup of the toxics on the site must go forward in conjunction with the proposed project, and thus justifies fill of the wetlands to allow a big box store. There is no basis for this assumption. The cleanup must be disconnected from the proposed project, because separate criteria determine the approvability of each. Only after the appropriate restoration of the site is determined can the site be evaluated for appropriate uses and projects.
3. The DEIR is deficient because it does not take into account the prioritization of land uses under the Coastal Act. An LCP amendment in the coastal zone, particularly on a site of this importance, must consider these priority uses.
4. The Land Use and Planning section of Chapter IV of the DEIR is deficient because it lacks any substantive analysis upon which to determine why the City made the consistency decisions that are presented. The table form, with its cursory comments, is clearly inadequate. As has been noted above, a number of these determinations are clearly

24-36

wrong, or without basis in fact. Because of this, this section of the DEIR needs to be redone.

5. Mindful of the City's apparent position with respect to the *City of Bakersfield* case, the DEIR is clearly inadequate with respect to the economic effect of the proposed project upon other businesses in the City, and particularly in the Core Area. It ignores existing General Plan policy and undermines decades of City efforts to bolster the economic vitality of that area. This is a major decision for the City of Eureka. Unless the City can demonstrate that the Marina Center will draw in new customers that do not presently shop in Eureka, a fact not demonstrated by the City's economic analyses, the economic effect in the City becomes a zero-sum game, in which business is shuffled from one store to another. This has two effects. First, it is likely to lead to significant vacancies and urban decay, particularly in the Core Area, which appears likely to suffer both fierce competition subsidized by major companies with a nationwide pricing scope, and a deterioration in shopper amenities as traffic from the proposed project clogs the streets of Old Town. Second, it is likely to lead to a deteriorating economic situation in the City of Eureka generally, as more money is taken out of town to national ownership, rather than being recirculated within the City by local owners. The DEIR does not adequately address these impacts.
6. The traffic analysis is completely inadequate, limited by its assumptions in ways that prevented a proper evaluation of the fate of the estimated 15,700 daily vehicle trips that the proposed project will generate. It provides inadequate mitigation for its effects upon Highway 101, particularly in light of the cumulative impacts of other known proposed development discussed above, and it completely ignores the problems that will be caused by drivers trying to get onto Highway 101 after exiting onto Waterfront Drive, and the difficulties caused for the Core Area by these exiting drivers and for the neighborhoods south and east of Highway 101 as drivers seek alternative routes to avoid the problems being caused on Highway 101 by drivers exiting the Center.
7. The DEIR is facially inadequate with respect to wastewater treatment because it relies upon a factual assumption that is incorrect. At least as important, any future EIR must discuss the real legal availability of wastewater treatment capacity in light of the City's historic use of capacity that is contractually that of the Humboldt Community Services District and pledged to future use within that district. It appears that the City already may be committed to provide service for existing development in excess of its legal available capacity at the wastewater treatment plant.
8. Finally, the Alternatives chapter of the DEIR does not provide an appropriate range of alternatives for analysis, and is skewed narrowly in order to justify approval of the project. Feasible alternatives were excluded, and no proper analysis of alternatives was conducted.

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For all of these reasons, the City should reject the DEIR and send its planners and the project proponent back to the drawing board. The landowner should plan and carry out a true restoration of the site, cleaning up the toxic wastes in the land and water on site, and restoring to the extent possible the natural habitat values of this site before any development is

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proposed. Meanwhile, the City planners should conduct a true planning exercise, of the sort that was once to be funded by the Headwaters Fund, involving the community at large, and consistent with existing law including the Coastal Act, in order to determine the best use of the site. The premier undeveloped parcel in the City deserves no less.

↑
24-37
cont.

Sincerely,



Ralph Faust

Letter 24: Northcoast Environmental Center (NEC), (Ralph Faust)

24-1 The comment broadly questions the adequacy of the Draft EIR. The Draft EIR has been prepared carefully and in accordance with all requirements set forth in the California Environmental Quality Act (CEQA) Statutes and Guidelines. As required under CEQA, the Draft EIR addresses the adverse environmental impacts that would result from the project as proposed and also identifies mitigation measures for all impacts determined to exceed significance thresholds. A reasonable range of feasible alternatives to the proposed project are also considered and evaluated in the document. Further, there has been no “substantial new information” provided in public comments or in this response document, and therefore redoing the EIR is unwarranted and not required by CEQA.

Coastal Act policies are evaluated in the Draft EIR in considerable detail, with policy consistencies and inconsistencies identified. The Draft EIR also specifically addresses any conflicts the proposed project would have with any Coastal Act land use policies adopted for the purpose of avoiding or mitigating an adverse environmental effect. Please also refer to Master Responses 3 and 5 in this Final EIR for further discussion of land use and resource protection issues pertinent to the Coastal Act.

24-2 The comment states that a different wetlands study, prepared by H.T. Harvey and Associates, should be used because it found the highest amount of acreage of wetlands—9.2 acres. As noted in the Draft EIR on page IV.D-11, the EIR relies on the Huffman Broadway Group’s wetlands mapping and analysis because it involved more extensive field work and a more detailed level of mapping, applying the specific delineation methodologies of both the U.S. Army Corps of Engineers and the Coastal Commission. The H.T. Harvey report was a more general biotic study, which included a wetlands assessment, and was not intended to be a detailed delineation of wetland boundaries.

24-3 The comment questions whether the project is approvable under the Coastal Act. The Draft EIR does acknowledge the sensitivity of Clark Slough and associated wetlands on the project site, even in the degraded state within which they presently exist, as well as the various Coastal Act and LCP policies that affect the site. In order for the remediation to occur, the wetlands onsite must be disturbed. The Coastal Act and the City’s LCP were not enacted to frustrate the need to remediate contaminated properties, which is evidenced, for example, in Section 30412 of the Coastal Act. Please also see Master Responses 3 and 5, as well as responses to comments 3-8, 3-17, 3-21, and 3-22 concerning the LCP and Coastal Act policies and remediation needs for the project site.

24-4 The comment disagrees with the City’s contention that there is any possibility of finding “overriding considerations” or “balancing” under Public Resources Code Sections 30200 and 30007.5. Master Response 5 in this Final EIR details the process by which the Coastal Commission will consider policy inconsistencies pertinent to wetland fill. As noted in the Master Response the Commission does have the ability, and authority, to

balance policy considerations under Coastal Act Section 30007.5 in circumstances similar to that of the proposed project and cites several examples elsewhere in the California coastal zone where the Commission has in fact done that. It should be noted as well that the EIR does not propose to adopt a statement of overriding considerations concerning the fill of wetlands and these policies of the Coastal Act, as this was not found to be a significant and unavoidable impact of the project (see, e.g., Draft EIR, Chapters IV.I and V).

- 24-5 The comment questions the relevancy of proposing development of higher value wetlands on the property in light of Coastal Act policies. As noted above, the Coastal Commission does have the ability and authority to approve development of higher value wetlands under certain circumstances. The Coastal Commission, in its letter commenting on this Draft EIR, seems to acknowledge that a well constructed, relatively large tidally influenced wetland would have greater natural resource value than the existing small, scattered wetland depressions that currently exist on the project site (see comment 3-9). In any event, CEQA is concerned with the existing environmental setting, and whether a project will result in physical changes to the environment. Here, the existing setting includes a number of low-value, degraded wetlands. By creating wetlands with higher functions and values, the project's physical effects on the existing wetlands can be fully mitigated under CEQA.
- 24-6 The comment questions the need for the remediation and wetland restoration activities to be linked as set forth in the Draft EIR. Please refer to Master Response 4 in this Final EIR for further discussion of the history and status of remediation efforts on the project site. A Supplemental Interim Remedial Action Plan has been prepared and approved by the Regional Water Quality Control Board (RWQCB). The interim remedial measures are necessary to comply with the 2001 Cleanup and Abatement Order issued by the RWQCB. Contrary to the comment, it is not possible to remediate the entire project site – which contains low level contamination throughout – without disturbing the existing wetlands. Please also see response to comment 8-1, concerning the public trust and its treatment under CEQA.
- 24-7 The comment again questions the linkage of the site remediation and wetland restoration as proposed under the project as well as the applicability of the Coastal Act. Please refer to Master Response 4, particularly under the subsection entitled “Supplemental Interim Remediation Action Plan and Wetland Restoration,” as well as Master Response 5 concerning Coastal Act policies pertinent to wetland fill. Again, CEQA pertains to the physical changes in the environment that may be caused by the proposed project, and whether those physical changes result in adverse impacts that may be mitigated. Here, the wetlands onsite can be fully mitigated as set forth in the Draft EIR, Chapter IV.D.
- 24-8 The comment states that the Draft EIR is deficient because it does not take into account the preferences and priority of land uses under the Coastal Act. For further discussion of priority land uses under the Coastal Act, please see pages IV.I-13 – IV.I-14 of the Draft EIR, as well as Master Response 3.

- The Draft EIR is not “required to analyze priority coastal uses.” Pursuant to CEQA, the Draft EIR is required to analyze the proposed project, as well as a reasonable range of alternatives. Such alternatives screened for analysis are the Coastal Dependent Industrial Zoning Alternative, the Limited Industrial Zoning Alternative, and the Tourism Use Alternative. These alternatives, as well as others, would include the uses described in the comment. Moreover, just because one use might be a priority use in an overarching land-use plan (like a LCP or General Plan) does not necessarily mean other uses are prohibited. This is particularly true where, as here, the Project Applicant is seeking an amendment to those overarching plans. In any event, a priority use could very well result in greater environmental impacts than a proposed use, and therefore these sorts of policy choices do not constitute the sort of physical environmental changes that concern CEQA.
- 24-9 The comment suggests that the Draft EIR must consider visitor-serving uses in this area, and should consider a more expanded wetland restoration. As required under CEQA, the Draft EIR identifies and analyzes a reasonable range of alternatives to the proposed project that seek to reduce or eliminate one or more significant environmental impacts identified and that are also consistent with most of the basic objectives of the project. Two dozen alternatives were initially identified, including several that included or featured greater visitor-serving uses (see Chapter VI of the Draft EIR). Still, the proposed project would include visitor-serving uses, including recreational uses at the wetland reserve, as well as retail and other uses within the developed portion of the project site.
- 24-10 The comment requests more information regarding the Draft EIR’s conclusion that the proposed project would not result in urban decay in the retail trade area of the City. Please see responses to comments 14-3, 14-4, and 14-6, which discuss urban decay in the City of Eureka, the industrial and office real estate marks, and recent closures and economic conditions, respectively. Please also see Master Response 1, which provides additional discussion pertinent to the urban decay analysis provided in the Draft EIR. Contrary to the comment, the evidence supports the EIR’s conclusion that while the project might have some economic effects, it would not result in urban decay. It is entirely reasonable to conclude that with this mixed-use center, shoppers from areas outside of the City limits would come to Eureka to shop, and that there would be increased economic activity sufficient to support new businesses.
- 24-11 The comment suggests that the analysis provided in the Draft EIR regarding urban decay and other economic issues may be in need of an update given the changing economic climate subsequent to the Draft EIR’s release. The comment also questions the Draft EIR’s assumptions regarding the pool of available shoppers. Please see Master Response 1, particularly the subsection “National Stores vs. Local Stores” which concludes that large national chain stores have the potential to contribute to the local economy to a greater extent than do local stores, in part due to the higher level of employment they support and because of a higher level of charitable giving. The EIR’s economic consultants reevaluated the project in light of the current economy and found, overall, that the Draft EIR’s conclusions were still correct.

- 24-12 The comment questions some of the assumptions and statements pertaining to the urban decay analysis in the Draft EIR and its implications on consistency with General Plan policies. Please refer to Master Response 1 for a more information on the urban decay analysis and other related economic issues raised by the proposed project. In light of this information, the conclusion in the EIR that the project would not result in urban decay of the City's core area remains valid and the project would not be inconsistent with General Plan Policy 1.L.1. It should be noted as well that the traffic analysis relied on a number of sources, including regional traffic models which are considered accurate if not conservative. While these economic and traffic models may not predict with absolute accuracy, they are the best methodologies available for evaluating a project's impacts.
- 24-13 The comment states that the Marina Center will economically bleed the Core Area and restates the opinion that the proposed project would result in urban decay in the City and that therefore the project is inconsistent with General Plan policy 1.L.1. For the reasons stated above and in Master Response 1, the EIR preparers respectfully disagrees. Further, the sort of businesses and other uses in and around the Core Area remain distinct enough that the project and its proposed uses are not anticipated to have the dire results that the comment appears to assume.
- 24-14 The comment states that the policy analysis provided in the Draft EIR is inadequate and too cursory. The approach provided for in the Draft EIR is quite comprehensive and goes well beyond what is typically regarded as adequate policy analysis in the context of CEQA. Table IV.I-16 lists all policies of the General Plan and Local Coastal Program, determines their relevance to the proposed project and then analyzes the project's consistency with them. CEQA, on the other hand, is concerned with those land-use policies "adopted for the purpose of avoiding or mitigating an environmental effect." (CEQA Guidelines App. G.IX(b).) Many of the City's General Plan and LCP policies were not adopted for that purpose. And to the extent that the project might conflict with a particular policy, the physical environmental effects concerning that policy are already addressed in the Draft EIR (e.g., Biological Resources). Ultimately, consistency will be a matter left to the City Council's discretion. The Draft EIR, however, includes sufficient information to alert the public and the decision makers of the project's potential physical and adverse environmental effects.
- 24-15 The comment states that the Draft EIR is deficient because its consistency analysis includes cursory comments, incorrect determinations, and determinations not based on facts. The comment states that the policies requiring further analysis include but are not limited to Policy 3.B.3; Goal 1.H and Policy 1.H.1; Goal 1.M and Policies 1.M.1, 1.M.2, 1.M.5, 1.M.6, and 1.M.10; Goal 1.N; and Policy 3.F.2.

No project can possibly be subject to every encouragement, suggestion, and requirement of the General Plan, given its broad scope. Several General Plan policies state that the City should engage in specific planning studies with other agencies, fund specific programs, discourage specific uses, and seek specific improvements. Many of these policies, however, do not provide specific mandates for Project Applicants, particularly

when the project proposal itself includes amendments to an existing General Plan. The City of Eureka, as Lead Agency for the proposed project, analyzed the proposed project and determined which policies are relevant. The City of Eureka, in other processes, may be adhering to other General Plan policies, but those policies may not apply to the Marina Center project. It is beyond the scope of the Draft EIR to describe every project and process currently undertaken by the Lead Agency. The Draft EIR must focus on the proposed project.

As stated on Draft EIR page IV.I-15, the policy consistency analysis is provided to facilitate the City Council's determination of the project's consistency or inconsistency with the adopted General Plan and Local Coastal Program. The City Council is ultimately responsible for the determination. 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 policies 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 the Draft EIR. The specific General Plan Goals and Policies listed by the comment above are discussed below.

Goal 1.B: 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 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. Please also see Master Response 1.

Policy 3.B.3: This policy states that the City should work with the Humboldt Transit Authority to develop an intermodal transportation center at a location that could overlap the northeastern corner of the project site.

As shown on pages IV.I-4 and IV.I-5, the proposed project entitlements and approvals would not include a change in the land use designation or zoning of the area between A Street and Commercial Street, south of Waterfront Drive and the railroad tracks. Therefore, any land use controls that would affect the City's ability to pursue this policy would not be changed by the proposed project.

Goal 1.H and Policy 1.H.1: The comment incorrectly confuses the General Plan Policy 1.H.1, which relates to view corridors in the "Core" of Eureka, with California Public Resources Code Section 30251, which states that scenic and visual quality of coastal areas shall be protected.

First, 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 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.

Second, Public Resources Code Section 30251 states: “The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.” Section 30251 is implemented through several state and local regulations, including the California Coastal Act, the Local Coastal Program, and local zoning ordinances. The proposed projects’ impacts on views and scenic vistas are analyzed in Section IV.A of the Draft EIR.

The proposed project would augment coastal views, as discuss on page IV.A-16 of the Draft EIR, by providing trails along the edges of the restored Clark Slough, which would provide enhanced opportunities for viewing Humboldt Bay. Additionally, amenities along the trail would include benches and other street furniture. Furthermore, the proposed project would create increased pedestrian activity on the project site, which in and of itself would increase opportunities for waterfront viewing. View corridors through the project site from the Fourth Street extension, between the proposed buildings along Waterfront Drive, and from the proposed multi-use trail along Waterfront Drive would all augment coastal views.

In addition, as stated on Draft EIR page IV.A-2, “long-range views to the east from the project site are framed by existing development adjacent to the project site and are focused along roadway corridors through downtown Eureka. The upward sloping topography towards Downtown affords views of the downtown skyline, which is more densely developed than the immediate project vicinity, with some buildings extending up to five stories.” Any development on the project site would limit the view across the project site to the east. However, the extension of Fourth Street through the project site would extend the Fourth Street view corridor to Waterfront Drive.

Goal 1.M: This goal states that the City should ensure an adequate supply of industrial land. As stated on Draft EIR page IV.I-27, the portion of the project site designated as industrial land would retain industrial uses. Therefore, the Draft EIR acknowledges this goal, the project is consistent with this goal, and further discussion is not required.

Policy 1.M.1: This policy states that the City shall protect industrially-designated land from pre-emption by unrelated and incompatible uses. As stated on Draft EIR page IV.I-27, the proposed project would change some land designated light industrial to designations allowing for other uses. The Draft EIR therefore acknowledges this policy and its applicability to the project. However, given that only a small fraction of the entire project site is designated for light industrial use, this change is not considered significant.

Policy 1.M.2: The potential inconsistency with this policy is documented on page IV.I-27, as well as discussed in depth on pages IV.I-71 through IV.I-75. The Draft EIR therefore acknowledges this policy and the proposed project’s conflict with it.

Policy 1.M.5: The potential inconsistency with this policy is documented on page IV.I-28, as well as discussed in depth on pages IV.I-71 through IV.I-75. The Draft EIR therefore acknowledges this policy and the proposed project's conflict with it.

Policy 1.M.6: This policy states that the area adjacent to the project site to the east should be considered to be developed as an industrial park. The proposed project does not affect the City's ability to consider such development. More importantly, as stated on Draft EIR page IV.I-28, this policy is directed toward an area outside the project site. As such, the proposed project is not subject to General Plan policies related to development of this area. The City Council will consider the proximity of the project site to this area when determining the consistency of the proposed project with the goals and policies the General Plan.

Policy 1.M.10: The comment provides no details on how the proposed project conflicts with this policy. As stated on Draft EIR page IV.I-28, the project would mix industrial and commercial uses in a carefully planned and compatible development. The proposed project is therefore consistent with this policy, as disclosed in the Draft EIR.

Goal 1.N: This goal states that the City should ensure an adequate supply of land for community facilities and services to meet the present and future needs of Eureka. Contrary to the comment's assertion, the Draft EIR does not "dismiss this Goal as not relevant." As stated on Draft EIR page IV.I-29, the Draft EIR states that the project would develop new commercial uses intended to serve the residents of Eureka. In addition, as stated next to Policy 1.N.6, the proposed project would allocate sufficient area to parks and open space within the project site.

The comment inappropriately confuses community facilities with Public and Quasi-public land use designations and zoning. Community facilities are not required to be located in designated Public and Quasi-public. Indeed, current community facilities are located in a variety of districts within the City. The Draft EIR analyzes the proposed project's consistency with existing land use designations and planning policies, as well as potential environmental land use effects, in Chapter IV.I, Land Use and Planning. The potential effects of the proposed land use changes are also analyzed throughout the Draft EIR in other sections of Chapter IV, such impacts related to transportation, air quality, and noise. The proposed project's impacts on public services are analyzed in Chapter IV.M-1. The Draft EIR, therefore, discusses the potential environmental effects of the land use changes associated with the proposed project.

Policy 3.F.2: This policy states that the City shall work with the railroad to determine feasible locations for switching operations, specifically so the balloon track area can be developed for other uses. The proposed project in no way affects the City's ability to work with the railroad to determine those locations, and it is beyond the scope of the proposed project to do so. Therefore, as stated on Draft EIR page IV.I-39, this Policy is not relevant to the proposed project.

24-16 The comment raises four concerns about the Draft EIR, i.e., seasonal difference in traffic conditions, use of roads as alternative to Broadway, applicability of mitigation measures,

and effects related to the Northwestern Pacific Railroad right-of-way. See response to comment 16-190 regarding the standard approach taken for traffic volume data collection (i.e., conducting weekday counts only on mid-week days (Tuesday-Thursday) when area schools were in session). The comment's reference to summer conditions is noted, but summer months are not representative of average peak-period conditions (with tourist traffic offset by schools being closed and residents taking vacations).

See response to comment 24-22, below, about alternative travel routes. See response to comment 24-23, below, regarding mitigation measures identified in the Draft EIR. See response to comment 24-21, below, regarding issues related to the railroad right-of-way.

- 24-17 The comment expresses opinions about the relative congestion on east-west streets (U.S. 101 on Fourth and Fifth Streets) compared to north-south streets (lettered cross streets) in the Core Area, and how those congestion levels affect the Draft EIR's analysis of traffic conditions.

It is acknowledged that the City of Eureka General Plan (Policy 3.H.2) recognizes the need to balance intersection traffic signal timings in the Core Area for traffic in all directions. Mitigation measures identified in the Draft EIR would synchronize traffic lights along Broadway. The traffic analysis concludes that even with this mitigation, acceptable levels of service would be maintained along Broadway, as well as the north-south cross streets. Please see Master Response 7 regarding trip distribution and responses to comments. Please see responses to comments 31-1, 32-9, 38-4, 40-2, and 49-1.

- Response to comment 31-1 addresses traffic conditions on Broadway, which would become more congested with or without the proposed project.
- Response to comment 32-9 addresses traffic impacts on two nearby streets, Sixth Street and Seventh Street.
- Response to comment 38-4 addresses traffic impacts to other nearby streets, Henderson and Harris Street.
- Response to comment 40-2 addresses traffic impacts to Waterfront Drive and Railroad Avenue.
- Response to comment 49-1 addresses levels of service at intersections on Broadway.

- 24-18 The comment states that the Draft EIR analysis does not account for the above-described relative congestion on east-west street compared to north-south streets in the Core Area. The Draft EIR used standard traffic analysis practices by calculating overall delay and level of service at area intersections, and assessing the project's impact on the basis of changes to the intersections' overall level of service. The goal of standard traffic analyses is not to achieve equivalent levels of service on all streets that comprise the intersection, but to achieve a reasonable mix of service levels on the streets so that, overall, the intersection operates acceptably. Please also see Master Response 7 and responses to comments 31-1, 32-9, 38-4, 40-2, and 49-1 concerning City-wide distribution of vehicle trips.

- 24-19 The comment quotes General Plan Policy 3.H.2, which recognizes the need to balance intersection traffic signal timings in the Core Area for traffic in all directions, and expresses an opinion that the Draft EIR is deficient because its policy consistency analysis (Table IV.I-2) states that Policy 3.H.2 is not relevant because the project is not within Eureka's "Core Area". The comment incorrectly melds the policy consistency analysis with the traffic analysis. The Draft EIR's traffic analysis encompasses a study area beyond the immediate project site, including an analysis of intersections in the Core Area. See response to comment 24-18 regarding the fact that the Draft EIR used standard traffic analysis practices to assess overall delay and level of service at area intersections.
- 24-20 The comment states that the proposed project would impede coastal access. The comment is incorrect. The proposed project would augment coastal views, as discussed on page IV.A-16 of the Draft EIR, by providing trails along the edges of the restored Clark Slough, and by providing enhanced opportunities for viewing Humboldt Bay. Amenities along the trail would include benches and other street furniture. Furthermore, the proposed project would be expected to increase pedestrian activity on the site, which in and of itself would increase opportunities for waterfront viewing. View corridors through the project site from the Fourth Street extension, between the proposed buildings along Waterfront Drive, and from the proposed multi-use trail along Waterfront Drive would all be designed to augment coastal views. Also, with improvements to the intersections and roadway sections around the project site, vehicle access should be improved as well. The project is situated landward of Waterfront Drive, and so it would not directly inhibit any coastal access points.
- 24-21 The comment questions how potential reactivation of the railroad right-of-way would affect the proposed project. The Draft EIR (Impact O-7, page IV.O-45, and Mitigation Measures O-7a, O-7b and O-7c, page IV.O-47) identifies and mitigates the safety and access concerns that would exist if a freight or passenger line were to operate along the western property boundary under project development. Also, evaluation of the intersection of the Fourth Street Extension and Waterfront Drive included consideration of how this intersection would function should this become an active rail crossing. If a northbound right turn lane were provided on Waterfront Drive, then vehicles attempting to turn right into Marina Center would be queued away from through traffic proceeding northbound through the intersection. Traffic exiting the proposed Marina Center would wait behind crossing gates until the train clears the crossing. The rail crossing is no different than many other at-grade rail crossings with similar traffic controls. A northbound right turn lane is not recommended until such time the crossing becomes active for train services. It should be noted as well that while there has been some talk about renewing rail service, there is no concrete proposal for doing so. Thus, this possible future use is not part of the environmental setting, nor is it a reasonably foreseeable probable future project. The level of use referenced in the comment is entirely speculative at this point in time, and consequently the EIR need not evaluate that use in conjunction with the proposed project.
- 24-22 The comment requests analysis of additional streets and intersections.

The Draft EIR's analysis shows that after implementation of the identified mitigation measures, all intersections on Broadway in the project area would operate acceptably (i.e., without adverse congestion), so the average driver would have no reason to divert from Broadway onto other roads. Please also see Master Response 7 and responses to comments 31-1, 32-9, 38-4, 40-2, and 49-1 concerning City-wide distribution of vehicle trips.

- 24-23 The comment expresses an opinion that the project should not be allowed to implement mitigation measures that have been discussed previously, but not implemented.

While it is undoubtedly true that at least some of the traffic-related mitigation measures have been discussed in the community for many years, being able to implement them is dependent on funding sources, land entitlements, and other considerations. The proposed project offers the opportunity for the City to obtain funding and the means to help implement those measures, many of which would help alleviate existing traffic congestion as well as address increased congestion anticipated due to the proposed project. The project's traffic-related mitigation measures would address cumulative traffic conditions through 2025. Thus, these measures do leave a capacity margin for future development at least through 2025.

- 24-24 The comment expresses an opinion that the City is relying on Mitigation Measures O-8a and O-8b (page IV.O-54 of the Draft EIR) to disregard the project's significant impacts in 2025. See response to comment 16-217 regarding 2025 cumulative traffic impacts, specifically that the Project Applicant cannot be obligated to pay more than its fair share, and that there is no program in place or funding otherwise identified to ensure completion of the mitigation measures within the time period necessary to avoid the 2025 cumulative impacts. Nonetheless, the City of Eureka can seek funding from future projects or develop regional fee programs that may ultimately address this shortfall and ensure that the unacceptable levels of service are avoided. But, the cumulative effects analysis in the Draft EIR's traffic study is comprehensive, and adequately and conservatively evaluates present and reasonably foreseeable probable future projects.

- 24-25 The comment suggests that the existing capacities at the City's Wastewater Treatment Plant are inadequately addressed and that the impact analysis does not take into account other proposed development projects in the County.

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 allocates 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, 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 is 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, 211 EDUs, is well below the previous estimate of 625 EDUs cited in the December 4, 2006 will-serve letter. The City's wastewater commitments to the Bayshore Inn Expansion (28 EDUs) and Lunbar Hills Unit 6 (56 EDUs) totals 296 EDUs.

Therefore, the balance of uncommitted connections contractually available to the City at the WWTP is approximately 2,161 EDUs after accounting for the 296 EDUs already committed for the above mentioned projects. Consequently, there is sufficient capacity at the WWTP to serve the Marina Center development and other future projects.

- 24-26 The comment states that because the City has submitted a letter to the Regional Board withdrawing its previous request to increase the WWTP's permitted capacity, the conclusion in the EIR with respect to available capacity to serve the proposed project must be reanalyzed.

In June, 2008 the Project Applicant requested information from the City regarding capacity of utilities to serve the Marina Center project. At that time City staff intended to apply for the ultimate design capacity, also referred to as 'nameplate' capacity, for average dry weather flow (ADWF) at the Elk River Wastewater Treatment Plant (WWTP) in its NPDES permit renewal application. Also at that time, the City was beginning work on the Phase 2A portion of the City of Eureka Wastewater System Facilities Plan, which was intended to update the analysis of the WWTP's capacity. As a result of that analysis it was recommended by the City's consultants that several capital improvement projects be constructed before applying for the ultimate 'nameplate' capacity, which is 6.0 mgd ADWF. The analysis also determined that that it was not necessary to apply for the full nameplate capacity for the current 5-year planning cycle, since the WWTP is operating at 4.6 million gallons per day and is not expected to reach 6.0 mgd until sometime after 2029. Consequently, in December 2008, the City submitted a revised NPDES renewal application requesting no change in permitted capacity.

As noted in response to comment 24-25 above, City Engineering staff-initiated changes to the Draft EIR indicate that the proposed project would generate 58,563 gallons per day of wastewater, and this wastewater would be accommodated well within the existing 5.24 mgd permitted capacity of the WWTP. Thus, the Draft EIR's conclusion that impacts on the City's wastewater treatment system would be less than significant remains true.

24-27 The comment notes that, according to a letter submitted by the General Manager of the Humboldt Community Services District, the City of Eureka has been exceeding its share of the WWTP's capacity in recent years. As noted above and in staff-initiated changes in Chapter 2 of this document, the wastewater generation estimate for the proposed project has been revised and is substantially less than that estimated in the Draft EIR. Capacity at the WWTP would be adequate to accommodate the proposed project, even when considering other projects in the pipeline.

The contractual relationship between the City and the CSD regarding wastewater treatment capacity allocation is a legal matter and not pertinent to the EIR.

24-28 The comment opines that the WWTP does not have capacity to accommodate the proposed project. As noted above, the EIR authors, City staff, and the record evidence disagree with the comment. There is more than sufficient capacity at the WWTP to accept wastewater from this and other future projects.

24-29 The comment states that the alternatives analysis in the Draft EIR is inadequate for several reasons, including narrowly focused project objectives, improper elimination of feasible alternatives, and failure of the City to "plan for the site."

The Alternatives section of the Draft EIR was prepared in compliance with the CEQA Guidelines and standard professional practice. The City's role in complying with CEQA recognizes that it must respond to applications filed with for private projects. Regarding the project's objectives, they were developed by the City in consideration of the Project Applicant's objectives as well as CEQA requirements. As stated on Draft EIR page VI-3, the first objective is to "strengthen Eureka as the retail and employment center of Humboldt County." Although the creation of jobs alone could result in increased demand on retail uses in the Eureka, the creation of both jobs and retail space would better satisfy this objective.

The second basic objective is to "develop an economically viable mixed use project (e.g., retail, office, residential, industrial)." As shown in Table VI-15, 18 of the 24 alternatives screened for analysis would meet most of the basic objectives of the project, including several alternatives with uses, density, and locations different from those that the developer proposes. These alternatives include, but are not limited to, the Convention Center Alternative, the No Retail Option, the Tourism Use Alternative, the Coastal Dependency Industrial Alternative, the Public Facilities Alternative, the Intermodal Bus Facility Alternative, the College of Redwoods Alternative, as well as several Off-Site Alternatives on land not owned or controlled by the Project Applicant. Therefore, the second basic objective does not limit consideration of alternatives to those the developer proposes.

The third basic objective is to "facilitate brownfield redevelopment and urban infill development of property in the redevelopment area in the city of Eureka." First, the comment's assertion that this objective skews the analysis toward the proposed project is not consistent with the comment's assertion that "the urban in-fill component can be

satisfied with any development on this site, as well as in any similar site in Eureka.” These two statements are contradictory. Second, as shown in Table VI-2, not every alternative screened for analysis meets this criterion, such as the Palco Property Alternative, the Lieber Property Alternative, and the Ocean View Cemetery Alternative. Redevelopment of these sites would not promote urban, infill development in the City of Eureka. Therefore, some redevelopment alternatives that are screened do not satisfy the urban infill component, and it is a valid objective.

In conclusion, the objectives are not too narrow and in fact have clearly enabled a “reasonable range” of alternatives to be considered in the EIR.

Similarly, the screening process for examining potential alternatives to the proposed project is quite thorough and, as required under CEQA, based on economic, social, environmental, legal, and technical factors. Also as required under CEQA, the final screening considered, in addition to feasibility, whether the alternative met most of the basic objectives of the project and avoided or substantially reduced one or more significant environmental impacts identified for the proposed project.

- 24-30 The comment restates the contention that the City can and should take the lead in planning development of the project site. The comment also questions the validity of the No Project Alternative analysis in the Draft EIR, maintaining a wide range of alternative uses are possible because the proposed project requires a General Plan amendment.

Again, the City must respond to an application as submitted and cannot direct an applicant as to what that development must be. Regarding the No Project Alternative, and as stated on Draft EIR page VI-16, the purpose of the No Project Alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. As stated in CEQA Guidelines 15126(e)(2), “the ‘no project’ analysis shall discuss the existing conditions at the time the notice of preparation is published...as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.”

The purpose of the No Project Alternative is not to speculate about the outcome of other planning processes and attempt to analyze them. The Lead Agency cannot speculate the entitlements and approvals that would be required after a separate planning process resulted in a different development proposal, nor can it delay the analysis of the proposed project until a separate planning process and development proposal is completed. In addition, the Lead Agency cannot know the final number of uses, square footage of uses, their configuration, or number of users of a different development proposal, so it cannot analyze them. If the results of any other planning process were to result in a different proposal for the project site, and that proposal requires discretionary approval, that project would be subject to CEQA and it would undergo environmental review.

Pursuant to CEQA, the purpose of the analyses in the Marina Center Mixed Use Development Project Draft EIR is to evaluate the proposed project, not every possible

development scenario available under every other planning process. Please also see Master Response 3.

- 24-31 The comment restates the opinion that the City should lead the planning of the project site. As noted above, the City must respond to an application submitted by a private applicant.
- 24-32 The comment suggests that the basic project objective of “strengthening Eureka as the retail and employment center of Humboldt County” is too stilted in favor of the proposed project. The EIR preparers respectfully disagree and that it, along with the other project objectives, enabled the Draft EIR to consider a reasonably wide range of alternatives in accordance with CEQA requirements.
- 24-33 The comment states the opinion that the project as proposed does not constitute “smart growth” because it doesn’t bring a mix of uses into a residential sector, and that the project’s objectives were an attempt to limit the consideration of alternatives.

Under CEQA, an EIR must articulate the objectives of the project to be considered. They cannot be so narrow as to unnecessarily limit the review of alternatives, but those objectives must still capture the essence of the project. Here, the objectives were quite broad, and allowed the Draft EIR to evaluate a number of project alternatives. The project’s relation to smart growth principles is detailed in pages IV.I-11 to IV.I-13 of the Draft EIR. As stated in that chapter, the proposed project is a mixed-use infill development of a brownfield site at the city center, which would include a mix of land uses that would connect the industrial section of the city with the commercial downtown area. Big box stores and smart growth are not mutually exclusive—please also see response to comment 128-1. The proposed project includes 54 residential units. However, with or without the inclusion of any residential units, the proposed project still adheres to several smart growth principles. Smart growth is not limited to the development of commercial and industrial uses close to suburban residential development—it also includes the development of infill sites in urban centers as opposed to on the urban fringe.

- 24-34 The comment states that cleanup of the toxics on the project site (brownfield redevelopment) is completely unrelated to this or any other development, and that it is not necessary for this project to be approved to allow cleanup of the site.

The Draft EIR does not state that it is necessary to approve the project to allow remediation of the hazardous materials. Some remediation is presumed to occur as part of the Clean Up and Abatement Order issued by the RWQCB. Still, the Project Applicant must obtain permits and appropriate entitlements to conduct the level of remediation proposed to occur here. Such entitlements are subject to CEQA.

In June 2009, after the City circulated the Draft EIR for public review, Environmental Resources Management (ERM) prepared a Supplemental Interim Remedial Action Plan (SIRAP), which is added to the Marina Center EIR as Appendix S. The SIRAP is intended to address existing site contamination concerns of the Project Applicant and the

California Regional Water Quality Control Board, and it is designed to be implemented with or without the build-out of the buildings and related improvements and infrastructure proposed in the project. The Project Applicant has proposed to implement the SIRAP in conjunction with onsite wetland restoration as Phase 1 of the proposed project and incorporating pertinent mitigation measures in the EIR, which are already described in the Chapters III and IV.G of the Draft EIR. Therefore, while this EIR addresses both this initial phase of the project as well as subsequent phases, the SIRAP has independent utility and can proceed on its own in advance of the City's approval of any entitlements necessary for the proposed project itself. Still, a Final Remedial Action Plan and regulatory closure would not occur until final site plans, building configurations, and construction methods are determined.

- 24-35 The comment states that the Draft EIR's conclusion that the Tourism Use Alternative is not economically feasible is not appropriate.

As stated on Draft EIR page VI-1, "a reasonable range of alternatives for comparison must include those alternatives that would feasibly attain most of the basic objectives of the project and would avoid or substantially lessen any of the significant effects of the project" (CEQA Guidelines Section 15126.6). CEQA generally defines "feasible" to mean an alternative that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. In addition, the following may be taken into consideration when assessing the feasibility of alternatives: "site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and the ability of the proponent to attain site control (Section 15126.6(f)(1))."

The Tourism Use Alternative was determined to be an economically infeasible alternative, and it fails to satisfy most of the project objectives. As stated on Draft EIR page VI-2, "alternatives that are not reasonable or feasible need not be discussed at length." If the Tourism Use Alternative were determined to be an economically feasible alternative, no reason exists for the Project Applicant to state otherwise, or for the Lead Agency to avoid exploring its potential environmental impacts. The comment also mentions that the Tourism Use Alternative could be a private, rather than a public project, but provides no evidence on how that could be accomplished or what sort of project that would entail.

- 24-36 The comment summarizes the comments made earlier in the letter. Please refer in particular to responses to comments 24-3, 24-6, 24-8, 24-13, 24-14, 24-18, 24-25, 24-27, and 24-29.
- 24-37 The comment makes a summary statement that the City should reject the Draft EIR and send the Project Applicant back to the drawing board. Ultimately, the City will make a decision about whether to approve the project or not. This decision will be based on many factors, including the disclosure of potential environmental effects identified in the EIR.

Comment Letter 25

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January 30, 2009

City of Eureka Community Development Department

Sidnie L Olson, Principal Planner

531 K St

Eureka CA 95501

The following are comments and questions on the Marina Center Draft Environmental Impact Report (DEIR) submitted on behalf of the North Group, Redwood Chapter of the Sierra Club, with over 1,200 members in Humboldt, Del Norte, Trinity, and western Siskiyou Counties.

AESTHETICS

- 1. The DEIR claims that the proposed project would “augment public coastal viewing,” but does not explain how stores ranging in height from 28 to 72 feet would accomplish that. 25-1
- 2. The Final EIR should include a visual simulation of a 1500+-car parking lot. 25-2
- 3. Could the Eureka Design Review Committee bar Home Depot from incorporating fluorescent orange in its store exterior color? 25-3

AIR QUALITY

- 1. The North Coast Air Basin is already in non-attainment status for fine particulate matter (PM10) at a threshold of 16 tons/year. The proposed project is estimated to generate 38 tons/year – more than TWICE the current threshold that is not being met. The proposed project would also result in emissions that exceed thresholds for ROG, NOx, and CO. The project applicant’s proposed mitigations (e.g., electric plug-ins for cars, pedestrian and bicycle zones, voluntary employee carpooling) are weak and their expected air pollution reductions are not quantified. Also, how can one expect pedestrians or bicyclists to make any significant purchases at the hardware/lumber store anchor? (Delivery trucks mean more diesel pollution!) 25-4
- 2. Has the update on the Air Quality District’s PM10 attainment plan (expected in 2008) been completed? If so, the project applicant should incorporate any findings into the Final EIR. 25-5
- 3. Locally, the vehicle trips generated by the proposed project would significantly contribute to greenhouse gas (GHG) emissions. However, since the DEIR sets the scale for determining an “individual discernable effect” as global (i.e., raising the Earth’s temperature), it makes them not significant. The DEIR should compare the 20,000 metric tons/year of GHGs generated by the proposed project as a percentage of local pollutants. 25-6
- 4. The DEIR is vague about what energy conservation measures would be implemented as mitigation. 25-7
- 5. The proposed project is inconsistent with the General Plan Policy to “protect and improve air quality” in the Eureka area. 25-8

BIOLOGICAL RESOURCES

- 1. The DEIR states that no special status plants are “expected to occur” on the project site. Haven’t surveys already been done of the entire property, allowing a definite statement to be made? 25-9
- 2. The proposed project would locate the restored wetland area immediately adjacent to the Anchor 1 (Home Depot) store. What is the width of the proposed buffer? If it is not 100 feet, how was a narrower buffer justified as “adequate”? What type of wildlife would be attracted to habitat next to a 40-foot-high store? 25-10
- 3. Based on two days of field survey, the DEIR claims that the current Balloon Track has “no habitat values.” (However, the report listed 27 bird species observed on the open field site in winter and 14 in summer.) What habitat values are associated with paved parking lots and buildings (47% of proposed project area)? 25-11
- 4. Have studies been done on expected bird kills from new buildings (particularly if glass) and parking lots in the proposed project? 25-12
- 5. It is extremely difficult to recreate a functional wetland (e.g., prone to fill in, non-native plants become established). The project applicant proposes to monitor the wetland for 5 years to confirm its success. How will success or failure be measured, and how was the 5-year cutoff determined? 25-13
- 6. The DEIR notes that public trust issues surrounding the property are “not clear and are being investigated by the State Lands Commission.” The results of this investigation are important and must be considered in the Final EIR. 25-14

CULTURAL RESOURCES

- 1. The potential impacts listed in the DEIR do not match statements from the Preservation Officer of the Wiyot Tribe that two villages may occur on the Balloon Tract. The project applicant should be required to perform subsurface studies to locate cultural resources by ground-penetrating radar, controlled backhoe testing, and augering before any development plan is approved. Excavation for data recovery (e.g., digging up and relocating artifacts and human remains) is the lowest priority for the Tribe and should be respected. What actions would the project applicant take if European remains are discovered? 25-15

HAZARDS & HAZARDOUS MATERIALS

- 1. Groundwater was tested only for petroleum hydrocarbons, metals, and volatile organic compounds. Why was sampling limited to these potential pollutants? 25-16
- 2. The Health Risk Assessments (other than for diesel emissions) were performed in 1996 and 2000. Levels of significance determined by the US EPA may have changed (i.e., been lowered) since then for chemicals of concern. The project applicant should be required to update the HRAs to incorporate any current levels of significance AND to reflect projected (not current) uses. 25-17
- 3. The DEIR devotes two sentences to dioxin, furans, and PCBs, noting only that they were found and sources were not identified. (The nonprofit organization Humboldt Baykeeper found all samples it tested from the Balloon Track positive for dioxin.) The project applicant should be required to test for these substances, as Humboldt Bay is already listed for dioxins and PCBs. 25-18

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- 4. What studies were done to model movement of pollutants from the project site into Humboldt Bay? Could the proposed reintroduction of tidal influence to Clark Slough mobilize toxic substances? 25-19
- 5. Throughout the DEIR, the project applicant refers to the site as a “brownfield.” However, it concludes that the site should not be considered for listing as a hazardous materials site because “it is in compliance with Regional Water Quality Board (RWQB) orders.” However, that compliance is based on the current use of the Balloon Track – basically, a vacant lot – NOT on the proposed use. 25-20
- 6. The DEIR mentions project compliance only with RWQB requirements. Don’t other government agencies have jurisdiction over toxics? 25-21
- 7. Remediation measures to be used should be spelled out (e.g., capping vs removal of toxic soils) in any plan brought before the Eureka City Council, not deferred until a future date. 25-22

HYDROLOGY & WATER QUALITY

- 1. The FEMA flood insurance map designating 100-year flood boundaries was last updated in 1986. Were any studies done to determine whether those delineations are still accurate? 25-23
- 2. The proposed project would install impervious surfaces on 29 of 43 acres (47%) of the Balloon Track, increasing peak discharge from the site. How were pre-project flows measured? The project applicant proposes to install culverts to handle only a 10-year storm event. Given the expense of replacing undersized culverts, and the potential for future excavation to stir up any “capped” hazardous substances, culverts should be able to handle a 50- to 100-year event. 25-24
- 3. What would happen to runoff collected in a retention basin, and where would it be located? Wouldn’t the runoff be contaminated with petroleum products from the parking lot? 25-25
- 4. The DEIR does not adequately assess effects of global warming/sea level rise on the proposed project, given that the site elevation ranges from 8 to 12 feet. 25-26
- 5. The proposed project is located in a Moderate tsunami zone. How would an evacuation route be able to handle thousands of cars, especially since the preferred exit (Waterfront Drive) is closer to the ocean than the proposed project? 25-27

LAND USE & PLANNING

- 1. The proposed project would require several changes to existing zoning classifications. The DEIR fails to discuss the desirability of removing a large contiguous segment of industrial land – the premiere piece of property left in the City of Eureka -- from inventory. It also fails to justify using land near the Bay for uses that are not coastal-dependent or coastal-related. The Marina Center does not need to be located on a historic waterfront. 25-28
- 2. While there are some elements of “Smart Growth” in the proposed project (e.g., urban infill), a Big Box (or, as described in the DEIR, “large-format”) store is the driving force behind Marina Center. Generating over 15,000 trips/day should not be considered eco-friendly. 25-29
- 3. Under the California Coastal Act, “visitor-serving commercial recreational facilities” have priority over residential, general industrial, or commercial development on properties in the coastal zone. Given that all of the proposed Marina Center uses are in the lowest priority group of allowable uses, why were they selected over potential higher priority uses? 25-30
- 4. The Coastal Act also states that “coastal-related developments shall not be sited in a wetland” and that wetlands may be dredged or filled for certain specified uses, none of which is operating in the proposed project. (The filling of wetlands for the purpose of site remediation is not listed as a permissible purpose.) Over 5-1/2 acres of wetlands would be filled. 25-31

- 5. The DEIR states that the Marina Center would not divide the existing industrial community of the Westside Industrial Area; would eastwardly expand similar existing commercial uses along 4th, 5th, and Broadway; and would provide large anchor retail spaces on a similar scale as to its south. However, it fails to gauge how well the proposed project would fit in with Old Town (1st through 3rd Streets, lettered cross streets). 25-32
- 6. Nothing in the DEIR would prevent a Wal-Mart from becoming an anchor store in the proposed project. (In fact, the report notes that if the Anchor 1 site becomes vacant, “certain large-format stores have expressed an interest in entering the Humboldt County market.”) Is the citizen referendum where two-thirds of Eureka’s citizens voted to stop a Wal-Mart from being built on the Eureka waterfront binding on the project applicant? 25-33
- 7. The proposed project is inconsistent with the General Plan policy of discouraging new commercial development that will adversely affect Eureka’s Core Area; its preference for upgrading established commercial centers over developing new ones; and developing part of the Westside Industrial Area for nonindustrial uses. According to the Westside Industrial Study, the Balloon Track is the only site available within the city for an industrial park. 25-34
- 8. Where are the 171 acres of vacant land planned for Public use located within the city? 25-35

POPULATION & HOUSING

- 1. Why should the proposed project NOT include some fair share of low-income housing? 25-36

TRANSPORTATION

- 1. Traffic sampling was performed in March and April, which does not take into account tourist season. Have studies been done to determine what time of year Broadway (Highway 101) experiences the worst traffic? Any scenarios projecting traffic increases from the Marina Center should use those numbers as a worst-case scenario baseline. 25-37
- 2. How much traffic will be diverted into adjacent neighborhoods not within the intersections studied in the DEIR (e.g., 6th 7th, Harris)? How were the roadways to study as being potentially impacted by the proposed project selected? 25-38
- 3. The City of Eureka has used existing traffic level of service and delays on Broadway to justify building Waterfront Drive Extension. Thus, how can adding over 15,000 trips a day to the current infrastructure not be determined to be of major significance? (And, conversely, why is WDE seen as necessary, if traffic signal synchronization is purported to mitigate a much-worse traffic problem?) 25-39
- 4. The DEIR fails to mention that Waterfront Drive is used as a staging area for boat launching at the Wharfinger Marina and gets backed up with trailers. Also, there are segments of WD where the road width is narrower than that listed in the DEIR. 25-40
- 5. The project applicant says it will pay its “fair share” of off-site and project access transportation improvements that include new road construction, medians, sidewalks, traffic signals, stop signs, directional signs, lane striping, etc. What is the total cost estimated to be? Would any land acquisition be necessary? Shouldn’t “fair share” equate to 100% of the costs, if such “improvements” would not be necessary if the Marina Center was not built? If not, how is “fair share” calculated? All too often, the public ends up paying for infrastructure that benefits private developers. 25-41
- 6. Mitigation measures rely heavily on actions that would need to be taken by CalTrans or the City of Eureka that are not under the project applicant’s control. (For example, the DEIR states the project applicant will “obtain encroachment permits from CalTrans and cause to be completed/installed mitigation measures A, B, C....”) CalTrans rules on Highway 101: what 25-42

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power does the project applicant have to force signal interconnects and optimizing signal coordination timing? And in what time frame would such measures have to be installed to coincide with Marina Center construction and operation? (The DEIR notes that "there is no program in place or funding otherwise identified to ensure completion of the mitigation measures within the time period necessary to avoid the impacts.")

↑
25-42
cont.

7. How will the project applicants deal with the possible resumption of the railroad through Old Town, or trucks carrying containers from the Redwood Marine Terminal now being planned? The DEIR states that the project applicant will work with the railroad to maintain adequate right-of-way and install warning signs and crossing gates at the Waterfront Drive driveway. This would block the main exit from the Marina Center each time a train passed. Also, the trail around the wetland is located partly on the railroad ROW.
8. The proposed project is estimated to slow morning peak traffic southbound on Broadway from 26.3 to 21.6 mph and reduce the p.m. peak hour speed from 21.2 to 18.5 mph, all well below posted speed limits. How can this not lead to more "road rage" and accidents?
9. Directing employees to park off-site during December (the DEIR estimates that the proposed project's parking lot could be 94 spaces short) takes on-street parking away from existing merchants during their peak holiday sales season.
10. Where does the project applicant plan to have speed bumps installed for traffic calming and who would pay for such construction?

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25-45

25-46

URBAN DECAY

1. The DEIR twists the meaning of urban decay to claim that because the Balloon Track is currently decayed, its cleanup and development would be an improvement, and therefore "eliminate the conditions for urban decay." However, by definition, urban decay includes the physical deterioration associated with high business vacancies. The DEIR fails to quantify how many stores might go out of business if the Marina Center is constructed. Although the report mentions competition from a possible home improvement store in Fortuna, it fails to study the effect of Home Depot on operating companies such as Pierson's, Ace Hardware, and Do-It-Best Hardware.
2. The DEIR states that 421 jobs may be lost in Humboldt County and the City of Eureka due to construction of the Marina Center, and that 1,246 jobs are projected to be created. Are the types of jobs created/lost comparable in wages and benefits?

25-47

ALTERNATIVES

1. The project applicant selected objectives for the proposed project so that only the Marina Center would meet those objectives (i.e., strengthen Eureka as the retail and employment center of Humboldt County; develop an economically viable mixed-use project; facilitate brownfield redevelopment and urban infill development of property in the redevelopment area in the City of Eureka).
2. The project applicant's objectives for the proposed project listed in the Alternatives section are different from those in the Project Description. For instance, the latter list includes tourism as an objective, but the DEIR does not quantify or explain how the proposed project will increase tourism.

25-48

25-49

Thank you for considering these comments.

Letter 25: Redwood Chapter of the Sierra Club (Sue Leskiw)

- 25-1 The comment requests that the Draft EIR explain how increasing building heights would augment coastal views.

The proposed project would augment coastal views, as discussed on page IV.A-16 of the Draft EIR, by providing trails along the edges of the restored Clark Slough, which would provide enhanced opportunities for viewing Humboldt Bay. Additionally, amenities along the trail would include benches and other street furniture. Furthermore, the proposed project would create increased pedestrian activity on the project site, which in and of itself, would increase opportunities for waterfront viewing. View corridors through the project site from the Fourth Street extension, between the proposed buildings along Waterfront Drive, and from the proposed multi-use trail along Waterfront Drive would all augment coastal views.

- 25-2 The comment states that the Final EIR should include a visual simulation of a 1500+ car parking garage.

Visual simulations of the proposed project were taken from five representative public vantage points. As illustrated in Figure III-2, Project Site Plan, and demonstrated in the visual simulations from public view points under Impact A-3, the views of the surface parking would be away from the public streets and shielded from direct view by proposed buildings which would front Second Street and Broadway. Small surface parking lots would be visible from Broadway from Second Street, Third Street and between Sixth and Seventh Streets; however the bulk of the surface parking would be obscured by existing uses (i.e., Bob's Fine Cars and Nilsen Feed & Grain Company). Furthermore, as described on page III-13 of the Draft EIR, the proposed project would include a total of approximately 1,590 parking spaces, only 462 of which would be housed in the proposed four-story parking structure. Thus a visual simulation of an approximately 1,500+ car parking garage would not be representative of the proposed project.

- 25-3 The comment asks that the Design Review Committee bar Home Depot from including orange in its exterior colors.

The Design Review Committee will review the site plans and designs prior to approval and ensure that the goals set forth in Section 155.180 et. seq. of the Eureka Municipal Code are met. The use of the corporate color for the exterior facade of the proposed anchor tenant will be assessed at that time.

- 25-4 The comment summarizes some air quality issues and indicates that the proposed air quality mitigation measures are weak and their expected air pollution reductions are not quantified. It is acknowledged that the City cannot demonstrate the extent that mitigation measures would reduce emissions of PM10, as speculative assumptions would need to be made regarding displaced conventional vehicular trips and efficiencies created by the

measures. As stated in response to comment 12-3, the City has taken a conservative approach to the significance determinations for Impacts C-2 and C-3, identifying significant and unavoidable impacts even with the implementation of mitigation measures. It is nonetheless reasonable to assume that the mitigation measures would result in some level of emission reductions by increasing efficiencies and displacing some conventional vehicular trips.

Please see responses to comments 12-2 through 12-5 for further discussion regarding the quantification of the air quality mitigation measures. As stated above, such quantification is not possible, but it is reasonable to conclude that mitigation measures would reduce emissions.

- 25-5 The comment asks if the PM10 attainment plan for the region was updated in 2008. According to the NCUAQMD, the plan was not updated in 2008 and it anticipates that the plan may be updated in 2009. Therefore, the following text has been changed at the end of the first paragraph on Draft EIR page IV.C-8.

The NCUAQMD is currently reviewing the attainment plan and expects to update the plan in ~~2008~~ 2009 (NCUAQMD, ~~2007a~~ 2009).

- 25-6 The comment indicates that the Draft EIR should have compared the GHG emissions generated by the project as a percentage of local pollutants. However, this comparison would not aid in the determination of whether the project would result in a cumulatively considerable contribution of GHG, which is determined by assessing if the project would conflict with the State goals for reducing GHG emissions, as set forth in Assembly Bill 32, the California Global Warming Solutions Act of 2006 (see Draft EIR page IV.C-20). Climate change is a global issue, and thus should be discussed cumulatively at a broader, or at least state-wide, scale.

- 25-7 The comment states that the Draft EIR air quality section is vague about what energy conservation measures would be implemented as mitigation. As identified on Draft EIR pages IV.C-14 and IV.C-15, Mitigation Measures C-2a and C-2b have components that would conserve fuel energy associated with vehicle use and landscape maintenance equipment. In addition, as identified on Draft EIR page III-16, the project objectives for the proposed project include: use of “green” building materials (e.g., recycled, local, and renewable); energy-efficient HVAC and lighting and control systems; use of natural ventilation and day-lighting; use of efficient plumbing fixtures; and promotion of energy-efficient and environmentally friendly practices during project operation.

As stated in response to comment 25-4, it is acknowledged that the City cannot demonstrate the extent that mitigation measures would reduce emissions, as speculative assumptions would need to be made regarding displaced conventional vehicular trips and efficiencies created by the measures. As stated in response to comment 12-3, the City has taken a conservative approach to the significance determinations for Impacts C-2 and C-3, identifying significant and unavoidable impacts even with the implementation of

mitigation measures. It is nonetheless reasonable to assume that the mitigation measures would result in some level of emission reductions by increasing efficiencies and displacing some conventional vehicular trips. In any event, the largest source of emissions come from mobile sources (commercial and personal vehicles), and it is not possible to regulate vehicle emissions and to dictate individual driving habits or consumer choices. Through its mixed-use design, the project has aspired to reduce the average number of vehicle trips normally associated with individual retail, office, and residential land uses.

- 25-8 The comment indicates that implementation of the proposed project would be inconsistent with the General Plan Policy to “protect and improve air quality” in the Eureka area, which is Policy 6.2 of the General Plan. As stated in Table IV.I-2 on page IV.I-61, the Draft EIR provides the required project-level environmental review and identifies potential air quality impacts and mitigation measures to reduce these potential impacts. The proposed project is therefore consistent with this policy.

In addition, as stated on Draft EIR page IV.I-12, 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.” Smart growth development results in less air pollution than conventional development.

- 25-9 The comment asks if special-status plants surveys have been performed. No special-status plants were found on the project site during the systematic surveys conducted on the project site April 28 and 29, 2006, and June 17, 2009 (please also see Draft EIR page IV.D-5). Moreover, the project site is heavily disturbed and sustains a number of non-native or invasive plant species. Thus, special-status plant species are not at the project site currently, and are not expected to occur. However, the proposed wetland reserve would provide suitable habitat for such species.

- 25-10 The comment asks about the buffer around the wetland, and about what types of wildlife would be attracted to habitat next to a 40-foot high store. As stated on Draft EIR page III-14, there would be a 50-foot buffer around most of the wetland area. The quality of the habitat to be provided is likely to be a stronger determinant of wildlife use than its separation from a structure, as is evident from other productive wetlands in urbanized areas.

- 25-11 The comment states that the Draft EIR concludes that the project site has “no habitat values.”

The Draft EIR does not state that there are “no habitat values,” only that there is no suitable habitat for special-status species (Draft EIR, page IV.D-2). The proposed wetland reserve, once completed, would have much higher function and value as habitat and wetlands than the existing disturbed landscape.

- 25-12 The comment asks about “bird kills from new buildings,” presumably from bird collisions, and from parking lots, where the impact cause is not clear. Bird collisions can be a concern, and in some cases can be significant. However, statistically these impacts mainly occur where buildings are higher than 250 ft, and cause collision hazards to birds on migration routes or birds descending from migration to forage or rest. Building heights for the project would range between 28 and 36 feet and the impact is not expected to be significant.
- 25-13 The comment states that the Draft EIR includes a proposal to monitor wetland restoration for five years to confirm its success, and then the comment questions how success or failure will be measured, and how the five-year cutoff was determined.

A plan for mitigation monitoring and compliance reporting, including monitoring methodology and performance criteria to measure success of the mitigation, would be included within the required wetland mitigation/restoration plan. A five year period of success monitoring is a standard requirement for mitigation plans approved for permits of this type, and is the period of time necessary to evaluate whether wetland vegetation, hydrology, and species habitats are forming and functioning naturally. Success would be measured against the performance criteria outlined in Mitigation Measure D-3b. The wetland reserve must retain hydrology, vegetation, and other site characteristics necessary to maintain equal or greater function and value to the current physical conditions of the wetlands. Also, under Mitigation Measures D-3b and -3d, in addition to the five-year monitoring, the restoration plan would include long-term maintenance, monitoring, and contingency plans, as well as an endowment for long-term management. The five-year assessment is but only one milestone for evaluating and ensuring long-term success.

- 25-14 The comment states that the State Lands Commission investigations regarding the extent of land subject to the public trust doctrine must be considered in the Final EIR. Please see response to comment 8-1, which addresses the status of those investigations and the implications of those investigations to the analysis under CEQA. Further analysis in the Final EIR is unwarranted.
- 25-15 The comment relates to the potential for Wiyot Villages to be present beneath the project site, and proposes that the Project Applicant conduct subsurface testing to locate cultural resources by ground-penetrating radar, controlled backhoe testing, and auguring before any development plan is prepared.

As described on Draft EIR page IV.E, two potential Wiyot village sites on or near the project area are discussed, Wiyot Village Site 1: Site # CA-HUM-69 (“djerochichiwil”), and Wiyot Village Site 1: Site # 2 (“Moprakw”). Comments requesting subsurface cultural resource studies are noted. Please see response to comment 69-1 and Master Response 9, which includes a revised Mitigation Measure E-2. Implementation of Mitigation Measure E-2 would reduce potentially significant impacts associated with the accidental discovery of historic-era (European) artifacts to a less-than-significant level.

Also, while the revised Mitigation Measure E-2 does not specify which technologies would be employed in the subsurface investigation, that investigation must be prepared in consultation with the appropriate Native American group(s) and would use archaeological-appropriate means to determine the presence or absence of archeological resources in those specific locations predetermined to be culturally sensitive. Preservation of culturally-sensitive resources is typically the preferred approach to protecting the resource, and can be employed to the extent feasible. The treatment plans required under Mitigation Measure E-2 would be prepared in consultation with the appropriate Native American group(s).

25-16 The comment asks why groundwater sample testing was focused on specific pollutants.

As stated on Draft EIR page IV.G-17, “Groundwater sample laboratory analyses have included TPHD, TPHG, PNAs, BTEX, Semi-Volatile Organic Compounds (SVOCs), VOCs, and metals (arsenic, cadmium, total chromium, copper, lead, nickel, and zinc). Under the current MRP, however, site wells associated with the former rail yard are monitored for TPHD, TPHMO, Bunker C fuel oil, and dissolved arsenic.” In addition, stormwater runoff has also been sampled for dioxins and furans. Current testing and monitoring is focused on those constituents of concern based on prior monitoring and testing.

25-17 The comment states that levels of significance determined by the U.S. Environmental Protection Agency may have changed since the preparation of previous Health Risk Assessments (HRAs) discussed in Chapter IV.G, Hazards and Hazardous Materials. The comment also suggests that the Project Applicant be required to update the HRAs to incorporate current US EPA levels of significance and to reflect projected uses.

Uses that could contribute to health risks have not operated on the project site since the early 2000s. The 1996 and 2000 HRAs are considered an accurate assessment of current site conditions. These HRAs, however, are not the most recent site investigations. As described in Master Response 4 and Appendix S, site investigations have been ongoing. For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S.

25-18 The comment states that the Project Applicant should be required to test for dioxins, furans, and PDBs.

The Draft EIR acknowledges that these contaminants have been identified in the stormwater runoff and, as recommended by Mitigation Measure G-1b, any further characterization and remediation work shall be completed prior to any construction activities. This would include the contaminants found in the drainage ditches. For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4.

- 25-19 The comment asks what studies were done to model the movement of pollutants through the project site to the Bay, and whether reintroduction of tidal influence to Clark Slough could mobilize toxic substances.

For a discussion of the Remedial Action Plan for the proposed project, please see Master Response 4. This response also addresses the potential for migration of pollutants beneath the project site. Clark Slough is currently tidally influenced, and so there would be no further effects associated with tidal influence within Clark Slough.

- 25-20 The comment states that the discussion in the Draft EIR related to the Regional Water Quality Control Board is confusing because it states that the project is not a hazardous materials site, and yet the Draft EIR calls the site a brownfield.

The discussion under Impact G-4 on page IV.G-23, concludes that due to the remediation completed to date, the proposed remediation for the site, and the implementation of the Mitigation Measures, there would be no impact as a result of the contamination identified at the project site. Interim and final remedial measures must be approved by the RWQCB before the project site may be developed for its intended uses. Please also see responses to comments 6-2 and 6-9.

To clarify the status of the project site, the text shall be revised as follows:

The project site has had a history of hazardous materials releases as discussed above, ~~but and is would not be considered for listing~~ listed as a hazardous materials site under Government Code section 65962.5. However, because it is in compliance with Regional Board orders and all USTs have been removed.

- 25-21 The comment asks whether agencies other than the RWQCB regulate toxics.

The RWQCB is the regulatory agency overseeing the site characterization and remediation efforts at the project site. Other agencies, including the California Environmental Protection Agency (Department of Toxic Substances Control) and U.S. Environmental Protection Agency also have some jurisdiction in these areas.

- 25-22 The comment requests further details in the remediation plan prior to project approval.

For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S, which is the Supplemental Interim Remedial Action Plan.

- 25-23 The comment asks whether any studies were done to determine whether the FEMA flood insurance maps are accurate.

The analysis in the Draft EIR considered the most current publicly-available FEMA FIRM map for its analysis, which has again been confirmed for the preparation of this Final EIR. Engineering review of the site and environmental documents have found no evidence to suggest that the FEMA FIRM map is in any way inaccurate.

- 25-24 The comment asks how pre-project flows were measured and suggests that culverts constructed as part of the proposed project should be capable of handling a 50- to 100-year storm event.

Pre-project flows at the project site were not measured. As stated on Draft EIR page IV.H-10, for the majority of the project site, there is no existing drainage infrastructure, so measurement would have been speculative. As stated on Draft EIR page IV.H-11, however, the existing site conditions cause runoff from the project site to be generated slowly, and most of the rainfall at the project site is likely to infiltrate the subsurface or to temporarily pond and later evaporate.

The comment regarding 50- and 100-year storm events is noted. As stated on Draft EIR page IV.H-14, however, the City has its own stormwater regulations, which require new development to provide retention / siltation basins to limit new runoff to 1 cubic foot per second or to pre-project flows. As reiterated by Mitigation Measure H-4a on Draft EIR page IV.H-19, the Project Applicant would develop a drainage plan that demonstrates that the culverts would be adequately sized and configured to handle a 10-year storm event.

In addition, Mitigation Measures H-5a and H-5b include implementation of stormwater treatment at drop inlets and grassed swales throughout the project landscape. These best management practices (BMPs) would minimize the potential for the proposed project to create or contribute to runoff that would exceed the capacity of the stormwater drainage systems.

- 25-25 The comment asks where a retention basin would be located onsite, and if the water in the basin would be contaminated with petroleum runoff.

Runoff collected in a retention basin is treated according to the requirements of the City and corresponding NPDES permit requirements. The final drainage plan has not been completed for the project but would be prior to issuance of a building permit. See also responses to comments 7-6 and 16-45 regarding stormwater runoff mitigation measures.

- 25-26 The comment states that the Draft EIR does not adequately address the effects on the project from global warming and sea level rise.

For further discussion regarding global warming and sea level rise, see response to comment 3-15. Contrary to the comment, the Draft EIR did adequately evaluate sea level rise. Based on available data, and even presuming sea level rise occurs at the rate that some have estimated, the project foundations and created wetlands would remain well above sea level for the foreseeable future.

- 25-27 The comment asks how a tsunami evacuation route on Waterfront Drive would be appropriate given the street is closer to the Humboldt Bay than the project site.

Mitigation Measure H-10a states that the Project Applicant prepare an Evacuation and Response Plan that would identify routes of egress and locations of safe haven. In addition, a tsunami warning or alarm system would also be integrated into the building designs. The Plan would be approved by the City prior to issuance of a building permit.

Waterfront Drive is a major street capable of handling large traffic volumes. It is one of many streets that may be incorporated into an evacuation route. It should be noted, however, that vehicular evacuation likely would not be the preferred or necessary form of egress, particularly as the distance to safe havens is not far. For example, ground elevations near U.S. 101/Broadway and points east would be considered high enough to protect people from adverse flooding risks. Vertical routes of egress within the buildings would also provide a relatively quick access to safe haven. Please also see response to comment 153-1, concerning routes to safe haven.

- 25-28 The comment states that the Draft EIR does not discuss the desirability of removing land from potential industrial use from the vacant land inventory. The comment also states that the Draft EIR does not justify the need for the Marina Center to be located on property within the coastal zone.

The Draft EIR analyzes the proposed project's consistency with existing land use designations and planning policies, including policies regulating development of uses in the coastal zone, as well as potential environmental land use effects, in Chapter IV.I, Land Use and Planning. Please also see Master Responses 3 and 5, which discuss land use regulations within the Coastal Zone. The potential effects of the proposed land use changes are also analyzed throughout the Draft EIR in other sections of Chapter IV, such impacts related to transportation, air quality, and noise. The Draft EIR, therefore, discusses the potential environmental effects of the land use changes associated with the proposed project.

Also, Chapter VI, Alternatives, screens several alternatives for analysis, including some that include industrial uses. The Limited Industrial Zoning alternative is carried forward for analysis. This analysis compares the potential environmental impacts of development of industrial use on the site with the environmental impacts of the proposed project. In addition, the Alternatives screening included several off-site locations for the proposed project, some of which are not in the coastal zone. The Draft EIR, therefore, also discloses the potential environmental effects of the proposed project as compared to industrial development.

Finally, it is beyond the scope of the Draft EIR and CEQA to address the "desirability" of rezonings and Local Coastal Program or General Plan amendments. It is also beyond the scope of the Draft EIR and CEQA to justify development of particular uses over others. As stated above, the purpose of the Draft EIR is to analyze the proposed project's consistency with existing land use designations and planning policies, including policies regulating development of uses in the coastal zone, as well as potential environmental effects. Decision-making authorities and regulatory agencies weigh several factors,

including potential environmental effects disclosed in the Draft EIR, when determining whether to grant project entitlements and approvals.

- 25-29 The comment states that the proposed project should not be considered as “smart growth” due to the project-generated traffic.

The comment is noted. As stated in Table IV.O-5, the proposed project would generate 15,666 daily vehicular trips. Nonetheless, as stated in comments 16-275 and 128-1, the project adheres to several smart growth principles. In addition, big box retail and smart growth are not mutually exclusive. Destination retail centers, by their very nature, generate visitor trips. The proposed projects’ location near the Downtown core of Eureka, as opposed to in an exurban or rural setting, however, allows for a higher portion of those trips to be made via modes other than the automobile.

- 25-30 The comment questions why uses of the proposed project were selected given that they are lower-priority uses within the Coastal Zone. The uses of the proposed project were selected because they meet the objectives of the Project Applicant. The Tourism Use Alternative, described on page VI-9 of Chapter VI, would contain uses similar to the “visitor-serving commercial recreational facilities” described in the comment. The proposed project’s uses and their consistency with the California Coastal Act use provisions and the Local Coastal Program are discussed under Impact I-2, beginning on page IV.I-13, as well as in Master Responses 3 and 5.

- 25-31 The comment states that, according to the Coastal Act, wetlands may be dredged or filled only for certain specified uses, none of which are included in the proposed project. Comment noted. Consistency with the California Coastal Act Section 30233 is discussed under Impact I-2, beginning on page IV.I-13, as well as in Master Response 5.

- 25-32 The comment states that the Draft EIR fails to gauge how well the proposed project would fit in with Old Town, specifically the area of First Street, Third Street, and the lettered cross streets. This area is defined as the Core Retail Commercial area in the *City of Eureka General Plan* and *City of Eureka General Plan Design Guidelines*.

As stated on Draft EIR page IV.I-7, implementation of the proposed project would have a significant impact on land use and planning if it would physically divide an established community, conflict with any applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect, or conflict with any applicable habitat conservation plan.

As stated in the comment, the Draft EIR provides an analysis of how the proposed project would expand similar existing industrial uses along Fourth Street, Fifth Street, and Broadway westward into the project site. As stated on Draft EIR page IV.I-13, the project would create a transition between the adjacent industrial communities to the northeast and south and the commercial area along Fourth Street, Fifth Street, and Broadway.

The area along Fourth Street, Fifth Street, and Broadway would continue to serve as a transition between Old Town and the project site, as well as the and nearby industrial uses. The proposed project would not physically divide the established Old Town commercial core.

- 25-33 The comment asks whether citizen referendums regarding the use of the property are binding on the Project Applicant. The Lead Agency is required to analyze the proposed project, which includes an anchor retail tenant. The purpose of the Draft EIR is to disclose the potential environmental effects of the proposed project. The Draft EIR does not (and cannot) function as a document that legally restricts specific chains of retailers from locating at the project site—such a restriction is beyond the scope and purpose of CEQA. To the extent that a future tenant proposes to locate at the project site, and the new tenant’s proposed use would significantly alter the analysis and mitigation in the EIR, subsequent environmental review would only be required if the new use triggers the criteria under Section 21166 of the Public Resources Code. Subsequent environmental review may be required under Section 21166 when there are substantial changes in the project or circumstances or new information that would require major revisions in the EIR.
- 25-34 The comment states that the proposed project is inconsistent with the General Plan policies of (a) discouraging new commercial development that would adversely affect the Core Area, (b) upgrading established commercial areas before developing new ones, and (c) developing the Westside Industrial Area as an industrial park.

First, the Draft EIR states that the proposed project is consistent with policies related to new commercial development within the city. As stated on Draft EIR page IV.I-25, Policy 1.L.1 of the General Plan states that the City shall discourage new commercial development within the city that would adversely affect the economic vitality of the Core Area. As stated on Draft EIR pages IV.I-25 and IV.I-26, “the proposed project could draw some customers away from Core Area businesses. It would, however, add residents, day-time workers, and visitors to an area within walking distance of the Core Area. It would ease pedestrian, bicycle, and automobile flow between the project site and the Downtown core by adding traffic signals at busy intersections, constructing a multi-use path along the coast, and extending Fourth and Second Streets into the heart of the project site. This would effectively extend the developed area of Downtown Eureka westward, making the entirety of Downtown Eureka more active.”

Second, the Draft EIR discloses that the proposed project may be inconsistent with policies related to commercial development outside established commercial centers. As stated on Draft EIR page IV.I-26, Policy 1.L.4 of the General Plan states that the City shall encourage consolidation and upgrading of established commercial centers over development of new shopping center within the Planning Area.

Finally, the Draft EIR discloses that the proposed project is not consistent with the goal of developing the Westside Industrial Area as an industrial park. The Westside Industrial

Area Study is discussed on pages IV.I-71 through IV.I-73. As stated on Draft EIR page IV.I-73, the proposed project would not be consistent with the fundamental objective of developing the project site solely as an industrial park. The project inconsistency, however, is not with a policy “adopted for the purpose of avoiding or mitigating an environmental effect.” Therefore, there is not a significant environmental effect.

25-35 The comment asks where the 171 acres of vacant land planned for Public use are located within the City. Members of the public can view the land use planning and zoning maps by visiting the Community Development department or on the City of Eureka’s Community Development web site: <http://www.ci.eureka.ca.gov/>. These maps show the locations of areas planned and zoned for public use. It should be noted that there is no present demand identified for any public uses in the coastal zone, and therefore this proposed project would not displace any other public uses or projects identified in the City’s capital improvement program.

25-36 The project questions why the proposed project should not include fair share housing.

The City of Eureka does not mandate that proposed development projects include a percentage of low-income housing. However, as stated in Table IV.I-2 on page IV.I-32, the project would provide a mix of moderately sized one-, two-, and three-bedroom residential units that would accommodate a range of income levels.

25-37 The comment questions why traffic counts were taken during March and April.

Continuous traffic counts by Caltrans on U.S. 101 south of Eureka may be highest in August. But late February and early March volumes are exactly average, and capture the highest peak traffic associated with work and daily end-of-school vehicle trips. The software used for level of service analysis, Synchro, assesses a range of volumes using the Poisson distribution. The capacity and level of service given for intersections include consideration of the range (or percentile) of traffic volumes given an average count. This is a generally accepted methodology for most accurately gauging long-term traffic impacts.

25-38 The comment asks how much traffic would be diverted to adjacent neighborhoods onto streets not analyzed in the EIR.

Project trips were distributed onto all streets in the greater Eureka Area. By far the majority of project trips are assigned to U.S. 101 and a few other arterial routes such as Sixth and Seventh Streets east into Downtown. The roadways and study intersections were selected through collaboration with the City of Eureka, Caltrans and the City’s environmental consultant, ESA.

Please also see Master Response 7, which addresses Citywide trip distribution.

- 25-39 The comment questions why the proposed project's mitigation measures do not require the extension of Waterfront Drive, given that the extension has been stated to be necessary to relieve existing traffic problems.

While the extension of Waterfront Drive would generally alleviate congestion on Broadway, the extension is an independent project and is not necessary to mitigate traffic impacts associated with the Marina Center project. Traffic signal synchronization and intersection improvements at Wabash Avenue / Fairfield Street and Henderson Street, as proposed in the Draft EIR, would be effective at reducing the delays along the Broadway corridor. The primary means to reduce impacts from increased trips to and from the Marina Center is the increase in capacity on Broadway and the mitigation measure that, when triggered, would divert traffic away from the narrow section of Broadway from Fourth Street to south of Wabash Avenue.

- 25-40 The comment states that the Draft EIR fails to mention that Waterfront Drive gets backed up with vehicles waiting to access the boat ramp and that the street is narrower in some segments.

Follow-up field checks of Waterfront Drive and Railroad Avenue widths have been made and are documented as follows:

- The width of Waterfront Drive at the Marina is measured to be about 44 feet.
- The roadway width is about 28-30 feet south of the Marina for about 700 feet. Following that 700-foot stretch, the road widens to 44 feet. No vehicles were observed to be parked along this section even though there are no signs prohibiting parking. The 28 to 30 foot width is insufficient for parking on both sides of the street, but if necessary, parking could be permitted along one curb (probably the west curb) leaving 20 to 22 feet for two directions of traffic, which is adequate.
- At other locations along Waterfront Drive and Railroad Avenue, the roadway width varies between 44 and 48 feet.

Waterfront Drive is classified as a major collector by the City of Eureka, and as such, its primary purpose is to move traffic, and not as a staging area for boat launches. Technically, boat staging with Waterfront Drive's primary purpose, but this is a traffic enforcement issue unrelated to the proposed project. If, as the comment states, there is inadequate parking at the public Marina, there is an under-utilized boat ramp at the foot of Waterfront Drive adjacent to the Samoa Bridge that has ample parking. Regardless, both of these issues are existing conditions that are independent of, and not a result of, the proposed project.

- 25-41 The comment questions how fair share is calculated in regard to traffic mitigation measures.

The mitigation measures are expected to be constructed within existing right of way, so there should not be a need for land acquisition. Based on current estimates, the total costs

of constructing the mitigation measures along U.S. 101 are under \$3 million, though the final costs cannot be known until the capital improvements are designed and approved. The mitigation is identified with or without Marina Center by 2025 based upon the long term historic growth of traffic volumes on U.S. 101 through Eureka. The 1.5 percent average annual growth results in a 33 percent increase in traffic from 2006 through 2025, even without Marina Center. While the Project Applicant is only required to pay its fair share, and there is no program in place or funding otherwise identified to ensure completion of the mitigation measure. To ensure that the improvements are nevertheless completed within the time period necessary to avoid the impact, almost all of the mitigation measures would be installed by the Project Applicant under a reimbursement agreement with the City or other method for receiving credit against future improvements. Generally, fair share is calculated simply by evaluating the proportion of traffic growth from a proposed project to the total traffic growth by the future year. For example, if traffic increases by 1,000 vehicles per hour at a study intersection requiring mitigation, and if a project's contribution to those 1,000 additional entering vehicles is 400 vehicles per hour, then 40 percent of the mitigation costs are the responsibility of the developer and 60 percent are the responsibility of others.

- 25-42 The comment states that the implementation of many traffic mitigation measures are outside of the Project Applicant's control.

It is acknowledged that very few of the identified mitigation measures can be implemented without the consent and approval of Caltrans. Close liaison with Caltrans has been conducted during the planning for Marina Center to help ensure that those measures would be acceptable. It is acknowledged that Caltrans does not yet endorse and may not approve the mitigation precisely as proposed in the traffic impact study. Nonetheless, given past communications between the Project Applicant, transportation consultants, the City, and Caltrans, as well as general knowledge concerning the technical feasibility surrounding the proposed measures, it is expected that the off-site mitigation can be successfully processed through Caltrans. See also responses to comments 5-1, 16-217, and 25-41 concerning project phasing, "fair share" contributions, and cumulative 2025 conditions.

- 25-43 The comment expresses concerns that reactivation of the railroad right-of-way would cause traffic impacts.

Evaluation of the intersection of the Fourth Street Extension and Waterfront Drive included consideration of how this intersection would function should this become an active rail crossing. If a northbound right turn lane is provided on Waterfront Drive, then vehicles attempting to turn right into Marina Center could be queued away from traffic proceeding northbound through the intersection. Traffic exiting Marina Center would wait behind crossing gates until the train clears the crossing. The rail crossing is no different than many other at-grade rail crossings with similar traffic controls. Since the northbound right turn lane is not needed to maintain an acceptable level of service, the northbound right turn lane is not recommended until such time the crossing becomes active for train services. It should be noted, however, that while there has been public discussions about proposals to restore

rail service, there have been no concrete proposals to do so and therefore the level of service expected is entirely speculative at this point in time. Thus, restored rail service would not be considered a reasonably foreseeable future project.

- 25-44 The comment asks how a slowing of traffic would not lead to road rage accidents.

Traffic accidents are not associated with minor changes in speed. Increases in traffic in the future would occur with or without the proposed project. Further, the traffic modeling conducted for the proposed project shows a decrease in traffic accidents due to the proposed intersection and roadway improvements. Road rage is an enforcement issue regardless of the proposed project.

- 25-45 The comment states that directing employees to park off-site during December would remove on-street parking from existing businesses during the peak holiday season.

Off-site parking is most likely to occur on Waterfront Drive during the busy shopping months of November and December when very little demand for on-street parking in the area exists. Additionally it should be noted that Marina Center would provide adequate parking for its proposed uses and the mixed use nature of the project leads to parking efficiencies as retail shopping traffic is heaviest (weekends and evenings) outside of those time periods when office and industrial employees would occupy parking spaces (weekdays between 7am to 5:30 pm). There is time limit parking on Broadway between Fourth and Fifth Streets, therefore employees are not expected to park there. Other merchants are far enough away from Marina Center that competition for the same on-street parking would not be likely.

- 25-46 The comment asks where speed bumps would have to be installed and who would pay for their construction.

Speed bumps are not identified for installation within Marina Center. Speed bumps have a tendency to disrupt bicyclists, and they also affect truck circulation and jostle cargo unnecessarily. The design of Second Street and the Fourth Street extension could include speed tables or other traffic calming strategies, but this is up to the site designer and architect. The design and construction of the internal streets of Marina Center is the responsibility of the developer. With proper design, it is unlikely that traffic speeds on internal streets would be so high as to constitute a safety threat to the traveling public, bicyclists, or pedestrians.

- 25-47 The comment states that the Draft EIR twists the meaning of urban decay and that it fails to address the operation of the proposed project and its impact on existing businesses.

Please see Master Response 1, under “Potential Local Store Closures.” Urban decay is considered an indirect physical environmental impact under CEQA, and can occur when the development of new commercial retail space in a particular market results in (i) the closure of competing businesses, which, in turn, results in vacant storefronts that meet the

definition of “blight” (see, e.g., Cal. Health & Safety Code, Section 33031(b)), or (ii) a physical deterioration so prevalent and substantial that it impairs the health, safety, and welfare of the surrounding community. Effects that may arise include, for example, those associated with aesthetics, utilities and service systems, hazards, or public services. Blight or deteriorating physical conditions may include, for example, buildings in which it is unsafe or unhealthy for persons to live or work; nearby uses that prevent the economic development of those parcels; boarded doors and windows; dumping of refuse or overturned dumpsters; and uncontrolled weed growth or homeless encampments. Here, while the EIR’s original and now updated economic analysis found that some increased vacancies would likely occur due to the proposed project, those vacancies would not be so extensive or prevalent as to result in the physical deterioration of downtown Eureka or other areas of the City. Consequently, the proposed project would have a less-than-significant impact under urban decay. See also CEQA Guidelines Section 15064(e), 15064(f)(6), and 15131(a) for further discussion about economic and social effects, and the extent to which those effects must be evaluated under CEQA.

- 25-48 The comment states that the Project Applicant’s objectives are so narrow so as to allow only the proposed project to qualify.

Please see responses to comments 24-29 and 16-239, which discuss Project Applicant objectives as related to alternatives, as well as the Draft EIR’s reasonable range of alternatives. As shown in Table VI-4 on page VI-15, 18 of the 24 alternatives screened for analysis met the Project Applicant’s basic project objectives. Therefore, the objectives are broad enough such that they can be met by several alternatives.

- 25-49 The comment states that the Project Applicant’s objectives listed in the project description do not include tourism, and that the Draft EIR does not explain how the project would increase tourism.

Contrary to the comment’s assertion, the Project Applicant Objectives listed on page III-15 include tourism:

To maintain Eureka’s status as the ‘hub’ of employment, retail commerce and tourism in Humboldt County.

As stated in Chapter IV.I, Land Use and Planning, the proposed Waterfront Commercial proposed land use designation would allow for tourist-attracting industries. As stated in Chapter III, Project Description, the proposed project would include restaurants, a wetland with associated walkways and benches, bike lanes and pedestrian paths, and lifestyle retail uses, all of which would contribute to increased tourism.

Comment Letter 26

REDWOOD REGION AUDUBON SOCIETY
P.O. BOX 1054, EUREKA, CALIFORNIA 95502



RECEIVED
JAN 17 2009
DEPARTMENT OF
COMMUNITY DEVELOPMENT

15 January 2009

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

Dear Sidnie Olson:

Redwood Region Audubon Society has a local membership of approximately 700 households. Our mission is to support the study and enhancement of wildlife and to support sustainable use of our natural resources. Almost anything would be an improvement over the blighted conditions of the balloon tract. A well planned project which benefits the community, looks and functions well, competes with but produces jobs without taking jobs from other businesses, would be a boon to the community.

26-1

We reviewed Volume 1 section IV of the Marina Center EIS and the Appendix G Table 2 Animal Species Observed on the Project Site or Expected to Utilize the Project Site.

We find the CNDDDB list not useful due to the scale of the query, which includes all of Humboldt County. The NDDDB lists are typically viewed as evidence of absence of particular species in a project area. Rather, the various government agency, CNPS, and other lists of species of concern should be utilized as a starting point, with input from various knowledgeable people and the literature, to determine which species should be considered.

We view these lists as not only species that could be negatively impacted by the project, but also those that could potentially benefit from the project as well. Because almost 12 acres of wetland and upland habitat are being restored, there are potential beneficial effects for species conservation. In review of plants to be included in plantings (Section III-4) on the proposed wetland and mitigation area of the project area we would encourage native shrubs and trees adapted to the local area which have wildlife values such as coyote bush, silk tassel, willows, alders, spruce, and grand fir. These plants provide food sources and habitat for birds. Other plants will seed in naturally or be introduced by birds. Unfortunately, we have a problem with human transients and homeless who may desire to inhabit densely vegetated areas. By providing judiciously placed trails in the restoration area the project may encourage diversity of plant species but discourage human habitation. Although no access is being proposed for the wetland reserve (III-14) viewing areas into the mitigation wetland could be included in the project proposal. This could provide some environmental education opportunities for the Discovery Museum.

26-2

A MEMBER OF THE NATIONAL AUDUBON SOCIETY

Comment Letter 26

Redwood Region Audubon Society

On the List/Proposed Threatened and Endangered Species for the Eureka Quad, we would delete all species except the following list, since these are the only ones that would potentially be affected by the Marina Center project:

- Tidewater goby
- Coho salmon
- Steelhead
- Chinook salmon
- Western snowy plover
- Yellow-billed cuckoo
- Bald eagle (although this species is no longer listed under the Endangered Species Act)
- Brown pelican.

The NDDDB query did not produce records of sandy beach tiger beetle, Indian Island rookery, and California clapper rail, but these are worthy of consideration and would have been identified if a good literature review of the area were done.

California Species of Special Concern (SSC) lists need to be consulted. I am not aware of any California SCC mammals that should be included. The following list of birds from the 2008 Bird SSC list should be addressed:

- | | |
|---------------------------|---|
| Brant | effects of the project on eelgrass in the bay |
| Redhead | likely not adversely affected |
| Northern harrier | potential beneficial foraging area |
| Yellow warbler | could benefit from riparian habitat |
| Bryant's savannah sparrow | could benefit with proper grasses and herbs |

From the 1994 Amphibian and reptile SSC list red-legged frog should be included.

From the 1995 Fish SSC coastal cutthroat trout should be considered.

Some shortcomings in the wildlife species analysis:

The EIR cites the following herpetofauna species as seen during a survey on page IV. D-1. "Despite looking under boards and other objects, the only amphibian or reptile observed was the Pacific treefrog during the July 9, 2006, summer survey. Other reptiles that could potentially use the site include Western fence lizard, common garter snake, and gopher snake." I agree with the technique, however in my experience, I would not expect western fence lizard or gopher snake in our wet coastal climate, but have seen garter snakes in my yard. Southern and northern alligator lizards (*Elgaria multicarinatus* and *E. coerulea*) are much more common in local coastal areas. Was the site also checked during the wet season?

In surveys of similar ruderal areas immediately adjacent to Humboldt Bay in March 2003 I found rough-skinned newts (*Taricha granulosa*) under logs and boards on coastal levees in Arcata and northwestern salamanders (*Ambystoma gracile*). I have wandering salamanders (*Aneides vagrans*) and California slender salamanders (*Batrachoseps californicus*) in my woodpile, which is within 1/2 mile of Humboldt Bay and within 2 miles of the project site.

In the DEIR Appendix G Attachment 2 Table 2 mammals observed include Townsend's vole (*Microtus townsendii*). I doubt the identification as *M. townsendii*; they are quite uncommon to rare locally. I have analyzed 4000 spotted owl pellets from northwestern California and southwestern Oregon for diet analysis and looked at owl and raptor pellets from Fay Slough Wildlife Area and Mad River Slough Wildlife Area. I have trapped in ruderal areas such as the

26-3

26-4

5-387

Comment Letter 26

Comment Letter 26

Redwood Region Audubon Society

Redwood Region Audubon Society

area known as "Mount Trashmore" on Arcata Marsh and Wildlife Sanctuary, at Lanphere Dunes unit Humboldt Bay National Wildlife Refuge, in the redwood dominated forest adjacent to Humboldt State University and Redwood Sciences Laboratory. The majority of voles encountered locally were identified as California vole (Microtus californicus) in openings and creeping or Oregon voles (M. oregona) under the tree canopy. On January 27, 2009, I visited the Humboldt State University Museum of Vertebrate Zoology and looked at their collection of local voles. They had full museum specimen trays probably measuring 24 inches by 48 inches each of M. californicus and M. longicaudus, long-tailed vole, probably 40 to 50 specimens of each. The tray of the same size holding M. townsendii held about a half dozen specimens, one of which was indicated as doubtful for that species. I don't know the trapping plan used at the marina site, but any live trapping of vole specimens should be expected to capture the most common species instead of a rare species. In a discussion with the curator at the MVZ, he expressed the same surprise as me that a Townsend's vole, the most rare and least expected vole in our area, was captured. Hall and Kelson (1981) * indicate a marginal record specimen of M. townsendii townsendii from Humboldt Bay near Eureka, but a range map indicates that Little River or perhaps the north end of Clam Beach, both north of McKinleyville, as the southern extent of their range. California vole extends north to Little River on the coast, The range map of California vole in Hall and Kelson (1981) extends north in Humboldt County to Little River. Long-tailed vole range extends from western Canada south to Mendocino, CA, so could reasonably be expected here. In any case none of these voles are considered species of concern, rather my concern is with the accuracy of the field identification done in conjunction with the project.

Aleutian cackling geese (Branta hutchinsii leucopareia) are noticeably absent from the list of observed species. This species was recently taken off the endangered species list. Currently there are tens of thousands of cackling geese flying in skeins of 25 to over 100 birds over the project site each morning and evening. On Audubon led trips at Eureka (Palco) Marsh we occasionally see tundra swans.

Light pollution impacts on migrating birds. Section IV.A-3 and Impact A-4 in EIR. Although already addressed in visual impacts as viewed by humans, we would like to see the light signature into the skies and laterally onto the adjacent area reduced to the maximum extent possible. Studies have shown that artificial lights can draw migrating birds to buildings where fatalities occur when the light-blinded birds fly into buildings and other objects.

Effects of hazardous materials. (IV.G-1) Hazardous materials should be cleaned up to the most reasonable extent possible. We realize that soil microbes will over long periods of time digest and dissolve some toxic materials. Because this project is imminent we don't have decades to wait for natural cleanup. From some reports I am aware of, the major hazardous materials onsite are diesel spills and lead contamination mainly from batteries but also from paints. It is hard to guess what chemical contaminants might have been introduced to the site in fill materials brought into the site. As the wetland mitigation is initiated and either old channels of Clark Slough are reestablished or as new channels are created, there comes a chance on either uncovering contaminants in old fill materials or in exposing the site to contaminants from upstream.

Stormwater Drainage Table IV.1-2 Policy 4 D-4 states "The City shall consider recreational opportunities and aesthetics in the design of stormwater detention/retention and conveyance facilities." Project Compliance Discussion states that it is NOT RELAVANT. Here is an

* ER Hall, KR Kelson (1981) The mammals of North America. Two volumes - John Wiley and Sons, New York, NY.

26-4 cont.

26-5

26-6

26-7

opportunity to direct stormwater runoff from buildings and parking lots into aesthetically created ponds. The created wetland pond properly vegetated could be used to mitigate some of the runoff from the project site and provide birdwatching, a recreational opportunity.

26-7 cont.

Thank you for the opportunity to comment on the project. We are active observers of wildlife in the area and are concerned about the health of natural and man-made habitats and each year lead over 80 field trips and docent led events in the local area. We would welcome working to help the project with the environmental information and interpretive signs (Section III-14) to insure that the information is accurate. (Sea otters do not occur on Humboldt Bay as a sign at the foot of "F" Street implies.)

Respectfully,

Chet Ogan, chair
with John Hunter
Redwood Region Audubon Society
Conservation Committee

Letter 26: Redwood Region Audubon Society (Chet Ogan)

26-1 The comment states that a well planned project would be a boon to the community. The comment is noted.

26-2 The comments regarding the potential beneficial impacts of the proposed project and particularly the wetland reserve on species conservation and environmental education opportunities are noted. Detail about the enhancement and long-term maintenance of the proposed wetland reserve would be provided in the Restoration Plan and other measures set forth in Mitigation Measures D-3b through D-3f in the Draft EIR.

The California Natural Diversity Database (CNDDDB) is in fact a starting point in the assessment of biological resource issues on the project site and is supplemented by field reconnaissance and review of other scientific information. Please see Chapter IV.D, Biological Resources of the Draft EIR.

26-3 The comment states that the EIR should address additional species from the state species of concern list: brant, redhead, northern harrier, yellow warbler, Bryant's savannah sparrow, red legged frog, and coast cutthroat trout.

A Biological Assessment prepared by HBG serves as a technical resource document for preparation of the Draft EIR and the HBG report is incorporated by reference into the EIR evaluation. The comment lists a number of species that should be added to the species evaluated within the context of the EIR. The species mentioned in the comment are discussed below.

The coast cutthroat trout is specifically evaluated in the Draft EIR. Basic biological information is provided on page IV.D-6, and potential impacts to individuals migrating by the site associated with various construction activities are addressed on page IV.D-19. Work windows limiting pile-driving to periods when the species would not be present and other considerations to limit noise and vibration effects of pile-driving (e.g. smaller sized pilings, use of cushioning blocks, etc.) are identified as mitigation measures on pages IV.D-19 to IV.D-20.

The northern harrier is designated as a Bird Species of Special Concern by the California Department of Fish and Game (CDFG 2009). This species is discussed in the HBG Biological Assessment (page 12). The discussion indicates that northern harrier is a species that could certainly forage over the project site, especially in winter, but that would not be expected to nest at the site due to the lack of appropriate nesting habitat and general disturbance resulting from the urban setting of the project area.

The habitat requirements of northern red-legged frog, a state designated species of special concern, are included in Table 4 of the Biological Assessment report, which specifically indicates that suitable habitat for this species is not present at the project site. Generally, the palustrine emergent seasonal wetlands present within the area of disturbed soils are

not inundated at depths or sufficient duration to satisfy the life cycle requirements for northern red-legged frog. The brackish water within the Clark Slough remnant would be too salty to support this species.

Other species mentioned include brant, redhead, yellow warbler and Bryant's savannah sparrow. These four species are considered as Bird Species of Special Concern by the California Department of Fish and Game (CDFG 2009) and are included on the Audubon Blue List. Habitat for these species is not present at the project site. Humboldt Bay supports the majority of overwintering brant in California, but they are found primarily in protected shallow marine waters with eelgrass beds. Although a remnant estuarine slough occurs at the project site, the degraded nature of this feature and lack of eelgrass beds or other vegetation that could support brant, renders the site conditions as unsuitable to support this species. Redhead is a diving duck (forages in deep water) found in winter on Humboldt Bay. This species of duck forages and rests on large, deep bodies of water of a type not found at the project site. Although yellow warbler has been documented as nesting in mature willow riparian habitats around Humboldt Bay, this species, which is also widespread and common during fall migration, would not be expected to nest in the degraded riparian habitats found at the project site. The preferred nesting habitat of Bryant's savannah sparrow generally consists of pickleweed marsh or moist grasslands near the coast, often with tidal mudflats or with patches of unvegetated upland habitat. In Humboldt County, Bryant's savannah sparrow no longer breeds in the salt marshes but instead have switched to nesting in dairy pastures where they utilize tall grasses and rushes and rushes along roads, fences and canals (Shuford and Gardali 2008). Nesting by this species would not be expected at the project site

- 26-4 The comment states that the western fence lizard and gopher snake should not be included as potential species; southern and northern alligator lizards are more common in local coastal areas, and the list of common herpetofauna should include rough-skinned newt, northwestern salamander, wandering salamander and California slender salamander. The comment also states that the table in the Draft EIR list Townsend's vole as an observed species, but the comment questions the identification. The comment states that the table should include Aleutian cackling goose.

Although western fence lizard and gopher snake are common reptiles in the region, the comment is correct that these two species of reptile are not as suited to conditions at the project site as the southern and northern alligator lizards.

The Biological Assessment tables include species that would be expected to occur at the project site as well as species that were specifically observed at the site during field reviews. The reptile and amphibian species mentioned above (northern and southern alligator lizard, rough-skinned newt, and northwestern, wandering and California slender salamander) are common species that could exist on the project site, though none were observed during biological surveys of the site. Townsend's vole is mistakenly placed on this list instead of the much more common California vole. The California vole was not encountered at the project site during field reconnaissance studies. The comment is also

correct that the list of birds should include the Aleutian cackling goose (the smaller cackling goose was recently split as a separate species from the much more common Canada goose), as Aleutian cackling goose is found around Humboldt Bay, but no cackling geese have been observed on the project site. All of the species mentioned here are quite common, therefore the proposed project would not have any significant effect on these species or their habitat.

26-5 This comment addresses light pollution, and its effect on migrating birds. Please see Mitigation Measure D-3e (Draft EIR, page IV.D-30) which addresses this issue.

26-6 The comment relates to site remediation and encourages full cleanup of the project site.

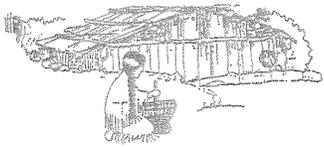
For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S of this document. The Supplemental Interim Remediation Action Plan and mitigation measures in the Draft EIR concerning stormwater would ensure that contaminants are not released to the slough during remediation activities. Further, restoration activities in the wetland reserve area are not anticipated to encounter significant contamination because that area of the site was never subject to industrial uses.

26-7 The comment regarding the opportunity to collect stormwater runoff is noted. As stated on Draft EIR page IV.I-43, Policy 4.D.4 does not provide specific mandates or requirements for Project Applicants. However, as stated in the Project Description on page III-14, the project would create collectively an 11.89-acre wetland reserve, with associated pedestrian paths. While wetlands are natural collection areas for stormwater runoff, the project is not proposing to use the wetland reserve to treat stormwater.

As stated on Draft EIR page IV.H-19, increase in runoff from the project site during post-development conditions would not exceed the capacity of the existing storm drain system. In addition, as stated under Mitigation Measure H-5b on page IV.H-20, the Project Applicant shall incorporate grassy swales into the project landscape plan, to the extent feasible, for runoff conveyance. These grass swales would be aesthetically pleasing areas.

Comment Letter 27

Comment Letter 27



Wiyot Tribe

RECEIVED
JAN 22 2009
DEPARTMENT OF
COMMUNITY DEVELOPMENT

January 16, 2009

RE: Marina Center DEIR

Sidnie L. Olson, AICP
Principal Planner
Community Development Department
City of Eureka
531 K Street
Eureka, CA 95501-1165

Dear Ms. Olson,

The Wiyot Tribe has reviewed the Draft EIR for the Marina Center Project and has the following comments:

- 27-1

▪ The Tribe applauds the applicant for the thorough and professional assessment of cultural resources that could be present within the footprint of project area. The Tribe also commends the report for clearly discussing the significance criteria and regulatory framework which applies to this undertaking. Of particular note is the consultation criteria under Section 106 of the National Historic Preservation Act, which will be triggered by the involvement of any federal agency in the project permitting or ministerial action.
- 27-2

▪ As noted in the DEIR, two archaeological sites may be present within the study area. The Wiyot village sites of "djerohichichiwiil" (CA-HUM-69) and "Moprakw" were identified by archaeologist Llewellyn Loud and ethnographic sources. While these sites have since been obscured, and likely covered by fill materials, they remain significant to both the Wiyot Tribe and the larger heritage preservation community. According to the DEIR, former Wiyot Environmental Director Andrea Davis "noted that the Wiyot Tribe had previously expressed concerns to the City regarding the presence of significant Wiyot cultural sites within or in the immediate vicinity of the project area." The report further states that the village of "djerohichichiwiil" is considered to be a "significant and highly sensitive cultural resource associated with Wiyot cultural history and identity."
- 27-3

▪ Due to the high sensitivity of these buried resources, which may include both irreplaceable material culture and human burials, it is imperative that all appropriate measures be taken to re-locate these resources prior to project implementation. It is in the best interests of all parties involved to instigate site identification early in the planning process. This will allow increased options for mitigation measures that will preserve this shared heritage.
- 27-4

▪ Monitoring should not be used as a mitigation strategy. As stated by cultural resource professional Richard Davis monitoring "is only sometimes acceptable as a mitigation measure when the circumstances of an undertaking are such that identification can't really be done ahead of project implementation." He also notes that "when using monitoring as a mitigation strategy, the folks implementing the project also have to be prepared for the monitor to find stuff. The project proponents need to be logistically and legally prepared for the construction delays that might be entailed..."
- 27-5

▪ From a tribal perspective, good site identification is critical to the consultation process. When resources are known, tribes can most effectively participate in the environmental and cultural resources planning process. Without this information, the project risks destroying the site and its resources. This situation is documented by well known preservation expert Tom King - "If monitors find something important,

January 21, 2009

practically speaking it is very unlikely that they're going to be able to stop destruction of the place where that something lies. The best they're likely to be able to do is delay destruction for awhile..."

- 27-5 cont.

▪ Therefore, the Wiyot Tribe requests professional archaeological testing of sensitive areas of the study area, including all areas of potential effect. This will require subsurface testing which may include, but is not limited to, ground penetrating radar, auger tests, and controlled back hoe testing. As described in the DEIR Cultural Resources Chapter IV.E-16, "Given the known and recorded sites in the area and its waterfront location, the project site is highly sensitive for prehistoric occupation, and there remains a possibility that previously unknown significant deposits may be encountered during development especially at depths below approximately 5 to 8 feet. Such unrecorded resources could be damaged or destroyed during project construction, including any subsurface, ground-disturbing activities."
- 27-6

▪ Boundaries and locations of sensitive areas must be determined from consultation and agreement among historical experts, archaeological professionals, and the Wiyot Tribe. As indicated in the discussion of Prehistoric Archaeological Sites (IV.E-15), descriptions of Wiyot village locations are vague and often inconsistent, as are the historical landforms which were dramatically altered by post-contact industrial uses. Further research and consultation is therefore critical to define and plot the areas of potential sensitivity.
- 27-7

▪ As proposed in the DEIR, Mitigation Measure E-2a is NOT adequate for "locating and protecting... potential prehistoric features" and needs to be amended to reflect site identification measures as described above early in the planning process. The geographic areas subject to this mitigation should be reassessed in consultation with the Wiyot Tribe. While construction monitoring must continue to be included in all ground disturbing activities, this should not substitute for pre construction site identification and planning. The Wiyot Tribe does NOT concur that the application of Mitigation Measures E-2a and E-2b as presented result in "Less-than-Significant" Level of Significance after any recommended mitigation measures (pp II-13, II-14).
- 27-8

▪ Training construction workers in identification of cultural resources is commendable, but insufficient for professional cultural resource management. The Wiyot Tribe requests that ALL ground disturbing activities be subject to cultural monitoring by a designated tribal representative and at the discretion of the Wiyot Tribe. Cultural monitoring oversight of ground disturbing activities where cultural resources are suspected is standard practice even when conducted by professional archaeologists. This is not limited to "coring" (requiring further definition) as stated in the DEIR Mitigation Measure E-2a
- 27-9

The Wiyot Tribe appreciates the opportunity to comment on the Marina Center DEIR. We look forward to our future consultation on this project, and to working together to identify and preserve Wiyot resources and our common heritage.

Sincerely,

Hélène Rouvier
Cultural Director/THPO
Wiyot Tribe

HR/hr
cc: Gail Green, Wiyot Tribe Chairperson

RECEIVED
JAN 22 2009
DEPARTMENT OF
COMMUNITY DEVELOPMENT

5-392

Letter 27: Wiyot Tribe (Helene Rouvier)

- 27-1 The comments applauding the cultural resources assessment in the Draft EIR, including the consultation criteria requirements under Section 106, are noted. The comments do not directly address the adequacy or accuracy of the Draft EIR. Please see responses comments 69-18 and 69-19.
- 27-2 The comment stating that there may be two buried Wiyot villages on the site is noted. The comment that these sites are significant to both the Wiyot Tribe and the larger heritage preservation community is also noted. Please see responses to comments 69-1 and 69-7, which explains that once remediation plans are finalized, a subsurface investigation would be completed in the discrete areas identified as culturally sensitive 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 also see Master Response 9.
- 27-3 The comment states that all appropriate measures should be taken to re-locate buried resources prior to project implementation, and that site identification should begin early in the planning process.

Please see response to comment 27-2, above, which explains that a subsurface site investigation would take place once the remediation plans are finalized. Please also see Master Response 9, which explains that the extent of the villages remains unknown due to imprecise and spotty reporting and documentation of the village sites.

- 27-4 The comment states that monitoring should not be used as a mitigation strategy. Please see Master Response 9, which explains that monitoring is not the sole mitigation strategy for the proposed project. Mitigation Measure E-2a, for example, dictates a number of steps that the Project Applicant must follow if archaeological materials are found, including ceasing construction activities, conducting an independent review of the find by a qualified archaeologist, and then implementing one or a combination of measures (e.g., “removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.”). (Draft EIR, pages IV.E-17 and -18.) Given the possibility that no archaeologically significant materials will be found during project construction or monitoring, as well as the fact that any materials found would be protected through the treatment measures required under Mitigation Measures E-2a and E-2b, no further mitigation is required and the project is expected to have a less-than-significant impact on archaeological resources. In consideration of suggestions by commenters, Mitigation Measures E-2a and E-2b on Draft EIR pages IV.E-17 and -18 have been revised to clarify and strengthen the protections for archaeological resources during all phases of the project. Please see Chapter 2, Errata, under Staff-Initiated Changes to the Draft EIR, or Master Response 9, to see these changes.

27-5 The comment states that good site identification is critical to the consultation process. The comment is noted. As stated in response to comment 27-2, a subsurface investigation would be undertaken once remediation plans are finalized. As stated in response to comment 69-1, it would be impractical to require significant trenching, boring, and excavation now, in advance of project approval, and before the specific areas of disturbance are ascertained, particularly given the fact that the project site may not contain any significant archeological materials. Such extensive testing would itself require the sort of permits from regulatory agencies that the project is seeking to obtain (e.g., a wetland fill permit). CEQA does not require the Project Applicant or lead agency to conduct every field test, research study, or experiment before approving an EIR. (*Society for California Archeology v. County of Butte* (1977) 65 Cal.App.3d 832, 838.) Still, the sort of site investigation and treatment suggested by the commenter will be conducted and mitigation will be implemented, if necessary, before project construction. Please see Master Response 9.

The comment also states that monitors would only be able to delay construction. Please see response to comment 27-4 and Mitigation Measure E-2a, which state that if resources were found, construction activity would cease as a first step in the mitigation process.

27-6 The comment states that the Wiyot Tribe requests professional archaeological testing of sensitive areas of the study area. Please see response to comment 69-1, which states that a subsurface investigation would be completed in the discrete areas identified as culturally sensitive 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 also see Master Response 9.

27-7 The comment states that the boundaries and locations of sensitive areas must be determined through consultation and agreement among historical experts, archaeological professionals, and the Wiyot Tribe.

The comment is noted. Please see response to comment 69-7, which states that results of the subsurface survey program would further define the archaeological sensitive areas. All investigations would be conducted by a qualified archaeologist. Please see response to comment 69-16, which states that the Wiyot Tribe would continue to be consulted. Finally, please see revised Mitigation Measure E-2a in Master Response 9, which states that if finds are determined to be significant or unique, a treatment or protection plan shall be developed by a professional archaeologist in consultation with appropriate Native American group(s).

27-8 The comment states that the Wiyot Tribe does not concur that the application of Mitigation Measures E-2a and E-2b would result in a less-than-significant impact to cultural resources and that Mitigation Measure E-2a needs to be amended. The comment states that the geographic areas subject to mitigation must be reassessed in consultation with the Wiyot Tribe.

Please see Master Response 9, which includes a revised Mitigation Measure E-2a. Please also see response to comment 69-1, which states that a subsurface investigation would be undertaken once remediation plans are finalized. As stated in response to comment 69-1, it would be impractical to require significant trenching, boring, and excavation now, in advance of project approval, and before the specific areas of disturbance are ascertained, particularly given the fact that the project site may not contain any significant archeological materials. Please see response to comment 27-8 regarding consultation with the Wiyot Tribe.

- 27-9 The comments stating that construction worker training is insufficient to mitigate potential impacts to cultural resources are noted. Following implementation of a subsurface survey program, archaeological and Native American monitoring would occur in areas predetermined as culturally sensitive. Please also see Master Response 9, which includes revised mitigation measures identifying an archaeological subsurface survey. Also see response to comment 11-1 related to consulting with the appropriate Native American group(s).

Sidnie Olson

From: radromy@aol.com
Sent: Thursday, January 29, 2009 8:59 AM
To: DEIRcomments
Subject: Marina Center

To whom it may concern:

I am writing to voice my support for the proposed Marina Center. I was born here in Humboldt County and am now raising my own family. I am happy to see this area being cleaned up and making way for new jobs and residential living spaces. I am in support of Home Depot coming to Eureka. Frankly, there are far more benefits to this proposal than their are concerns.

28-1

Thank you,

Liz Scott Adams
PO Box 95
Cuttan CA 95534

707 444-9662

Letter 28: Liz Scott Adams

28-1 The comment expressing support of the proposed project is noted.

Comment Letter 29

Comment Letter 29

Sidnie Olson

From: Sidnie Olson
Sent: Wednesday, December 10, 2008 10:07 AM
To: DEIRcomments
Subject: FW: Marina Center- Balloon Tract DEIR comments
Attachments: Doc1.doc

PERSONAL COMMENTS ON MARINA CENTER/BALLOON TRACT, DRAFT ENVIRONMENTAL IMPACT REPORT
David Ammerman Date: December 2, 2008

From: Ammerman, David A SPN [mailto:David.A.Ammerman@usace.army.mil]
Sent: Tuesday, December 02, 2008 10:22 AM
To: Sidnie Olson
Subject: Marina Center- Balloon Tract DEIR comments

<<Doc1.doc>> Sidnie - These are my comments as a private citizen and do not constitute the views of any public agency including the Corps of Engineers. Please add these to the public record. You can make edits if you like, I tend to get carried away with things. Most of my specific comments are on public transit access (there are numerous errors in the DEIR regarding this) and vehicle transportation to and from Marina Center and miscellaneous comments. My official comments as a Corps employee were forwarded to Kelley Reid, our lead biologist in Regulatory yesterday and I've asked Kelley to add them to the official record from the Corps of Engineers. The Corps comments address page specific requests for revisions, clarification or correction.

Thanks, -Dave Ammerman, 707-443-0855

Please accept these general and some specific comments on the DEIR for the Marina Center proposal located between Waterfront Drive and Broadway and bounded by Washington Street on the south as proposed by CUE VI LLC. These are my comments as citizen of Cutten, in unincorporated Humboldt County and not of any public agency.

General comments:

I am in favor of some kind of commercial or light industrial development at the Balloon Tract (herein to be referred to as the "lot"). I agree with the City of Eureka's determination of the next Environmentally Superior Alternative after "No Project" to be the "Marina Center Reduced Footprint Alternative". The full project as proposed by CUE VI LLC with its mixed commercial, retail, office and residential, is in my opinion putting too many eggs in one basket. The height of some of the buildings (up to 72 feet) seems to me out of character for that close to the waterfront with its recreational setting. I can see why taller buildings are proposed, otherwise to have the same capacity with shorter buildings one would have to expand into the wetland areas or upland buffers. The residential and museum components can be left out, if anything to reduce parking capacity. I suppose one could adapt and maintain a residence or condo above the retail floors below as in Old Town, but having residences on the lot seems inappropriate. On the other hand, having someone living on site might provide some level of security over and above what might be provided on a contract basis for the retailers on site, but considering the number of transients (some violent and often under the influence) loose in this town, the residents themselves will desire security.

29-1

29-2

I don't favor the Limited Industrial Zoning alternative, nor the Off-Site Shoreline Property Alternative. The latter I would prefer to remain open space or set aside for waterfront park land or some other recreational use.

I support the applicant's proposal to perform clean up of the site of hazardous and toxic materials, hence their chosen front name, CUE VI LLC (Clean Up Eureka, this chosen phrase might be construed to refer to all of Eureka and not just the lot, and seems to have a slightly derogatory connotation towards the city). The extensive clean up of contamination substances needs to be closely monitored for compliance by the city, RWQCB and Coastal Commission. With the high profile of this project and its on-going controversy, documentation of each step and progress is essential. The developer of the

29-3

5-398

Comment Letter 29

Comment Letter 29

Lot, certain individuals and environmental groups including BayKeeper , EPIC and NEC to name just a few are in constant disagreement over development of the lot. Some of the individuals and environmental groups have legitimate concerns, others suffer from ultra-hysteria and ride the crusade carpet. With this acrimonious background, it is important to be as objective as possible, which might be extremely difficult as the battle lines have been drawn for years. The usual activist groups always complain of the developer's grandiose plans, but these same groups have never come up with practical or really desirable alternatives of their own.

I support the applicant's proposal to restore and enhance Clark Slough and the wetland areas to be set aside for this project. They need to come up with a viable and adequate plan that meets the standards of the Corps of Engineers, Coastal Commission, California Department of Fish and Game, RWQCB and the City. I believe as far as public agencies go, by far the biggest hurdle for the applicant in terms of permitting will be the Coastal Commission (for that portion of the project that requires a permit direct from the Commission) because of the Commission's very lengthy and cumbersome but at times necessary public hearing, environmental review and related permit processes. The Corps permit process is also getting more complicated, especially with new Compensatory Mitigation Rules and jurisdictional rules that have come out recently. I would like to see an upland or wetland vegetation buffer all the way around the perimeter of the proposed lot, but perhaps that is not practical due to traffic and circulation, and needs of minimum development for economic gain.

Specific comments:

The DEIR's discussion of public transit systems is outdated and needs to be immediately revised. I would not be surprised if either the public or news media picked up on the numerous errors already. It appears that the DEIR preparers and city planner reviewers took no opportunity to ride the transit or take a look at the most recent bus schedules. I am a long time rider of both city and county transit buses. Some of the city routes are rather long, tedious milk runs but if you know where you're going, what you want to do and when to do it, the bus can be an efficient and pleasant way to get around Eureka and the County. These are some of the errors that glower:

Neither the county or city buses run seven days a week, they run six days a week including Saturdays. Saturdays for both county and city buses are on a reduced schedule (usually 10 to 5 p.m. for city buses and slightly longer schedule on Saturday for the County buses). The buses may run on either a Saturday schedule or regular on certain holidays or holiday periods, on some major holidays the buses do not run at all. There is no Sunday service, although many people including myself would take advantage of Sunday service it were offered.

The route map in the DEIR is not accurate. Example, on both weekdays and Saturdays, the Red Route, after stopping at 3rd and H and 4th and D on its southbound route, makes a right-hand off 4th Street turn somewhere around A Street to the west and follows Commercial Street to Englund Marine and then makes a left onto Waterfront Drive. Both the weekday and Saturday Red Routes pass by the Balloon Tract on Waterfront Drive and past the Eureka Marina. Curiously, there is no designated bus stop between D Street and Koster and Washington intersection (on Saturdays I don't believe the Red Route stops at Koster and Washington but it does during the weekday). I asked the bus driver why they take this diversion route along Waterfront Drive even though there is no stop (it is indeed a scenic route). She said the reason is timing of the route so that the several buses meet at the same and correct time for transfers at Bayshore Mall and other locations, and to maintain the schedule. However, I can easily see the buses serving at least one designated stop at Englund Marine or at the Eureka Marina. I recommend the City discuss with the transit authorities to add a stop or two on Waterfront Drive. I'm sure some riders would stop here. I know I would especially if there is a special event at the Wharfinger Building. If the Marina Center gets approved and built, a stop somewhere along Waterfront (not just Koster and Washington) would be convenient for shoppers at the Marina Center.

Another error mentioned: The DEIR states the southbound Koster and Washington Street bus stop is discontinued. This is not correct, this stop is still used by city buses on the weekday Red Route southbound only. It is the northbound stop with the shelter that is no longer used. Why not ask the transit service to move the shelter across the street to the southbound side? The problem with the shelters is like at 4th and D, transients use them for shelter only including Sundays and are potential troublemakers to others including legitimate bus riders.

THE DEVELOPER, TRANSIT AUTHORITY AND THE CITY SHOULD DO EVERYTHING THEY CAN TO ENCOURAGE PUBLIC TRANSIT TO AND FROM THE MARINA CENTER IF IT IS APPROVED AND BUILT. This can reduce unnecessary traffic entering and leaving the center and clogging city traffic arteries.

On to traffic. I suggest there be a one way circulation from north to south starting at the Fourth Street extension. Two way traffic entering and leaving the Marina Center in reduced or full configuration will do nothing but snarl traffic both ways on Broadway. I do favor multiple entrances into the Marina Center including near the Eureka Wharfinger Building but keep the main circulation one way. No left turns from northbound even with a stop light. Proper signage, promotional or otherwise can direct out of town traffic to the Marina Center. The locals know to use Waterfront Drive or other secondary entrances.

5-399

29-4

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29-6

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29-12

Comment Letter 29

Wetlands and Clark Slough:

12 acres should be minimum for wetlands restoration and enhancement on the lot, possibly some more enhanced within the channel of Clark Slough which currently has too much invasive vegetation such as Phragmites or Pampas Grass. Clark Slough is currently a dumping ground by transients and other fools. Maintaining Clark Slough and the wetlands areas should be primary responsibility of the developer with conservation agreement and assistance from City Public Works.

29-13

Bicycles and Pedestrians

Along with public transit, public access on foot and by bicycle (might want to discourage horses unless an unpaved path is available and hitching posts are provided where an area can be cleaned up) should be encouraged and provided for. Bicycle lock racks like everywhere else are essential for those patronizing new center stores.

29-14

Locomotive derelicts:

I've never understood why these dinosaurs are still here. If they are the responsibility of Union Pacific they should be ordered to remove them or be fined. The locomotives are graffiti-ridden, public eyesores and public safety liabilities.

29-15

Thank you for your consideration on these comments - David A. Ammerman

Letter 29: David Ammerman

- 29-1 The comment raises a number of issues about the type of development, the character of the buildings, and whether residential or other proposed uses may be inappropriate. The comment suggests that the full complement of mixed uses may be “putting too many eggs in one basket,” and proposes to leave out the museum and residential components to reduce parking capacity.

This complement of uses is not “putting too many eggs in one basket” as the comment suggests. It exhibits the principles of “smart growth” in that it is a balanced mix of uses that are compatible with the existing zoning and allowed uses of adjacent properties. This sort of development is common for urban in-fill projects where denser development is appropriate, and is in step with the existing office and residential buildings located throughout the adjacent Downtown and Old Town areas of the City. The mix of uses is also important to reducing traffic and other impacts associated with non-mixed use projects. In any event, the comment does not raise any issues pertaining to the sufficiency of the EIR as an informational document, nor does the comment provide any other mitigation measures or alternatives that would further reduce the project’s impacts. The comment instead raises land-use policy and preference issues, and no further response is necessary.

- 29-2 The comment against the residential component of the proposed project is noted. Regarding security at the project site, please see response to comment 16-178.
- 29-3 The comment regarding the cleanup of the project site is noted. For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 of this document, as well as new Appendix S.
- 29-4 The comment regarding reviewing agencies for wetland restoration is noted. As stated on Draft EIR page III-18, the project may require other approvals from the U.S. Army Corp of Engineers, the California Coastal Commission, the California Department of Fish and Game, and the North Coast Regional Water Quality Control Board. Please also see responses to comments 4-5—which discusses litter removal maintenance—and 7-1 through 7-5. In addition, please see Chapter IV.I, Land Use and Planning, which discusses necessary Coastal Commission approvals.
- 29-5 The comment states that the project should include an upland or wetland vegetation buffer all the way around the perimeter of the proposed lot, though it may not be economically practical.

Wetland buffer zones are proposed around the entirety of the proposed estuarine wetland restoration area, though no wetland buffer is proposed for the entire property. As indicated in response to comment 3-10, the buffer zones between commercial land uses developed as part of the Marina Center project and restored wetlands is proposed to be a minimum of 50 feet. Elsewhere around the proposed restoration area, buffers of less than

50 feet are proposed where existing streets, existing rail rights of way, or planned pedestrian trails adjacent to Clark Slough necessitate narrower buffers, and only as long as they provide visual screening and other attributes that help protect the resource (e.g., earthen berms and native vegetation to minimize disturbing water birds). A wetland vegetation buffer all the way around the perimeter of the proposed lot (i.e., the entire project site) is not practical or feasible for a number of reasons, including the reasons stated by the comment. In addition, wetland restoration and buffer areas are most effective when they are consolidated and/or contiguous with other wetland or open space areas. A wetland vegetation buffer around the entire perimeter of the project site would fragment the wetlands, make them much more difficult to manage, and probably would not be fully utilized by species due to disturbances.

- 29-6 The comment states that discussion of public transit system is outdated, and suggests a stop on Waterfront Drive for the convenience of shoppers at the Marina Center. The following revisions to the EIR text are proposed to address the updated information from the comment concerning the County and City bus schedules. The text on page IV.O-5 of the Draft EIR is revised as follows:

~~The Humboldt Transit Authority operates local transit service 7 days a week within Eureka. There are four routes: Red, Green, Gold, and Purple. The Red, Gold, and Purple routes are within the vicinity of the project site (see Figure IV.O-2). The Red line, which adjoins the site, operates along Fourth and Fifth streets and along Broadway to Washington Street. It then turns on Washington and extends to Koster Street for southbound service. Northbound service is along Summer Street (parallel to Broadway approximately 500 feet east). The service operates from 6:15 a.m. until 7:00 p.m. with one hour headways.~~

~~The Redwood Transit System operates the regional transit service between Trinidad and Scotia through Eureka. The service operates on three hour headways for the entire route, and offers more frequent, approximately one hour headways between the Arcata Transit Center (about 9 miles north of the project site) and the Bayshore Mall (two miles south of the project site). In the vicinity of the project site, southbound service starts around 9:40 a.m. and ends at 6:15 p.m., and northbound service starts around 9:45 a.m. and ends at 5:55 p.m.~~

Redwood Transit System (RTS) is the public bus system for Humboldt County, which is operated by Humboldt Transit Authority. It provides service between the cities within the County, Monday through Friday and limited service on Saturday. RTS provides service within the City of Eureka along U.S. 101/Broadway/Fourth and Fifth Streets, and it stops at Del Norte Street, Bayshore Mall, and McCullen Avenue in the vicinity of the project site. The fare for adults is \$2.50 per ride, with some discount for children, seniors, and disabled individuals.

Eureka Transit Service (ETS) is the public bus service that serves City of Eureka, offering several routes that run Monday through Friday, and limited Saturday

service. The fare for adults is \$1.40 per ride, with some discount for children, seniors, and disabled individuals.

On weekdays ETS offers Purple, Green, Gold, and Red Routes, of which Gold and Red would serve the project site directly. The Purple Route begins service at H and Ninth Streets and ends service at H and Third Streets. It provides service to the north east area of the City. The Green route begins at Bayshore Mall and ends at Harris and F Streets. It runs along Harris and Henderson Streets. The Gold Route provides service to the west side of the City. Some of the stops in the vicinity of project site are at:

- H Street/Fourth Street
- Sixth Street/C Street
- Summer Street/Seventh Street
- Summer Street/Clark Street
- Summer Street/15th Street
- Summer Street/Wabash Avenue
- E Street/Clark Street

The Red Route begins service at H and Manzanita Streets and ends at H and Third Street. This route is the nearest to the project site on Waterfront Drive. Some of the stops in the vicinity of proposed project are at:

- Fourth Street/D Street
- H Street/Third Street
- Wharfinger Building
- Koster Street/Washington Street
- Bayshore Mall
- Broadway Street/Del Norte Street
- California Street/15th Street
- California Street/Seventh Street

On Saturdays, only the Gold, Rainbow, and Purple Routes operate and they all begin at H and Third Street, and operate from 10:00 a.m. until 5:00 p.m.

This information clarifies the existing bus routes and public transit schedule, but does not affect the determination in the Draft EIR that, with Mitigation Measure O-7d as revised in this Final EIR, the project's impacts on public transit would remain less than significant with mitigation.

- 29-7 The comments correcting the description of transit services are noted. Please see response to comment 29-6, which includes text changes to the Draft EIR description of transit service.

- 29-8 The comments correcting the description of transit services are noted. Please see response to comment 29-6, which includes text changes to the Draft EIR description of transit service.
- 29-9 The comment states that the City should discuss with local transit authorities the possibility of adding a transit stop along Waterfront Drive. As discussed in response to comment 1-8, the Red Route currently operates along Waterfront Drive and Mitigation Measure IV.O-7d is revised to include upgrades to the existing transit stop in front of the Wharfinger Building.
- 29-10 The comments correcting the description of transit services are noted. Please see response to comment 29-6, which includes text changes to the Draft EIR description of transit service.
- 29-11 The comment states that the developer, the city and the transit authority should do everything they can to encourage transit use to and from the project site. This is partially achieved through the proximity of the project to existing public transit routes and through improvements to public transit facilities. The mode split and transportation analysis are provided in Chapter IV.O.
- 29-12 The comment suggests a one-way circulation through the proposed project, southbound on Waterfront Drive, and northbound on Broadway, with no left turns allowed on Broadway. The comment states that two-way traffic would snarl traffic both ways on Broadway.

Waterfront Drive is classified as a Major Collector by the City of Eureka, and as such is intended to carry high volumes of traffic from traffic generators to the principal arterial system. As noted in the traffic study on which the Draft EIR is based, a one-way system using Broadway as a northbound one-way street north of Wabash Avenue is considered and rejected as infeasible because of three reasons: (1) Clark Slough is a physical barrier that prevents a one-way couplet with Koster Street being southbound U.S. 101 north of Wabash Avenue; (2) use of Waterfront Drive as the southbound half of the one-way couplet is too far to the west to serve as the southbound U.S. 101 route as this would increase vehicle miles of travel and would require major physical changes to Waterfront Drive at a high cost, and (3) no reasonable site plan could be developed that included a major, three-lane southbound state highway within the project site. In any event, as the Draft EIR concludes, the levels of service along this stretch of Broadway would remain within acceptable levels with the implementation of the measures outlined in the Draft EIR. (See Draft EIR, pages IV.O-33 through -42, and IV.O-48 through O-54.)

- 29-13 The comment states that 12 acres should be the minimum for wetlands restoration and enhancement. As stated on Draft EIR page III-14, the proposed project would create collectively an 11.89-acre wetland reserve. Regarding maintenance of the wetland, please see response to comment 4-5.

- 29-14 The comment states that public access on foot and bike, including bike racks, should be provided for in the proposed project. The comment is noted. Please see response to comment 118-3, which addressing bicycle and pedestrian access.
- 29-15 The comment questions the remediation responsibilities of the Union Pacific Railroad. For further discussion regarding the Remedial Action Plan for the proposed project, please see Master Response 4 and Appendix S.

Sidnie Olson
City Planning Dept
Eureka, CA 95501

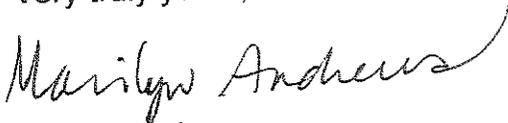
Dear Sidnie:

Re: the new plan for the Marina, and the EIR

Until the Home Depot – and indeed, any other big box store – is removed from the project, I will be against it. In terms of noise, traffic, and other categories on the EIR, a big box store would cause negative environmental impacts which simply could not be satisfactorily mitigated. I 30-1
I 30-2

I live in Arcata, and I own a building in Eureka at 220 First Street.

Very truly yours,



Marilyn Andrews
PO Box 1066
Arcata CA 95518

December 10, 2008

RECEIVED
DEC 11 2008
DEPARTMENT OF
COMMUNITY DEVELOPMENT

Letter 30: Marilyn Andrews

- 30-1 The comment expressing disagreement with the large anchor retail tenant of the proposed project is noted. Please see Master Response 1, under “National Stores vs. Local Stores,” which discusses the potential economic impacts of a big box store in the proposed project.
- 30-2 The comment states that a big box store would cause negative environmental impacts that could not be satisfactorily mitigated.

As stated on Draft EIR pages V-1 and V-2, the proposed project would result in significant unavoidable environmental impacts to air quality and transportation. As discussed in Chapter IV.K-1, Noise, potential noise impacts would be less than significant or reduced to less-than-significant levels with proposed mitigation measures.