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memorandum

date October 26, 2009
to Sidnie Olson, Principal Planner
from Lesley Lowe and Gary Oates, ESA
subject Marina Center EIR

Subsequent to release of the Final EIR (FEIR) for the Marina Center project, a few additional comment letters have been submitted to the City regarding the EIR, including several submitted as testimony at the October 20th City Council meeting. These letters and written comments have been submitted by the Northcoast Environmental Center (in conjunction with Humboldt Baykeeper and EPIC), Chuck Goodwin, Tom Peters, Ralph Faust, the Mercer-Fraser Company, Forster-Gill, Inc., the Eureka Heritage Society, and Ron Kuhnel. They are attached.

While not required under CEQA, we have reviewed those letters and offer the following observations and general responses in the interest of trying, in good faith, to address the concerns expressed in them. Many of the comments are general statements regarding the EIR, either in favor of or against the City taking a certification action, or requesting additional time for review, particularly connected to inclusion of the Supplemental Interim Remediation Action Plan (SIRAP) in the FEIR. The SIRAP, more specifically, is alleged to constitute new significant information warranting recirculation under CEQA. *In broad conclusion, we don't believe that any of the comments raise any issues that rise to the level of suggesting a new significant impact or a greater severity of impact than currently identified in the EIR or any additional feasible mitigation or project alternative that would substantially lessen any significant impacts already identified. In addition, we do not believe that there has been any new significant information provided, including the SIRAP, that would require recirculation of the FEIR.*

The main topics raised by the letters and our response follows.

More Time for Public Review

The CEQA Guidelines specify no time requirement for public review of a Final EIR, other than to require that responsible and trustee agencies who have submitted comments on the Draft EIR be given 10 calendar days to review the responses to their comments before any certification action is taken on the EIR. In practice the amount of time between the release of a Final EIR and consideration of a certification action varies depending on the circumstances surrounding the project and/or the environmental document and is subject to the discretion of the lead agency. It is certainly not unusual in our experience for a certification action to be taken within two or three weeks of release of a final environmental document, even a lengthy one.

While a voluminous document, the Final EIR was prepared and formatted with an eye to making it as “reader-friendly” as possible. For example, multiple and overlapping comments were consolidated into master responses so that a reader interested in, for example, remediation issues, could go to one place in the document and get an overview of the issues raised and the responses of the EIR authors to those issues. There were nine such master responses identified in the FEIR, totaling about 90 pages of text and graphics.

It should be noted that much of the “volume” in the Final EIR is attributable to the inclusion of the many pages of comment letters submitted together with supplemental materials the commenters believed added to their comments (included in Volume 2 of the FEIR). The letters submitted were organized and coded in a way to enable point-by-point response to each and every EIR comment raised, and to make it easier for readers to not only find and see the specific responses to their comments but also those submitted by others.

In addition, individual responses were carefully crafted with the intent not to simply refer the reader to another place in the document without at least including a brief summary of the main conclusion(s) pertinent to their particular comment. In this way, we attempted to find the balance between making a reasonable good faith effort to respond to all comments submitted while limiting redundancy, and unnecessary extra paper, as much as possible.

SIRAP and Related Remediation Issues

Contrary to commenters claims, the Draft EIR did include information and analysis concerning the remediation process, and included a number of mitigation measures designed to address the effects of Phase 1 and the site remediation on wetlands, water quality, air quality, and public health. And while the SIRAP includes some new details about how the remediation will proceed (at least in the interim), that information simply clarifies and amplifies the information, analysis, and conclusions already included in the Draft EIR. The SIRAP further demonstrates that measures can and will be instituted to protect the environment during site remediation activities, and that environmental baseline conditions on the project site would be substantially improved following implementation of phase 1 of the project.

It also should be noted that although the SIRAP can proceed independently, it is not a brand new, independent project. Remediation was always a central part of the proposed Marina Center Project, and was described in the Draft EIR specifically as Phase 1. A key objective of the Marina Center Project is to remediate contaminated soil to safe levels and to restore and enhance habitat through long-term protection of the Clark Slough remnant (Draft EIR, page III-16). Plans for remediation of the site and creation of the wetland reserve were described in the Draft EIR and outlined as part of the first phase of the project. (Draft EIR, pages III-14 and III-15.) The Draft EIR’s project description said, for example, that the project would include:

- Remediation of the existing brownfield site to meet federal and state environmental cleanup and water quality standards;
- Preparation of a remedial action plan to be approved by the North Coast Region California Regional Water Quality Control Board (RWQCB); and
- Removal of surface vegetation and contaminated fill materials, as well as placement of clean soils on the property (Draft EIR, page III-14).

The DEIR evaluated the potential environmental effects associated with the remediation activities primarily as part of its evaluation of the wetland reserve and project construction activities. (See, for example, the discussion of impacts associated with air quality, biological resources, land use, hydrology and water quality, and traffic.) Moreover, much of the information on site characterization and remediation presented in the SIRAP was already presented to the public in the Draft EIR in Chapter IV.G (Hazards and Hazardous Materials), including information about past uses of the site, contamination hot spots, past interim remediation efforts, and the

contaminants of concern (DEIR, at pages IV.G-1 through IV.G-11). Impact G-1, in particular, evaluated whether exposure to contaminated soil, surface water, and groundwater during project construction (including the site remediation work) would result in a significant effect on human health or the environment. The analysis in Impact G-1 ultimately concluded that with Mitigation Measures G-1a through G-1e, the project's effects associated with remediation and construction work would be less than significant (Draft EIR, pages IV.G-20 and IV.G-21). Given all of this information and analysis, it is clear that the remediation process was addressed in the Draft EIR, and that additional information presented in the SIRAP provides only clarification and elaboration of that information.

Although precise details of the remediation plans were not known at the time the Draft EIR was prepared, the Draft EIR nonetheless included sufficient information and analysis to evaluate and disclose the project's potentially significant effects on the environment, including effects associated with the project's Phase 1. Thus, the public was provided a meaningful opportunity to comment on the site remediation and to propose additional mitigation measures and alternatives. The City, therefore, is not required to re-circulate the EIR for further public review and comment.

Finally, it is important to note that the SIRAP is only an interim, supplemental plan. The project, and property, will be subject to a Final Remedial Action Plan (FRAP), which must still be developed under the supervision and at the direction of the Regional Water Quality Control Board (RWQCB) under its 2001 Cleanup and Abatement Order. The RWQCB, and the public process that will accompany the final site closure, will ensure that the project meets its objective – that the site is cleaned up to federal and state standards and to a level appropriate for future uses. But it would be impractical, if not impossible to develop final remedial measures at this point in time without a final, approved land-use plan, a further process with the RWQCB to develop appropriate final remedial measures, and additional site characterization that will occur during interim remediation and ongoing monitoring activities. This sort of final information is not necessary in order to adequately and accurately understand the project's potential environmental effects under CEQA.

Cumulative Traffic on Broadway and Related Issues

If the proposed Marina Center project were never constructed, the increase in traffic volumes on Broadway by 2025 reasonably would be expected to be approximately the same as used to analyze the Cumulative (2025) plus Project Conditions in the Draft EIR. Still, the traffic analysis prepared for the EIR evaluated the project's significant contribution to the specific intersections and roadway segments surrounding, and directly affected by, the project, and identifies mitigation measures to address those effects.

As described in the Draft EIR (pages IV.O-48 to IV.O-51), three different approaches were taken to forecast traffic volumes for Cumulative plus Project Conditions in 2025, namely,

- (1) analysis of historical traffic volumes on Broadway at Wabash Avenue using traffic volume data from 1985 through 2005 published by Caltrans;
- (2) examination of the correlation between the population and employment growth of the Arcata-Eureka-Fortuna developed area and the growth in traffic on U.S. 101; and
- (3) analysis of estimated trips that would be generated by the proposed project and other known development projects (presented in Figure IV.O-13, and listed in Table IV.O-9).

Each of these analytical approaches yielded a traffic growth of about 33 percent, and the existing intersection traffic volumes were increased by at least that amount to represent Cumulative (2025) plus Project Conditions. As stated in the Draft EIR, for some intersections, the addition of traffic generated by the proposed project and other known development projects resulted in a greater than 33 percent increase, and that higher volume was used.

The rationale for similar traffic volumes on Broadway by 2025 with or without the Marina Center project is supported by the above-cited other analytical approaches (historical trends and correlation between population and traffic), which show a similar growth in traffic volumes (albeit tied to projected population and employment growth in the Eureka urbanized area, not to specific development projects). If Marina Center is not built, there would remain a market for commercial office/retail uses, and that market will be fulfilled by the development of other projects. The Marina Center project would accommodate the growth in a single site, but non-development of Marina Center will result in the relocation of that growth to other locations that would similarly contribute traffic along Broadway.

It should be noted that subsequent to the publication of the Draft EIR, the countywide travel demand model was run with Marina Center, Ridgewood Village, other Eureka Community Plan development and additional countywide development, and it was found that 2030 volumes in the model are similar and, at some locations, lower than the volumes used in the Draft EIR analysis.

With respect to the issue of project and other traffic diverting onto other streets due to U.S. 101 congestion during peak periods, the EIR modeling analysis distributed project trips throughout the City as warranted by predicted traffic levels and driver behavior. Although the vast majority of project trips were assigned by the model to Broadway (U.S. 101) east and south of the project site, the model predicted that some trips (both trips generated by the project and other “background” trips) would divert to other arterial routes, such as 6th and 7th Streets east into Downtown. The model results demonstrate that intersections beyond the focused study intersections would operate at acceptable levels of service. In addition, 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. Therefore, the project would have a less-than-significant impact on those additional segments and intersections and conducting a more detailed analysis of those intersections and roadway was not warranted.

Other Traffic and Circulation Issues

Some commenters (including in particular Tom Peters and Ron Kuhnel) raised a variety of continuing traffic concerns, each of which was addressed in some detail in the Final EIR. However, some further responses on these matters are provided below.

Boat Launch Parking and Traffic: With full build out of the project and the extension of Fourth Street, the number of parking spaces along Waterfront Drive available to boat launch vehicles would remain unchanged. Further, additional parking is available and currently under-utilized in Lot C, which is approximately 100 feet south on Waterfront Drive.

Impacts on Local Arterials, Connectors, and Alternative Streets such as Herrick: The EIR’s traffic analysis did not dismiss the “spill-over effect” on side streets as possible alternative routes to Broadway/U.S. 101; rather, the modeling shows that even with cumulative traffic, those side streets would remain within the applicable LOS. Given the small number of trips diverted onto these side streets/local arterials, the EIR did not evaluate those side streets further and did not include the side streets on any figures.

Vehicular Traffic between Marina Center and Old Town: Contrary to the comment, the responses are not contradictory. The modeling shows that there would be some spillover trips between Marina Center and Old Town, but the number of trips would be relatively minor and generally there would be little interaction between the two destinations.

Summer Tourist Traffic: The comment is incorrect. The traffic analysis did consider summer traffic, and found that while there may be increases in daily traffic, particularly over the weekend, the a.m. and p.m. peak-hour trips would remain within the applicable LOS calculations included in the EIR. The traffic models used in the EIR

analysis assume a substantial degree of variability in daily and peak-hour trip calculations, and any additional summer traffic would be captured within that variability.

Bottleneck on South Broadway: The comment is incorrect. Traffic approaching the transition between three to two lanes on South Broadway was considered, and found not to be significant because the length of the queue at the approaching traffic light would ensure that the bottleneck remains within acceptable levels of service.

Rights of Way: An analysis was conducted as part of the EIR of the available rights of way along Broadway/ U.S. 101, and it was determined that sufficient rights of way would accommodate all of the mitigation measures identified in the EIR.

Cumulative Wastewater Generation and Treatment Plant Capacity

One commenter (Forster-Gill) repeated an earlier comment that the Ridgewood Village project was not explicitly incorporated into the EIR's cumulative impact analysis. As noted in responses to Comment Letter 80 in the Final EIR (and in particular responses 80-5 and 80-9), the Ridgewood Village project has been accounted for the EIR's analysis of wastewater capacity for all reasonably foreseeable future projects. As noted in the EIR, the City has issued a conditional will-serve letter for the Ridgewood project.

As also noted in the FEIR, the Elk River Wastewater Treatment Plant (WTTP) has sufficient permitted dry weather flow capacity for at least the next five years and sufficient physical dry weather flow capacity at the plant until at least 2029. While the plant, as is true of many wastewater systems throughout California, is currently near or at capacity with respect to peak wet weather flows, the City has an ongoing program in place to address this issue and keep pace both with anticipated development and continued aging of the system. The Regional Water Quality Control Board agrees and earlier this summer issued to the City a renewed NPDES permit for the plant.

As described in the Draft EIR on page IV.Q-1, the City's WWTP has a permitted wet weather capacity of 32 mgd. Wet weather flows are higher because all wastewater systems develop leaks in pipes over time and rainfall and groundwater are then able to infiltrate the system, elevating flows. During periods of high influent flows at the WTTP, i.e. when major storm events occur, the overflow to the plant is directed from the effluent holding pond to a temporary holding marsh. As flows subside, water in the marsh is pumped back into the holding pond and then treated prior to ultimate discharge into the Bay. The discharge to Humboldt Bay is limited to ebb flow periods, to ensure that all wastewater is conveyed to the mouth of the Bay and dispersed into the Pacific Ocean.

While the City has had some relatively minor sanitary sewer overflow events in the past, and recently received an Administrative Civil Liability Complaint from the RWQCB, the Regional Board also noted that the City "has a very responsive and proactive collection system program to prevent, minimize and mitigate the effects of the spills" and that the City's "history and pattern of violations shows that the Discharger is maintaining its system adequately and has a good response program to deal with spill events". It should also be noted that these violations primarily involved spill events associated with portions of the wastewater collection system not directly connected to the proposed project site.

Historic Cultural Resources

One commenter (Eureka Heritage Society) maintains that the project site currently qualifies as an historic resource because of its association with past events but the EIR authors respectfully disagree. As noted in the EIR, none of the remnant rail yard features or structures remaining, either individually or collectively, rise to the level that would warrant their consideration as significant historic resources under CEQA. With respect to the building at 502 Broadway and the potential for the proposed project to affect it directly or indirectly, it is outside the project area and not under the control of the project applicant. There is no intention to affect the building in any way, nor could there without the permission of the building's owner and the City.

Urban Decay

One commenter (Tom Peters) raised continuing questions regarding the urban decay analysis, and responses to comments on that analysis, provided in the FEIR. With respect to the relationship between vacancy rates and urban decay, the EIR merely makes the point that high vacancy does not inevitably progress to urban decay. Comments challenging the EIR's suggestion that there could be trip linkages between the project and the City's Downtown also seems to be a matter of degrees. The EIR authors agree that the effects are likely to be small but would still be a benefit to existing retailers.

Case studies presented in the EIR to examine the "before" and "after" effects of a Home Depot on local related retailers included the cities of Ukiah and Woodland, not just the City of San Rafael. With respect to retail sales projections, the original economic study did rely on 2006 sales data because that was the most recently available data at that time. The changes in the economy and trends in sales data are addressed in detail starting on page 3-8 in Master Response 1 under the subheading "New Recessionary Conditions".

Finally, both the projections of sales and sales tax revenue were based on an assumption that inflation would average 3% on annual basis over the projection period. Even if both of the resulting projections proved to be too optimistic given the current recessionary economy, the expectation would be that the project's potential negative impacts on existing retailers would be lower and the net fiscal impact to the City of Eureka still positive.

In summary, none of the issues raised by commenters submitting written comments on the Final EIR would warrant changing any of the conclusions of the EIR with respect to impact significance or required mitigation.

10/20/2009
DLM 16



October 20, 2009

Eureka City Council
531 K Street
Eureka, CA 95501

Re: Marina Center Final Environmental Impact Report

Mayor and Council:

Humboldt Baykeeper, the Environmental Protection and Information Center, and the Northcoast Environmental Center thank you for the opportunity to provide comments on the Final Environmental Impact Report (“FEIR”) prepared for the proposed Marina Center Development. As we have only had a very limited time to review FEIR, these comments are by no means exhaustive but conclusively demonstrate that the City cannot legally certify the FEIR at this time.

We are concerned with the lack of adequate analysis provided in the environmental review documents prepared by the project proponent’s consultants on behalf of the City of Eureka. As you know, the California Environmental Quality Act (“CEQA”) requires that the lead agency certify that in their independent judgment the material and information contained in the prepared environmental review documents meet the requirements of CEQA. We do not believe that the documents prepared for the Marina Center Development meet these requirements, and thus this document should not be certified by the City at this time and should instead be recirculated for review by the public and relevant agencies.

The draft Environmental Impact Report (“DEIR”) was inadequate in its analysis and disclosure of information concerning the proposed project and its impacts. It was lacking in several respects, as evidenced by multiple comments concerning several areas, including critical and necessary information about the baseline conditions of the site and remediation of those conditions. Inadequacies of the DEIR included information provided on: removal of hazardous materials, traffic, Coastal Act compliance, land use consistency, archaeological resources, community compatibility, urban decay, air quality, climate change, project phasing and project description, visual and aesthetic impacts, public utilities, and public trust resources. The lack of adequate information in the DEIR deprived the public

of meaningful opportunity to comment on significant environmental effects of the proposed project or feasible ways to mitigate for impacts as required by the CEQA.

Now, the City presents a purported FEIR, which seems intent on cheating the CEQA review process further by including extensive new information and analysis clearly designed to bolster the defective DEIR. This new information requires recirculation of the EIR prior to a certification decision by the City. This information should have been disclosed in the first instance in the DEIR, and not held back until the FEIR as responses to comments, or in the alternative it should be used in a new DEIR that is recirculated and has full public and agency review. The City has deprived the public, other agencies, and decision makers of the ability to present meaningful comment on the new information, which the City expects everyone to take at face value.

The public is deprived, for example, of the opportunity to evaluate and comment on whether the newly released Supplemental Interim Remedial Action Plan (“SIRAP”) properly discloses and mitigates the impacts associated with development on this contaminated site. Even though remediation of the property is defined in the DEIR as part of the project, what will actually comprise remediation was never provided for public review. Rather, the project proponent issued the SIRAP **after** the DEIR was circulated. Thus, neither the public nor the regulatory agencies had an opportunity to review all documents required by the DEIR. Even now, inclusion of the SIRAP as part of the FEIR does not remedy this situation as further remediation of the site will be required in the future and public disclosure and review has never been allowed. Completion of the SIRAP only comprises one portion of the remediation portion of the project – the remaining work is yet to even be determined, let alone disclosed and analyzed.

Similarly, the public has been denied the opportunity to comment and provide evidence concerning the adequacy of updated biological surveys to evaluate the impact of development of the site. Upon review of the responses to comments, the same can be said for nearly every area of purported analysis in the DEIR, as the responses attempt to supplement and substitute analysis for the defective DEIR. Moreover, the responses themselves are not adequate, so often noting or dismissing the comment, without providing effective analysis to show that the City has actually grappled with the concern.

Furthermore, this EIR will form the basis for decision making on various other discretionary approvals by the City. These discretionary approvals include but are not limited to: zoning changes and changes in the City’s approved Land Use Plan pursuant to the California Coastal Act. The EIR is fundamentally flawed and cannot in its current form be used as the base of environmental review for those further actions. Although this same environmental document will be used as the foundation for analyzing the proposed land use amendment that would be required for the project to go forward, it does nothing to actually analyze the potential impacts of the project in conjunction with the policies contained in the Coastal Act.

The City has not provided an opportunity for meaningful comment on this FEIR. The City should

understand that we are not opposed to the development of the Balloon Track property. Rather, we are opposed to piecemeal plans and inadequate characterization and cleanup as well as the disregard for appropriate process as the City has not complied with CEQA and does not appear to be complying with applicable zoning and development laws. We have attempted, through participation in the administrative process and by submitting comments on the DEIR, as well as presenting these concerns given the limited opportunity to review the FEIR, to resolve these concerns and avoid litigation by presenting to the City the reasons why the EIR should not be certified. We ask the City to not certify the EIR and rather to recirculate it and allow the public and agencies to comment on the significant new information .

If the City proceeds with EIR certification, we will be forced to consider filing a lawsuit in the public interest to require compliance with the law. In that case, should we prevail, we will ask the court to award attorneys' fees and costs pursuant to the Code of Civil Procedure section 1021.5, or any other applicable theory. This is our attempt to avoid litigation, which becomes necessary should the City act to certify the FEIR based on the record before it.

We understand the City has negotiated an indemnity agreement with the applicant to cover costs associated with any potential litigation. We question whether such an arrangement prevents the City from exercising its independent discretion in this matter. We request a copy of this and any indemnity agreement for this project, and any agreements arising therefrom that currently exist or may develop should litigation be necessary, including any agreements the City may execute to retain lawyers to defend its decisions.

Thank you for the consideration of our comments,



Jennifer Kalt, Secretary
Northcoast Environmental Center

Pete Nichols, Executive Director
Humboldt Baykeeper



Scott Greacen, Executive Director
Environmental Protection and Information Center

Item #16
10/20/2009

Marina Center EIR Testimony
Eureka City Council
Oct. 20, 2009

Honorable Mayor and City Council members, I am Chuck Goodwin, a resident of the City of Eureka. I appear before you this evening, not as a former City Council member, but as a former President of the Humboldt Taxpayers' League.

Years ago, when Walmart attempted to construct a building on the balloon track, the Humboldt Taxpayers' League was one of the major opponents to Walmart. Walmart was attempting to change the zoning of the balloon track parcel by using the initiative process, rather than by using the EIR process, which would lead to a zone change through the normal public hearing process. The voters loudly said NO to this attempt to do an end run around public hearings.

This evening you have created the opportunity for public comments on this process and by your own actions to continue to move this process forward. I think it is significant to note from the staff report under CEQA Findings for Certification, that "City staff's extensive involvement in the preparation of the EIR supports the finding that the EIR reflects the independent judgement of the city." (Agenda Summary, item 16, page 3, item 3.)

I think it is worthy of consideration that the applicant is proposing to clean up this brownfield with his own money and not asking for grants or loans or other cost sharing methods.

One of the issues raised is the growth in traffic that may be generated by this project. I want to point out that according to the Times-Standard, October 19, "the city of Eureka is expecting a 33 percent growth in traffic (in less than two decades,) with or without (this project.)" You can't turn your back on this traffic problem. It's happening with or with this project.

Until recently, I was opposed to any non-harbor-related development near the Eureka waterfront. However, with certain exceptions (those being the boat basin, and the area from Schneider Dock to the 14th street dock area) economic decisions by others have caused me to change my mind. Currently there are large areas now available on the north spit, from Samoa southward, for industrial development. And those areas are closer to the main channel and thus it is easier to maintain deep water access to those docks.

I urge you to continue to advance this public process and this project.

Thank you

10/20/2009

Item 16

Tom Peters
221 Dollison St.
Eureka, CA 95501

October 20, 2009

1.

Remarks to The Eureka City Council regarding the responses to the EIR for the proposed Marina Center

The following are a few of the areas of concern with the EIR. Sometimes there are misrepresentations. Sometimes there are internal contradictions. And sometimes there is missing information. It has been impossible to do a thorough job in the time allowed. I have included responses to my specific comments, several other individuals' comments, The Department of Transportation comments, and the Humboldt County Planning Department comments as well as the Master Responses. I note that the general tone of the EIR is extremely defensive, seeking more often to try to justify its Responses than to provide information. Occasionally the tone used in various Responses to comments is downright insulting, suggesting the Commenter is either ignorant or simply unable to understand. Neither approach is appropriate.

I hope these remarks will lead you to some of the problems with the EIR which might result in its rejection and request for a better product.

A few problem areas in the Marina Center EIR (NOT exhaustive)

1. No mention is made in the Master Responses of requirements under the LCP for COASTAL RELATED uses in the Coastal Zone. Only COASTAL DEPENDENT uses are mentioned.
2. In response to comments about conflicts with current uses of Waterfront Drive:
"No new boat docking locations would be created by the proposed project. Therefore the proposed project would not significantly affect use of the Waterfront Drive boat ramp".
They've obviously never been there on a summer morning! (16-137 & 16-138)
3. Responding to comments about the loss of parking for boat trailers on Waterfront, responder cited all of the new parking spaces the project would create, oblivious to the fact they are of no use to trucks with trailers and would in NO WAY reduce parking problems at the boat ramp!
4. Citing interviews with ONE unnamed 'city official' and TWO unnamed commercial real estate brokers, Responder concludes that the current 15 – 20% retail vacancy rate is some how unrelated to increasing urban decay.
(Master Response) "In 2 years most weak businesses will close, the remaining will thrive, and others will be retenanted". It's a miracle!!!
5. The Traffic Model used would have us believe that by 2025 a 33% increase in traffic on Broadway would result in only an increase of 13 – 17 additional trips on Herrick, a regularly used alternative to Broadway. Where is their Common Sense?

6. Response 16-202 states, "The amount of vehicular traffic from the Marina Center into Old Town via 2nd and 3rd is very minor..." "This is because modeling shows **little interaction** between Marina Center trips and Old Town trips."
7. Response 16 – 5 states, "Project would have positive spillover for adjacent Downtown districts as the daily residents and workers....may also choose to combine these trips."
8. Response 16 – 303 states, "It is expected that visitors to Marina Center would also visit Old Town.....more likely parking at both destinations."
9. Items 6, 7, and 8 directly contradict each other.
10. Responder equates smaller housing units with lower cost housing with no numbers to back this up.
11. Response says Reduced Footprint alternative with NO big box won't meet 'project objectives' but never defines those objectives.
12. Responder completely misses the point about conflict with existing uses on Waterfront Drive and inevitable problems and congestion.
13. EIR dismisses necessity of complying with Eureka's General Plan.
14. Response claims there will be a 33% increase in traffic on Broadway "with or without" the project. If there is to be other growth on Broadway, increase would HAVE to be much larger.
15. Confusion: While the accident RATE might decline on Broadway with mitigations, the actual number of accidents will increase due to traffic volume. A rate of 5/1000 yields 20 accidents for 4000 cars. Double the number of cars (8000) and reduce the rate to 4/1000 yields 32 accidents.
16. Traffic study makes almost NO allowance for summer tourist traffic on Highway 101. Traffic studies where apparently done in March and April.
17. Traffic Model consistently dismisses the use of alternative streets and impacts on traffic throughout the city. This is contrary to common sense.
18. The division of FAIR SHARE expenses to the City is never defined.
19. The EIR tries to compare Eureka with San Rafael, a crowded urban area in the State's MOST EXPENSIVE county.
20. Responder NEVER mentions that creating 3 lanes on South Broadway will create a bottleneck when it becomes 2 lanes again entering Highway 101.
21. DOT comments claim NO rights-of-way exist for several Broadway mitigations (P.2 comment 5 DOT comments)
22. Projections of sales are all based on a spectacular economic recovery in the next two years. While not impossible, it is both unlikely and difficult to prove. Again, Common Sense!
23. EIR calculates ONLY the impact from direct sales. It does not calculate the value of money removed from the local economy by big box chain stores.
24. The Retail Sales figures do not appear to be updated from 2006 for 2009 conditions in making projections of sales impact. (Master Responses P.4)
25. Likewise, sales tax revenues are based on 2006 projections and may bear little relationship to current conditions. (Again, the 'miracle' recovery?)

3.

26. Relating to my comments specifically, Responder frequently misunderstood or mischaracterized my remarks and responded inappropriately or incorrectly.

This list barely scratches the surface. Admittedly it is difficult to form a true picture of the profound impacts this project would have on Eureka, its businesses, and its very nature. I firmly believe there are many better financially viable alternatives for the Balloon Tract that would have a more positive, less disruptive, and economically more beneficial impact on the City. As a result, I must stand in opposition to this out-of-scale financial dinosaur which would totally disrupt Eureka's economy for the worse, and would forever change the very nature and liveability of our city. This type of project and its business model are 20 years out of date.

Demand more. We deserve better than another old-fashioned big box shopping mall with a few apartments put in for color.

Thank You for considering my opinion.

A handwritten signature in cursive script that reads "Tom Peters". The signature is written in black ink and is positioned above the printed name.

Tom Peters

Item 16
10/20/2009

Ralph Faust
2727 Graham Road
Bayside CA, 95524
October 20, 2009

City Council
City of Eureka
531 "K" Street
Eureka, CA 95501

Re: Marina Center Project

Dear Council:

This letter is submitted to object to the certification of the Final EIR for the Marina Center Project in its present form. I received the Final EIR in an email from Ms. Sidnie Olson of the City staff on October 10. As I have elsewhere discussed with City staff, this is not an appropriate time period to give to the public to allow for meaningful review and an opportunity to comment on a Final EIR. Further, based upon my review thus far, the EIR in its present form is inadequate in that it:

- does not properly analyze the impacts of the proposed project upon the environment, in that the Draft EIR did not properly analyze those impacts, and the Final EIR remains substantially unchanged with respect to most of those impacts;
- does not properly analyze the impacts of the proposed project upon the surrounding community, in that the Draft EIR did not properly analyze those impacts, and the Final EIR remains substantially unchanged with respect to most of those impacts;
- responds to many of the comments received after circulation of the Draft EIR by repeating the comment and referring to the Draft EIR without ever addressing the substance of those comments;
- introduces new information and analysis into the Final EIR that was not included in the Draft EIR and has not been made available for public review and comment;
- ignores or minimizes the inconsistencies of the project with the policies of the Coastal Act, the standard of review for an LCP amendment in the Coastal Zone, by insisting that these are not appropriate topics for an EIR or by ignoring the thrust of the comments and raising peripheral issues unrelated to the thrust of the comments; and

- purports to analyze an interim remediation plan (SIRAP) that is entirely new and has never been subjected to public review and comment.

For all of these reasons the City Council should not certify the Final EIR but rather should instruct City staff to redo it to correct its deficiencies and recirculate it for public review and comment. These actions will preserve the integrity of the City's review process and ensure proper and appropriate review of this controversial project in this critical location within the City.

Sincerely,

A handwritten signature in black ink that reads "Ralph Faust". The signature is written in a cursive style with a large, prominent "R" and "F".

Ralph Faust

Item 16
10/20/2009

Ralph Faust
2727 Graham Road
Bayside, CA 95524
October 20, 2009

City Council
City of Eureka
531 "K" Street
Eureka, CA 95501

Re: Proposed Interim Remediation Plan (SIRAP) for Balloon Track parcel

Dear City Council:

This letter is submitted to object both to the certification of a Final EIR (for the Marina Center project) as purported CEQA compliance for the SIRAP, and to the issuance of a Coastal Development Permit (CDP) for that plan. The SIRAP is a project within the meaning of CEQA, and despite the fact that it is being proposed by the property owner of the Balloon Track parcel, who is also the project proponent of the Marina Center, it is a project that has not undergone any proper CEQA review. Appending it to the Final EIR of the Marina Center project and giving it a few pages of analysis in response to public comments made upon related issues raised by the underlying Marina Center project does not meet the requirements of CEQA for a meaningful opportunity to comment upon the proposed plan. This project should be properly analyzed in an appropriate CEQA document and then noticed for public comment to give the public that meaningful opportunity.

It is not clear whether the City Council intends to approve today a CDP for the SIRAP or whether it intends to wait until it has properly complied with CEQA. However, in case the Council intends to approve a CDP tonight or in the near future prior to further review, I want to register my further objections to the Plan based upon this project's inconsistencies with the City's certified LCP and with the policies of the Coastal Act.

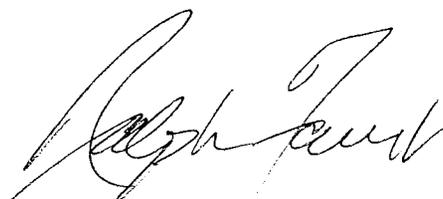
As the City indicates in the analysis that it has done, the SIRAP is plainly inconsistent with the ESHA and wetlands policies of Public Resources Code sections 30240 and 30233 and the related policies embedded in the City's certified LCP, such as CZR section 10-5.2910. It does not appear that the City can approve the SIRAP either directly, or, as is suggested in the Final EIR, pursuant to the conflict resolution provisions of the Coastal Act. As was indicated both in my letter in

response to the Draft EIR and in that of the California Coastal Commission, there is no decision path available to resolve a coastal policy conflict in part because there is no conflict created by the project itself. The applicant has attempted to solve this problem with the approvability of its original project by creating the SIRAP, which appears in the Final EIR sometimes as a project that stands alone for review and sometimes as Phase I of the Marina Center project. It doesn't work. This is a half-baked shell of a remediation plan that manages to destroy all of the ESHA and wetlands on the site without ever cleaning up the contamination problems that are the purported basis for its existence. The proposed fill of wetlands and destruction of ESHA described in the SIRAP is a "cover-up" of the fact that this is not a real clean up of the contamination on the site but rather only a pretext to eliminate the wetlands and ESHA and pave the way for the Marina Center.

Until the entire site has been properly characterized for contamination, no adequate or appropriate remediation of that contamination can occur. Only after that proper characterization has occurred can the property owner develop and the City and other review agencies evaluate a complete and comprehensive remediation plan that removes the contamination on the site and prepares it for appropriate public use. Without that proper characterization and plan development we have only the SIRAP, a plan to remove some contaminants, and move around and attempt to conceal others, while eliminating the wetlands and ESHA on the site. It is not in any sense restoration, and it is misrepresentation to the Council and to the public to call it that. It restores nothing; it simply destroys habitat.

For these reasons the proposed SIRAP should be denied a Coastal Development Permit.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Faust". The signature is fluid and cursive, with a large initial "R" and "F".

Ralph Faust

MERCER, FRASER COMPANY

General Contractors and Engineers

SINCE 1870

P.O. BOX 1006 • (707) 443-6371

EUREKA, CALIFORNIA 95502-1006

October 20, 2009

Hon. Mayor and City Council
City of Eureka
531 "K" Street
Eureka, CA 95501

Ref: Balloon Track

Sub: Interim Clean-Up

Dear Mayor and Council:

I am writing this letter urging your affirmative vote to allow the interim clean up plan proposed by Marina Center to move forward.

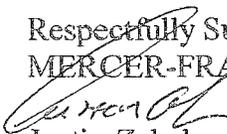
Our main offices and warehouse at 77 West 2nd Street, have been located adjacent to the Balloon Track property for the last ninety years. We have seen in the last 20+ years major degradation of the property, transient occupancy, and vandalism that has "spilled over" to neighboring properties. Since the initial minor clean up and perimeter fence that was installed a couple of years ago, we have noticed considerable change for the better.

I understand that this interim cleanup is the first in several that will occur, thus more public input at a later time will be received related to the final cleanup. There is no logical reason why the City should not allow this interim cleanup to proceed. One, any cleaned up will be better than what is occurring on site now, and two, this cleanup is being funded privately by the owner with no clean up cost being borne with taxpayer monies. In my eyes, this is "win-win" for everyone.

I for one am carefully watching the climate of the City Council. The direction in how this process and attitude to allowing this important development to proceed will dictate to us how we proceed with our properties and whether we feel we have the council's support to maintain our business in this community. We have been ignored long enough on this end of town. The continue decline in our neighborhood has lessened the values of our properties and discouraged business to locate or revitalize existing other properties in this area.

-Please move forward.

Respectfully Submitted,
MERCER-FRASER COMPANY


Justin Zabel

Sidnie Olson

From: Angela Brezden [abrezden@belsherandbecker.com]
Sent: Tuesday, October 20, 2009 4:46 PM
To: Sidnie Olson
Cc: John Belsher; Tim Gill
Subject: FORSTER-GILL re Marina Center
Attachments: Ltr dated 10-20-09 from FORSTER-GILL re Marina Center.pdf

Attached is a letter from Forster-Gill dated 10-20-09 regarding the Marina Center.

Angela M. Brezden
Secretary to John W. Belsher, Esq.
BELSHER & BECKER
412 Marsh Street
San Luis Obispo, California 93401
Telephone: (805) 542-9900
Facsimile: (805) 542-9949

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FORSTER-GILL, INC.

P.O. Box 14459
San Luis Obispo, CA 93406
(805) 541-6387

October 20, 2009

Via E-mail & Fax

City of Eureka
Department of Community Development
531 K Street
Eureka, CA 95501-1146
Attn: Sidnie Olson

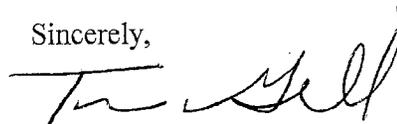
RE: Marina Center EIR Certification

City of Eureka Department of Community Development:

In reply to Response to Comments to Forster-Gill's comment letter of January 30, 2009, Forster-Gill, Inc. offers the following:

1. The Ridgewood Village project applications for a general plan amendment and subdivision were formally accepted by the County and have been in process since that time. See e.g. letters of April 30, 2007 and December 6, 2007 from the County of Humboldt, incorporated herein by reference. It is incorrect under CEQA to have overlooked this foreseeable project, particularly as the Board of Supervisors approved both an authorization to proceed and a contract to prepare an EIR for the project.
2. The recent County of Eureka Housing Element Amendment modifies the General Plan build-out for South Eureka by requiring zone changes to multi-family designation for numerous projects. That Amended Housing Element is hereby incorporated into the record of this EIR certification.
3. The October 20, 2008 and August 20, 2009 Brown & Caldwell studies for the Elk River Regional Wastewater Treatment Plant NPDES permit capacity upgrade should be referred to in the EIR and incorporated into the administrative record by this reference. These reports show that up-grading of the Plant is a feasible mitigation.

Sincerely,



Tim Gill, President

cc: Kirk Girard
Bonnie Neeley



October 20, 2009

City of Eureka Mayor and Council
531 K Street
Eureka, CA 95501

Re: Marina Center
Final Environmental Impact Report

Dear Mayor and Council:

This letter is in response to the final Environmental Impact Report (EIR) for the Marina Center Project.

The Eureka Heritage Society urges you not to adopt the final EIR in its current version. The Society maintains that the final EIR is flawed and does not adequately address the environmental impact on historic cultural resources.

The response to our comment (19-1, page 5-301) does not adequately address the Society's position that the proposed site qualifies as a historic resource as defined by NHPA and CEQA. The site, even its current state, is "associated with events that have made a significant contribution to the broad pattern of our history," an eligibility criteria of NHPA and CEQA. The "foundations and other rail-related features of the historic-era railroad yard area," as stated in the EIR response, *do* provide evidence of a once vital and important part of not only Eureka's history, but the history of our country. These remnants should not be easily dismissed. Historically significant buildings that existed on the site within the last decade have been removed without benefit of the CEQA process. Because they no longer exist does not diminish the overall historic importance of the site. Additional historic cultural resources may also be located on the site, but not readily visible.

The response to our comment (19-2, page 5-301) does not adequately address the Society's assertion that the building at 502 Broadway will not be impacted by the proposed project. The City of Eureka's own notification process recognizes that proposed projects have an impact on neighbors and structures. To state that "no significant direct or indirect impacts to this property are anticipated as a result of the proposed project" simply does not sufficiently address the impacts of the project, be they due to construction, traffic patterns or disturbing ground.

You are being asked to approve the final EIR, a document that is flawed. We urge the Council to (a) deny approval of the Final EIR and (b) invite the applicant to revise the EIR to include substantive data regarding the historic cultural resources and realistic alternatives for a project that would include incorporating the remaining rail-related features into the project and mitigation measures that would address the impact of the project on surrounding buildings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Ann McCulloch".

Mary Ann McCulloch
Preservation Committee Chair

Sidnie Olson

From: Mike Jones
Sent: Tuesday, October 20, 2009 2:40 PM
To: Sidnie Olson
Subject: FW: Marina Center Final EIR

From: ron@kuhnel.com [mailto:ron@kuhnel.com]
Sent: Tuesday, October 20, 2009 1:20 PM
To: Mike Jones
Subject: Marina Center Final EIR

October 20, 2009

Dear councilperson and Mayor:

I want to get to you my initial reaction to the responses to my comments on Marina Center DEIR. The City Website version did not work on my Mac, and the CD I was given by the City containing the Technical Appendices was defective, so I cannot complete my analysis until I have obtained a new one.

However this is what I can see to this point.

I commented that the project would divert traffic onto Arterials and connectors, and this was not adequately addressed in the traffic analysis. The response directs me to comment 32-9 and Master Response number 7. I have read these and neither of these address my comment. My comment has therefore not been adequately responded to.

I also commented on the lack of an adequate simulation on the impact on local arterials connectors, and streets. I am directed to responses 33-3 and 32-9. Again I have read these responses and they do not adequately respond to my comment.

Simply pointing me to inadequate responses do not represent a good faith effort to address comments made on the DEIR.

I have further comments but these will have to wait until I have a readable CD with the Appendices.

However I wanted to let you know I consider the responses made to at least two of my comments to be inadequate and in violation of CEQA.

Furthermore considering the version of the Final DEIR on the web site did not work and the CD given me was defective, I feel you should extend the time allowed for those who originally commented to complete their analysis of the responses to their concerns before considering certification of the Final EIR.

Best regards,

Ron Kuhnel

10/20/2009