AGENDA SUMMARY

RE:	MARINA CENTER Certification of EIR	For Agenda Date: October 27, 2009 Agenda Item No.:

RECOMMENDATION:

1. Certify the EIR for the MARINA CENTER MIXED USE DEVELOPMENT PROJECT by adopting the "RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT."

SUMMARY OF THE ISSUE:

On March 7, 2006 CUE VI, LLC made application to the Community Development Department for the Marina Center project which consists of a mixed use development on a 43 acre brownfield site.

The City determined that the Marina Center project is a "project" under the California Environmental Quality Act (CEQA) and that an Environmental Impact Report (EIR) would be required. The City issued a Notice of Preparation for the EIR and subsequently prepared a Draft EIR which was circulated for public and agency comment for a period of 62 days. The City prepared a Final EIR which includes the Draft EIR, the comments received on the Draft EIR, the responses of the City to the comments, and the Mitigation Monitoring and Reporting Program.

The City Council is being asked to certify the EIR as complete and adequate by adopting the attached Resolution titled "*RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT*."

(continued on next page…)

FISCAL IMPACT: No impacts to the City General Fund have been identified as a result of this action.

DH SIGN:_____ CM SIGN:_____

Kevin R. Hamblin
Director of Community Development

David W. Tyson
City Manager

REVIEWED BY: DATE: INITIALS:

City Attorney _____ _____

COUNCIL ACTION:

Ordinance No. _____ Resolution No. _____

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PROJECT DESCRIPTION:

The Marina Center project would include approximately 313,500 sq. ft. of Retail/Service/ Furniture including 28,000 sq. ft. of Nurseries/Garden; 104,000 sq. ft. of Office; 72,000 sq. ft. of Multi-Family Residential (54 dwelling units); 70,000 sq. ft. of Light Industrial use; 14,000 sq. ft. of Restaurant; and 12,500 sq. ft. Museum. The new buildings would be between one and five-stories. The project would include approximately 1,590 parking spaces, including about 462 spaces in a four-level parking structure.

The project site is located in the City of Eureka on a 43 acre brownfield site that is generally bounded by Waterfront Drive to the north and west, Washington Street to the south, and Broadway (Highway 101) to the east. Assessor Parcel Numbers: 001-014-002; 003-021-009; 003-031-003; 003-031-008; 003-031-012; 003-031-013; 003-041-005; 003-041-006; 003-041-007; and 003-051-001.

The project would be constructed in phases. Phase 1 would include interim remediation of the brownfield and the creation of an 11.89 acre wetland reserve.

The future phase(s) would include pedestrian and roadway improvements, including a proposed extension of Fourth Street into the site, connecting to and terminating at Waterfront Drive; and the proposed extension of Second Street into the site, connecting to and terminating at the Fourth Street extension. Additional access would be provided via driveway access from the Sixth Street and Broadway intersection. The future phase(s) would also include the construction of a landscaped pedestrian and bicycle path parallel to Waterfront Drive, as well as landscaping throughout the site. On-site landscaping would incorporate native plants, ranging from restored slough and wetland aquatic plants to upland trees, shrubs, and grasses indigenous to the region.

The four parcels which roughly make up the tract of land know as the Balloon Track have an existing general plan land use designation of Public/Quasi Public (PQP) with a corresponding zoning designation of Public (P). Five of the existing remaining parcels have an existing land use designation of Light Industrial (LI) with a corresponding zoning designation of Limited Industrial (ML). The last two parcels have an existing land use designation of Highway Service Commercial (HSC) with a corresponding zoning designation of Service Commercial (CS).
The future phase(s) of the project include amendment of the certified Local Coastal Program (LCP) to a combination of designations that include General Service Commercial (GSC), Professional Office (PO), Waterfront Commercial (WFC), Limited Industrial (LI), and Water Conservation (WC). The LCP amendments would include amendments to both the Land Use Plan, which is the relevant portion of the local general plan, and the Implementation Plan, which includes the zoning ordinance and zoning district maps.

The proposed project design would draw from the site's maritime and industrial heritage, as well as from the contemporary influences of the Eureka waterfront, Old Town and downtown areas.

Development of the site would seek to maximize views of Clark Slough, as well as Humboldt Bay, the small-boat marina, and the developing waterfront west of the site.

CEQA PROCESS:

The CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, Article 7. EIR PROCESS, enumerate the process for preparing, circulating, and certifying an EIR. Below are pertinent sections of Article 7, a summary of the section, followed by a discussion of how the city complied with the section.

Section 15082. Notice of Preparation and Determination of Scope of EIR.
Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send to the Office of Planning and Research and each responsible and trustee agency a notice of preparation stating that an environmental impact report will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the project. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project.

> The city issued a Notice of Preparation (NOP) for the Project EIR on April 6, 2006. In addition to sending the NOP to the State Clearinghouse, the city sent the NOP by certified mail to 28 local, state and federal agencies. The city, as required by CEQA, also posted the NOP with the County Clerk. The NOP contained all the information required by CEQA under this section. The State Clearinghouse assigned a state identification number of 2006042024. The NOP and copies of the agency responses to the NOP are included in the Draft EIR as Appendix B.

Section 15083. Early Public Consultation.
Prior to completing the draft EIR, the lead agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. Many public agencies have found that early consultation solves many potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping.

> On April 4, 2006, the city sent notices to agencies and interested parties to advise that the city would be holding an agency and a public scoping session on April 13, 2006. In addition a notice of the public scoping session was published in the Times Standard, a newspaper of general circulation. The agency scoping session was held at 1:30 p.m., and six agencies attended. The public scoping session was held from 4:00 p.m. to 7:00 p.m. and 77 persons either spoke or provided written comments on the scope, focus, and content of the EIR and including the range of actions, alternatives, environmental effects, methods of assessment, and mitigation measures to be included in the EIR. Written public comments and the full transcript of the public scoping session are included in the Draft EIR as Appendix B. Table I-1 of the Draft EIR is a summary list of the issues raised

in the NOP and scoping sessions, and the location in Draft EIR where the issue is addressed.

Section 15084. Preparing the Draft EIR.
The draft EIR shall be prepared directly by or under contract to the lead agency. The lead agency may require the project applicant to supply data and information both to determine whether the project may have a significant effect on the environment and to assist the lead agency in preparing the draft EIR. The requested information should include an identification of other public agencies which will have jurisdiction by law over the project. Any person, including the applicant, may submit information or comments to the lead agency to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The lead agency must consider all information and comments received. The information or comments may be included in the draft EIR in whole or in part.

The lead agency may choose one of the following arrangements or a combination of them for preparing a draft EIR.

(1) Preparing the draft EIR directly with its own staff.

(2) Contracting with another entity, public or private, to prepare the draft EIR.

(3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.

(5) Using a previously prepared EIR.

Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.

On March 16, 2006, the City executed a third party contract with CUE VI to govern the preparation of the Draft EIR by an independent contractor. Environmental Science Associates (ESA) of San Francisco was chosen as the independent contractor to prepare the Draft EIR. This approach in EIR preparation is quite common in California and is entirely consistent with CEQA and the CEQA Guidelines Section 15084(d)(4).

ESA has made preparation of environmental impact assessment documents a core business since its founding 40 years ago. Among the firm’s 260 professional staff are a full range of technical specialists including land use planners, physical scientists, registered environmental assessors, certified biologists, registered engineers and geologists, and professional archaeologists. In addition, ESA staff stay abreast of important CEQA legal cases as well as updated administrative guidance provided by the Office of Planning and Research. Consequently, the firm is able to ensure a CEQA

analysis that is experienced and competent.

City staff was project manager for preparation of the Draft EIR and ESA worked under direct supervision of city staff. Certain professional and technical studies such as urban decay, traffic, health risk, remediation, cultural resources and biological resources (including wetlands), were prepared by subconsultants hired directly by CUE VI. The reports and studies prepared by the subconsultant's were subject to peer review by ESA professional staff qualified in those technical areas. In addition to the peer review by ESA, the urban decay analysis prepared by CB Richard Ellis (CBRE), the subconsultant of the applicant, was subject to peer review by Economics Research Associates (ERA), an economic consultant hired by the city through an Request for Qualifications process. All of the subconsultant's professional and technical studies are included in the Technical Appendices of the EIR.

An Administrative Draft EIR was submitted by ESA to the city in November, 2007. Upon review of the Administrative Draft EIR, city staff advised ESA and the applicant that the document was not adequate. The city worked closely with ESA and the subconsultants to revise the Draft EIR. A revised Administrative Draft EIR was presented to the city in the summer of 2008. After city staff provided additional comments on the revised Administrative Draft EIR, the Draft EIR was determined by staff to be complete.

City staff's involvement in the preparation of the Draft EIR included, but was not limited to: project management; reviewing and commenting on all professional and technical reports; reviewing and commenting on the Draft EIR; authoring portions of the Draft EIR; attendance at meetings, including meetings with ESA, subconsultants and/or agencies; coordination of work products; and, weekly conference calls.

Section 15085. Notice of Completion.
As soon as a draft EIR is completed, a notice of completion must be filed with the Office of Planning and Research.

On November 24, 2008, the Notice of Completion (NOC) was filed with the Office of Planning and Research. The NOC specified a 62 day review period commencing on December 1, 2008 and ending on January 31, 2009.

Section 15086. Consultation Concerning Draft EIR.
The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.

(6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

(7) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved.

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects.

On November 24, 2008, the city sent the Draft EIR to the State Clearinghouse for distribution to state agencies, and the city sent copies of the Draft EIR directly to local, state and federal agencies that may be interested in or have permit authority over the project, and including trustee and responsible agencies, and the incorporated cities in Humboldt County and the County of Humboldt. The agencies were advised that the comment period on the Draft EIR was 62 days commencing on December 1, 2008, and ending on January 31, 2009.

Section 15087. Public Review of Draft EIR.
The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to the Office of Planning and Research. Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

The notice of availability must be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. Pursuant to CEQA Guidelines Section 15105 the review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances. To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

The city provided public notice of the availability of the Marina Center Draft EIR by mailing or emailing the Notice of Availability (NOA) on November 21, 2008, to all organizations and individuals who had previously requested the notice and to the owners and occupants of property contiguous to the project site. The NOA contained all the information required by CEQA and specified a 62 day comment period commencing on December 1, 2008 and ending on January 31, 2009.

The NOA was filed for posting with the Humboldt County Clerk on November 21, 2008. The NOA was published in the Times Standards on November 25, 2008, in the Humboldt Beacon on December 4, 2008 and in the North Coast Journal on December 4, 2008. The NOA was sent to the Mayor and City Council, and to City Department Heads. City staff posted the project site with the NOA; the NOA was posted at numerous points around the perimeter of the site.

Copies of the Draft EIR were sent to all county libraries and the Humboldt State University and the College of the Redwoods libraries. Copies of the Draft EIR were sent to local media, the Planning Commission, and to the Humboldt Watershed Council, the Northcoast Environmental Center, and Humboldt Baykeeper. The Draft EIR was available for review at the Community Development Department and it was posted on the City of Eureka's website.

Section 15088. Evaluation of and Response to Comments.
The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail

giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.

During the 62 day comment period, the city received 180 letters containing about 1500 comments. Written responses were prepared for each comment received. There were nine issues which generated multiple comments and master responses were prepared for those issue areas that include urban decay, air quality, LCP policy issues, site remediation, wetland fill, cumulative traffic on Broadway, trip distribution, visual impacts, and cultural resources. A summary of the Master Responses can be found below.

Responses to comments that raised major environmental issues were provided more detail than those that did not raise environmental concerns (i.e., opinions on the merits of the project, fiscal impacts, etc.). In instances where the environmental issue raised was already addressed in the Draft EIR, the response identified where in the Draft EIR the issue was discussed. Where the comments generated modifications to the text of the Draft EIR or to mitigation measures identified in the Draft EIR, those changes were shown in Chapter 2 of the Final EIR, Errata.

Section 15088.5. Recirculation of an EIR Prior to Certification.
A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish & Game Com.(1989) 214 Cal.App.3d 1043).

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.

Below is a summary of revisions to the Draft EIR as a result of the Final EIR. There are other minor modifications to the text from the Draft EIR which can be viewed in their entirety in strikeout/underline format in Chapter 2 of the Final EIR. The revised mitigation measures in strikeout/underline format can be found below.

- The project description and project phasing have been modified to specifically describe Phase 1 as the interim remediation and creation of the wetland reserve.

  The Draft EIR, Chapter III, Section C. Project Construction Phasing, contains the following language:

  > "The project is expected to be constructed in phases which would also result in implementation of mitigation measures in phases. Because the project applicant has not identified the actual construction phasing for the project the impact analysis and recommended mitigation measures listed in Chapter IV of this EIR are for full project build-out. When the project applicant has completed a project phasing plan, the specific mitigation measures required for each phase will be determined and a Development Agreement will be entered into to assure full compliance with the recommended mitigation measures. Before the City approves the phasing plan and associated discretionary entitlement (e.g., the Development Agreement), the phasing and mitigation plan will be evaluated to ensure that there are no changes to the project, changes to surrounding circumstances, or other new information that triggers the need for supplemental or subsequent environmental review under Section 21166 of the Public Resources Code.
  >
  > "An example of possible phasing:
  >
  > "Phase 1: would span 12 months and would include the wetland restoration and site remediation.
  >
  > "Phase 2: would span 12 months and would include the development of the Anchor 1 through 4 buildings and the industrial area.
  >
  > "Phase 3: would extend over about 18 months and would include the completion of the proposed Second Street extension, construction of about half of the mixed-use retail and office buildings, and construction of the parking structure.
  >
  > "Phase 4: would extend over an approximately 12-month period and would include construction of the remaining mixed-use retail and office buildings and the mixed-use retail and multi-family residential building."

It is clear that, should the project be phased, the Draft EIR identified remediation and wetland restoration as Phase 1. In the Final EIR, the project description has been revised to specify that the project **will** be phased with Phase 1 being remediation and wetland restoration. The only change to the project description is revising the language for phasing from something that *could* occur to something that *will* occur.

The contamination of the property is a pre-existing condition. The project will not add to the contamination but will, in fact, improve the pre-existing condition. The potential environmental impacts that would result from remediation and wetland restoration are identified and analyzed in the Draft EIR, regardless whether the remediation and wetland restoration occur in conjunction with project development or as Phase 1 of the project. Mitigation Measures were identified in the Draft EIR to reduce potential impacts resulting from remediation and wetland restoration. No new mitigation measures are proposed in the Final EIR as a result of identifying Phase 1 of the project.

The Supplemental Interim Remediation Plan (SIRAP) provides greater detail of the remediation actions that will be taken on the project site. These actions are at the direction and under the regulation of the Regional Water Quality Control Board (RWQCB). At the time the Draft EIR was prepared, the level of detail now identified in the SIRAP was not known. However, what was known was that remediation would be required, and it would be required prior to project construction. It was always understood that the RWQCB regulated the type of remediation activities that would be performed and that those activities would be a benefit to the environment rather than causing environmental impacts not existing already.

The revision to the project description does not result in a new significant environmental impact not analyzed in the Draft EIR or a substantial increase in the severity of an impact analyzed in the Draft EIR for which additional mitigation measures are required. The revision to the project description does not require new mitigation measures that would result in new significant impacts, or mitigation measures that are considerably different form others previously analyzed. Therefore, the revision to the project description does not require recirculation of the EIR.

- The estimation of wastewater generated by the project has been modified to be about 1/3 the estimate evaluated in the Draft EIR. The conclusion that capacity exists at the Elk River Wastewater Treatment Plant to serve the anticipated project's wastewater demands has not changed.

  The revision to the wastewater estimate is not a new significant environmental impact that was not addressed in the Draft EIR and it does not substantially

increase the severity of an environmental impact analyzed in the Draft EIR, in fact, it decreases the severity of the potential impact. The revised estimate makes no change to the alternative analysis. Therefore, the revised wastewater estimate does not require recirculation of the EIR.

- The location of the coastal zone boundary has been clarified but there are no changes to the impacts, analysis and conclusions of the Draft EIR as a result of the clarification.

  The clarification of the coastal zone does not result in a new significant environmental impact not addressed in the Draft EIR nor would it substantially increase the severity of an environmental impact identified in the Draft EIR. The clarification does not affect the alternative analysis. Therefore, the clarification of the location of the coastal zone boundary does not require recirculation of the EIR.

- The transit system bus routes have been corrected based on comments to the Draft EIR. No changes to the impacts, analysis and conclusions of the Draft EIR as a result of the correction was identified, however, Mitigation Measure O-7d was modified to include bus stop improvements at the bus stops in front of the Wharfinger Building.

  The correction to the bus routes does not result in any new significant environmental impact nor does it substantially increase the severity of an identified impact identified in the Draft EIR. Mitigation Measure O-7d was revised to require bus stop improvements at the bus stop at the Wharfinger Building. The revision to the mitigation measure is not considerably different to what was included in the Draft EIR. Therefore, the correction to the bus routes and the revision to Mitigation Measure O-7d do not require recirculation of the EIR.

- The mitigation measures for protection of archaeological resources (measures E-2a - E-2c) were modified or added to increase protections; the mitigation requires that a qualified archeologist conduct subsurface investigations for ground-disturbing activities in areas of high sensitivity, and the mitigation prescribes steps that must be taken should resources be encountered.

  The modification to the mitigation measures does not result in a new significant environmental impact not identified in the Draft EIR. Modification of the mitigation measures increases the protections to potential archaeological resources, thereby reducing (not increasing) the severity of an environmental impact identified in the Draft EIR. The modified mitigation measures are not considerably different from those included in the Draft EIR and the proponent has agreed to adopt them. Therefore, the modifications to Mitigation Measures E-2a through E-2c do not require recirculation of the EIR.

- Mitigation measures for the treatment of stormwater (measures H-5a & H-5b) have been modified to require the submittal of a drainage plan that includes best management practices and design features effective at reducing or eliminating stormwater pollutants, and the incorporation of low impact development strategies, such as grass/vegetative swales (biofilters).

  The modification to the mitigation measures does not result in a new significant environmental impact not identified in the Draft EIR. Modification of the mitigation measures does not increase the severity of an environmental impact identified in the Draft EIR. The modified mitigation measures are not considerably different from those included in the Draft EIR and the proponent has agreed to adopt them. Therefore, the modifications to Mitigation Measures H-5a and H-5b do not require recirculation of the EIR.

- Appendix F has been deleted. It is a health risk assessment that was superseded by the health risk assessment found in Appendix E.

  Removal of Appendix F makes no change to the environmental assessment of the Draft EIR. No new impacts are identified and no mitigation measures are modified or added as a result of the deletion of Appendix F. Therefore, recirculation of the EIR is not required because Appendix F has been deleted.

- Appendix M (Variable Routes and Parking Lot Management) of Appendix P (Traffic Impact Study) has been deleted because the subject is no longer under consideration.

  Removal of Appendix M makes no change to the environmental assessment of the Draft EIR. No new impacts are identified and no mitigation measures are modified or added as a result of the deletion of Appendix M. Therefore, recirculation of the EIR is not required because Appendix M has been deleted.

Based on the discussion above, the revisions to the EIR listed in Chapter 2 of the Final EIR, and summarized above, do not identify any new significant impacts not previously identified in the Draft EIR, nor do they reveal a substantial increase in the severity of an environmental impact. The revisions further do not describe an alternative or mitigation measure considerably different from those identified in the Draft EIR. Accordingly, the revisions in Chapter 2 of the Final EIR are not considered “significant new information” and, therefore, the EIR does not require recirculation prior to certification.

Section 15089. Preparation of Final EIR.
The lead agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these guidelines. Lead agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft

EIR.

The Administrative Final EIR was submitted by ESA to the city for review and comment in spring 2009. City staff provided comment on the Administrative Final EIR to ESA; and in late July, 2009 city staff met with ESA in their offices in San Francisco to go over the revised Administrative Final EIR. The Final EIR was completed in September 2009 and presented to the City Council on October 6, 2009.

The Final EIR includes the Draft EIR, comments and recommendations received on the Draft EIR either verbatim or in a summary, a list of persons, organizations, and public agencies commenting on the Draft EIR, the responses of the City to significant environmental points raised in the review and consultation process, and other information as added by the City. The Final EIR contains the following chapters:

Chapter 1, *Introduction*, describes the CEQA process and the organization of the Final EIR.

Chapter 2, *Errata*, contains errata identifying text changes to the Draft EIR.

Chapter 3, *Master Responses*, contains master responses to nine key issue areas identified in the comments.

Chapter 4, *Agencies and Persons Commenting on the Draft EIR*, contains a list of all persons and organizations that submitted written comments on the Draft EIR during the public review period.

Chapter 5, *Responses to Written Comments on the Draft EIR*, contains comment letters received during the review and comment period and the responses to the comments are provided following each letter.

Chapter 6, *Mitigation Monitoring and Reporting Program*, describes the identified mitigation measures and the responsible parties, tasks, and schedule for monitoring mitigation compliance.

On October 6, 2009 and October 20, 2009, the City Council invited public input on the Final EIR. On October 13, 2009 and October 15, 2009, the City Manager hosted town hall meetings where the public were invited to ask questions of city staff regarding the Final EIR.

Section 15090. Certification of the Final EIR.

Prior to approving a project the lead agency shall certify that:

(1) The final EIR has been completed in compliance with CEQA;

(2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and

(3) The final EIR reflects the lead agency's independent judgment and analysis.

As evidenced in the discussion above, the city has completed the Final EIR in compliance with CEQA. The City Council is the final arbiter of whether the Final EIR was completed in compliance with CEQA. Confirmation that the City Council found that the Final EIR was prepared in compliance with CEQA is evidenced by the City Council's action to adopt the RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT.

The Final EIR was presented to the City Council on October 6, 2009. The City Council's individual review and group discussions on the Final EIR would support the finding that the City Council reviewed and considered the information contained in the Final EIR. Confirmation that the City Council did, in fact, review and consider the information contained in the Final EIR is evidenced by the City Council's action to adopt the RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT.

As discussed above, city staff have been thoroughly involved in the preparation and processing of the EIR. Staff's involvement would support the finding that the EIR represents the city's independent judgment and analysis. The City Council is the final arbiter of whether the Final EIR reflects the city's independent judgment and analysis. Confirmation that the City Council did determine that the Final EIR reflects the city's independent judgment and analysis is evidenced by the City Council's action to adopt the RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT

SUMMARY OF MASTER RESPONSES:

Master Response 1: Urban Decay Analysis

Comments suggest that the urban decay analysis is inadequate and most comments disagree with the conclusion that the project would result in less-than-significant impact on urban decay. Urban decay is "a chain reaction of store closures and long-term vacancies, ultimately destroying existing neighborhoods and leaving decaying shells in their wake."

Comments have been considered not relevant to CEQA if they have no bearing on the project's likelihood of resulting in significant physical deterioration of properties or structures and, thereby, leading to urban decay. Changes to the City's General Fund and changes to the job and wage markets are not relevant to the physical environment and, therefore, are inappropriate for review in an EIR. In addition, CEQA is not concerned with the type of store that may be impacted by a project, such as whether a store is a national big box chain or whether it is a locally owned small

business. Fiscal impact analysis is also not a required CEQA topic.

Master Response 2: Air Quality Health Risk Assessment

The comments state that the Health Risk Assessments (HRA) prepared for the proposed project are inadequate. At least two comments indicate that the HRA fails to analyze prevailing wind patterns for localized effects in relation to specific demographics or land uses such as schools, hospitals, and senior centers. However, a meteorological data set that includes the prevailing wind patterns was incorporated into the air dispersion modeling and risk analysis performed for the site. The database provides weather data for wind direction, temperature, and air inversion modeling.

Master Response 3: Local Coastal Program Policy Issues

The comments state that the proposed project is inconsistent with the Local Coastal Program. The Draft EIR acknowledges the project's inconsistencies with the existing land uses of the Local Coastal Program, and the project description states that the project includes an amendment to the adopted Local Coastal Program in order to facilitate the proposed development.

Master Response 4: Site Remediation Plans and Project Phasing

Many of the comments express concern that the Draft EIR lacks sufficient detail regarding the proposed Remedial Action Plan, how it would be phased, and the environmental effects of the clean up. The Supplemental Interim Remedial Action Plan (SIRAP), included as Appendix S to the EIR, provides information on how the interim remediation would proceed and how the remediation would resolve two concerns related to contamination at the site.

First, there has been concern that stormwater leaving the site is carrying contaminated soils or sediments. The SIRAP would resolve this by eliminating the flow of stormwater off the site by re-grading the site, and by increasing the capacity of the property to absorb rainfall by overlaying the site with porous fill material which would allow more rain to infiltrate into the ground. Implementation of the SIRAP would also eliminate the ditches and pipes that carry stormwater offsite.

Second, there have been concerns that people and wildlife may be exposed to elevated levels of contaminants in surface soils and sediments, particularly in the wetlands. Implementation of the SIRAP would resolve this concern by excavating hotspots in which there are elevated levels of contaminants, and properly disposing of this material offsite.

Final site remediation will be addressed in future phases when the Marina Center development is approved and the site design is finalized. Because the site plan and footprint of development may change once reviewed and approved by the City Council, it is impractical to develop more specific final remedial activities at this time.

Master Response 5: Coastal Commission Wetland Fill Policies

The comments express concern that the proposed project's filling of wetlands is not in compliance with the Coastal Act. The Draft EIR acknowledges that the project is not fully consistent with certain policies in the California Coastal Act for fill of wetlands in the coastal zone. The Legislature anticipated situations where strict adherence to one section of the Coastal Act might impede attainment of the Act's broader goals and provides a mechanism for resolving policy conflicts. The mechanism specifically includes balancing considerations of policy inconsistencies with what is most protective of significant coastal resources.

The existing wetlands on the site were largely created incidental to, and as a result of, past human activities on the site; are contaminated with elevated levels of substances harmful to human health and wildlife; are usually dry and subject to vegetation maintenance to protect against fires; and are scattered, such that they have limited habitat value. The project proposes to restore wetlands onsite in a quantity greater than that which presently exists and to enhance their value by not only consolidating them but also by improving their hydrologic connectivity with Humboldt Bay and providing them with an upland buffer.

Because the project would attain a key goal of the Coastal Act to protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment, the EIR concludes that the project's non-compliance with Section 30233 would not constitute a significant adverse environmental impact.

Master Response 6: Cumulative Conditions on Broadway

Comments state that traffic congestion on Broadway is already an issue and project-generated traffic would add substantially to the already degraded conditions. In addition, comments request additional information related to the implementation of mitigation measures on Broadway, especially related to financing and phasing.

Based on the traffic analysis in the Draft EIR, if the project were constructed this year, the increase in traffic on Broadway would be approximately 33 percent more than the existing traffic volumes. If the project was never constructed, it is expected that the same approximately 33 percent increase in traffic volumes would still occur but in the year 2025. The system of mitigation measures identified in the Draft EIR that would reduce the potential impacts resulting from a 33 percent increase in traffic volumes resulting from the project are the same system of mitigation measures that Caltrans would likely implement for the 33 percent increase in traffic volumes occurring without the project by 2025. Therefore, the implementation of the system of mitigation measures listed in the Draft EIR would significantly reduce the impacts resulting from a 33 percent increase in traffic volumes on Broadway <u>with</u> or <u>without</u> the proposed project.

With regard to implementation of the mitigation measures, 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 measures. 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 and/or Caltrans or other method for receiving credit against future improvements.

Master Response 7: Trip Distribution

Comments raise concerns regarding trip distribution and the possibility that alternate roadways that could be used to access the project site are not properly analyzed. The list of 27 study intersections was developed through consultation with the City of Eureka and Caltrans District 1. As outlined in the Draft EIR, it was determined that the intersections of Fourth and H Streets, Fourth and I Streets, Fifth and H Streets, and Fifth and I Streets were the busiest in Downtown, so that if project impacts were insignificant at these intersections, intersections farther east would have even less effect and need not be studied. And, to the south on Broadway, the intersection of Harris Street/North Bayshore Mall access drive and Broadway was determined to be the most likely southern intersection to be affected.

There are several intersections located between these study intersections, most of which are secondary (i.e., Broadway and Grant Streets, Broadway and Cedar Streets, and Fifth and A Streets), meaning that they are local access streets with relatively low traffic volumes. The study intersections fairly represent the “worst case” for such minor intersections, and if the study intersections were shown in the modeling results to continue to perform adequately, the secondary intersections would be anticipated to perform adequately as well. On this basis, not all intersections along U.S. 101 were included as study intersections. Consequently, the project would have a less-than-significant effect on these other intersections on the U.S. 101 corridor.

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

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

Comments raise concerns with respect to visual viewpoints of and through the project site from the west (Humboldt Bay and Waterfront Drive). Although the project proposes structures that would alter the visual character of the site as viewed from the west, because of the existing brownfield conditions of the site, and the surrounding urban context with commercial and industrial buildings of various height, bulk, mass, and scale, the change is not considered significant.

Master Response 9: Wiyot Cultural Resources

Comments suggest that an archaeological investigation should be performed prior to project approval and that mitigation in the Draft EIR is not sufficient. In response to the comments, the mitigation measures were modified to provide a greater level of protection.

REVISIONS TO MITIGATIONS MEASURES:

As listed in Chapter 2 of the Final EIR and repeated below, the following mitigation measures were revised in the Final EIR. The revisions are shown in strikeout/underline format.

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

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

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

(ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented by the Project Applicant to avoid or mitigate any significant adverse affects to the resource. A treatment plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: (a) recovery of the object or feature and the preservation of any data available for scientific study; (b) modification to the land-use plan or construction methods to avoid the object or feature; (c) placement of soil sufficient to protect the integrity of the feature or object; and/or (e) permanent protection of the feature through the conveyance of a conservation easement. The archaeologist shall determine the extent of monitoring based on the findings of the investigation. The treatment and monitoring plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment plan

(iii) If no "historically significant" or "unique" archaeological resources are discovered during excavation monitoring or pre-construction investigations, the Project Applicant shall implement Mitigation Measure E-2b for ground-disturbing activities within the areas specifically delineated as "highly sensitive" in the above-referenced Cultural Resources Investigation.

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

(i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.

(ii) If archaeological artifacts or other archaeological materials are discovered onsite during construction, all construction activities within 100 feet of the find shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review to evaluate whether or not the archaeological materials would be considered "historically significant" or "unique" under the criteria set forth under Public Resources

Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3).

(iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.

(iv) If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a determination that the archaeological material is not significant or unique or a treatment or protection plan is prepared and initiated.

~~**Mitigation Measure E-2a:** For construction in the geographic areas described below workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources. In addition, a Native American representative shall be present to monitor coring activities. If an archaeological artifact or other archaeological remains are discovered on-site during construction, all construction activities shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review of the site. If the find is determined to be significant, adequate time and funding shall be devoted to conduct data recovery excavation.~~
~~Protection plans for either unique archaeological resources or culturally important archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.~~

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

~~1. East of Commercial Street.~~

~~2. Within 100 feet of the common property line between the Balloon Track and those properties fronting Broadway that are not a part of the project (e.g., Nilsen's and Bob's Fine Cars).~~

~~3. The southeast corner of the property east of the proposed garden area of Anchor 1 and south of Bob's Fine Cars.~~

~~**Mitigation Measure E-2b:** If human remains are discovered during project construction, all work shall cease within the area until the coroner for Humboldt County is informed and determines that no investigation of the cause of death is required and, if the remains are determined to be of Native American origin, the descendants of the deceased have made a recommendation to the landowner on how they would like to proceed in handling the deceased and the accompanying grave goods. If there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the California Native American Heritage Commission. If human remains will be removed from the site, the removal shall be done by archaeologists working by hand.~~

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

Mitigation Measure G-1b, third paragraph, seventh line:
~~…Three samples~~ At least one sample for every 500 yards of the backfill material….

Mitigation Measure G-1c, first paragraph, second line:
…could be detected by a hydrocarbon odor, photo-ionizing detector (PID), or visually…

***Mitigation Measure G-1d*:** Possible reuse of ~~contaminated~~ excavated soils as subgrade fill material shall require approval from the local environmental oversight agency (Humboldt County

Department of Health), Integrated Waste Management Board, or successor agency, and/or RWQCB.

***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.

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

***Mitigation Measure O-1h*:** The ~~p~~Project ~~a~~Applicant shall obtain an encroachment permit from Caltrans and shall cause to be completed improvements necessary to prohibit southbound left turns from Broadway to eastbound Seventh Street (and to Commercial Street), and instead, shift these turns to the southbound left turn lane at Washington Street, one block to the south….

***Mitigation Measure O-7d*:** The Project Applicant shall work with the Eureka Transit Authority to reinstate the bus stop at Koster and Washington Streets and improve the bus stops in front of the Wharfinger Building and at Seventh and California Streets, including paying their fair-share to enhance the amenities of the stop (i.e., shelter, beach, and signage).

SB 610 WATER SUPPLY ASSESSMENT

California Water Code Section 10910 requires that a water supply assessment be prepared for a project that is subject to CEQA, and which surpasses 500 housing units and/or surpasses certain thresholds for commercial/industrial buildings, the latter of which the Marina Center project does. The city is mandated to identify the public water system that would provide water supply to the project and then to request a water supply assessment. The water supply assessment identifies the source(s) of water supply, quantifies water demands, evaluates drought impacts, and provides a comparison of water supply and demand that is the basis for an assessment of water supply sufficiency. The assessment discusses whether the total projected

water supplies will meet the projected water demand associated with the proposed project in addition to existing and planned future uses.

The City of Eureka would be the supplier of water to the Marina Center project, and as required by the Water Code the City caused to be prepared a water supply assessment for the Marina Center project. The assessment determined that the projected water supplies will be sufficient to satisfy the demands of the project. The analysis from the assessment was incorporated into the Draft EIR, Chapter IV.Q (Utilities and Service Systems), and the water supply assessment was included as Appendix R in the Draft EIR.

By adopting of the RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT, the City makes the determination that water supplies are acceptable as to quality, quantity, and reliability; that based on the entire record the projected water supplies will be sufficient to satisfy the demands of the project in addition to existing and planned future uses; that the SB 610 Water Supply Assessment prepared by SHN Consulting Engineers & Geologists, Inc. was included in the EIR for the Marina Center Project in Chapter IV.Q (Utilities and Service Systems) and as Appendix R; and, was prepared in accordance with the California Water Code and Public Resources Code.

ATTACHMENTS:

Attachment 1 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT

Attachment 2 EIR for the MARINA CENTER MIXED USE DEVELOPMENT PROJECT (previously provided to the Council)

Attachment 1 Resolution No. 2009-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT

WHEREAS, on March 6, 2006, CUE VI, LLC applied to the City of Eureka for entitlements to develop the Marina Center Project ("Project"), a mixed-use development on a 43-acre brownfield site in Eureka, located on all or portions of APNs 001-014-002; 003-021-009; 003-031-003; 003-031-008; 003-031-012; 003-031-013; 003-041-005; 003-041-006; 003-041-007; and 003-051-001;

WHEREAS, the Project is proposed to occur in phases, and Phase 1 is proposed to include interim remediation of contamination occurring from past uses of the site, as well as construction of an 11.89-acre wetland reserve surrounding the remnant of Clark Slough, all on APNs 001-014-002, 003-021-009, 003-031-008, 003-041-005, 003-041-006, 003-041-007, and 003-051-001. Subsequent phases would include a mixed-use development containing retail, office, restaurant, museum, light industrial, and multi-family residential uses;

WHEREAS, the City determined that the Marina Center Project is a "project" under the California Environmental Quality Act ("CEQA") and that an Environmental Impact Report ("EIR") would be prepared to discuss and evaluate the Project's environmental effects;

WHEREAS, the City issued a Notice of Preparation ("NOP") for the Project EIR on April 6, 2006, and held two scoping meetings on April 13, 2006, to discuss and receive comment on the scope, focus, and content of the EIR;

WHEREAS, on November 21, 2008, following the NOP and scoping meetings, the City prepared a Draft EIR, which addressed all phases of the Project, including the Phase 1 site remediation and wetland reserve;

WHEREAS, upon completion of the Draft EIR and in compliance with CEQA, the City issued a Notice of Availability ("NOA") on the Draft EIR, State Clearinghouse Number 2006042024, and the 62 day public and agency comment period for the Draft EIR began on December 1, 2008 and ended on January 31, 2009, during which public and agency comments were received;

WHEREAS, the City of Eureka would be the supplier of water to the Marina Center project, and as required by the Water Code the City caused to be prepared a water supply assessment for the Marina Center project. The assessment determined that the projected water supplies will be sufficient to satisfy the demands of the project. The analysis from the assessment was incorporated into the Draft EIR, Chapter IV.Q (Utilities and Service Systems), and the water supply assessment was included as Appendix R in the Draft EIR;

WHEREAS, by adopting of the RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT, the City makes the determination that water supplies are acceptable as to quality, quantity, and reliability; that based on the entire record the projected water supplies will be sufficient to satisfy the demands of the project in addition to existing and planned future uses; that the SB 610 Water Supply Assessment prepared by SHN Consulting Engineers & Geologists, Inc. was included in the EIR for the Marina Center Project in Chapter IV.Q (Utilities and Service Systems) and as Appendix R; and, was prepared in accordance with the California Water Code and Public Resources Code;

WHEREAS, the City prepared a Final EIR that includes, but is not limited to, the Draft EIR, technical appendices accompanying the Draft EIR, the comments and recommendations received on the Draft EIR, the responses of the City to the comments and recommendations received in the review and consultation process, and the Mitigation Monitoring and Reporting Program ("MMRP") for all phases of the Marina Center Project;

WHEREAS, on October 6, 2009, the City provided proper public notice of completion of the Final EIR and, consistent with Public Resources Code section 20192.5 and CEQA Guidelines sections 15088(b) and 15089(b) posted the Final EIR including its technical appendices for public review on the City's website, provided copies to all County and higher education libraries for public review, and provided copies to those public agencies that commented on the Draft EIR;

WHEREAS, the City Council of the City of Eureka received a report on the Final EIR from city staff and ESA, the consulting firm that prepared the EIR, and received public input on the Final EIR on October 6, 2009;

WHEREAS, city staff held two Town Hall meetings on the evenings of October 13 and October 15, 2009 for the purpose of answering questions from the public about the Final EIR;

WHEREAS, the City Council of the City of Eureka received public input on the Final EIR at it's October 20, 2009 meeting;

WHEREAS, if and when CUE VI, LLC later seeks entitlements for subsequent phases of the Marina Center Project, a separate set of findings and an MMRP applicable to those phases, including any statement of overriding considerations that may be necessary for impacts associated with those later phases that cannot be mitigated to a level of less than significant, would be considered for adoption by the City at that time.

NOW, THEREFORE BE IT RESOLVED, that pursuant to CEQA Guidelines section 15090 the City Council of the City of Eureka certifies the Final EIR for the Marina Center Project as adequate and complete by making the following findings:

1. The Final EIR has been completed in compliance with CEQA;
2. The Final EIR was presented to the City Council, the decision making body of the lead

agency, and the City Council reviewed and considered the information contained in the Final EIR;

3. The Final EIR reflects the City's independent judgment and analysis;
4. No significant new information has been added to the EIR since the City of Eureka provided public notice of the Draft EIR, and therefore recirculation of the EIR is not required under section 21092.1 of the Public Resources Code or section 15088.5(a) of the CEQA Guidelines.

BE IT FURTHER RESOLVED that the City Council finds and determines that the SB 610 Water Supply Assessment prepared by SHN Consulting Engineers & Geologists, Inc. was included in the EIR for the Marina Center Project as Appendix R and in Chapter IV.Q (Utilities and Service Systems) and was prepared in accordance with the California Water Code and Public Resources Code. The City Council hereby adopts the SB 610 Water Supply Assessment and, based on substantial evidence in the record as a whole, finds and determines that the total projected water supplies of the City will meet the projected water demand associated with the Project in addition to existing and planned future uses in normal, single dry, and multiple dry years.

BE IT FURTHER RESOLVED that the documents and material constituting the record of this proceeding are located at the City of Eureka, 531 K Street, Eureka, California 95501 and the custodian of said records is the Clerk of the City of Eureka;

BE IT FURTHER RESOLVED that prior to construction of Phase 1, CUE VI, LLC must obtain approval from the City of the submitted Coastal Development Permit (Case No. CDP-09-0004), a discretionary permit; and, CUE VI, LLC must obtain approval of a Grading Permit and an Erosion Control Permit, ministerial permits, from the City Building Department;

BE IT FURTHER RESOLVED that certification of the Final EIR does not vest any rights or entitlements to the property owner for construction of the Marina Center project that are not otherwise due the property owner under law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka, County of Humboldt, State of California, on the ____ day of _____ 2009, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____ _____
Virginia Bass *Pamela J. Powell*

RE: MARINA CENTER
Certification of EIR

For Agenda Date: October 27, 2009

Mayor

City Clerk

APPROVED AS TO ADMINISTRATION:

APPROVED AS TO FORM:

David W. Tyson
City Manager

Sheryl Schaffner
City Attorney