CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT OFFICE 710 E STREET • SUITE 200 EUDEKA CA 05501

710 E STREET • SUITE 200 EUREKA, CA 95501 VOICE (707) 445-7833 FACSIMILE (707) 445-7877



# Th14c

## MEMORANDUM

Date:December 9, 2009To:Commissioners and Interested PartiesFrom:Peter M. Douglas, Executive Director<br/>Robert S. Merrill, District Manager – North Coast District<br/>James R. Baskin AICP, Coastal Program Analyst – North Coast DistrictSubject:Addendum to Commission Meeting for Thursday, December 10, 2009

North Coast District Item Th14c, Appeal No. A-1-EUR-09-049 (CUE VI, LLC Marina Center Phase One – Supplemental Interim Remedial Action Plan)

## **STAFF NOTE**

This addendum contains correspondence since publication of the staff recommendation report on November 20, 2009. Among these items is a letter received from the staff of the North Coast Regional Water Quality Control Board regarding the subject appealed development project. The letter states that the Regional Board's concurrence with the Supplemental Interim Remedial Action Plan submitted by the applicant (see Exhibit No. 9 of November 20, 2009 staff report) does not preclude other alternatives from being utilized in achieving the previously-issued 2001 cleanup and abatement order. The Regional Board letter also notes that substantial delays in completing the permit appeal process would allow continued releases of contaminated surface water from the site into Humboldt Bay, which is of serious concern to Regional Board staff.

In addition, staff has received correspondence from the City of Eureka, the project applicant, an appellant, and members of the public through December 8, 2009, making various comments on the written staff recommendation. Full copies of this correspondence are attached.

Staff has reviewed and considered these comments and continues to recommend that the Commission find that substantial issues of conformance with the certified LCP were raised by the subject appeals and that the Commission hold a *de novo* hearing on the development after receipt of the additional information identified in the November 20, 2009 staff report.

Addendum to Commission Meeting for Thursday December 10, 2009 North Coast District (Item No. Th14c), Appeal No. A-1-EUR-09-049 CUE VI, LLC Page 2

## ATTACHMENTS

- 1. <u>Review Agency Correspondence</u>
  - a. Facsimile copy of letter from Catherine Kuhlman, Executive Director North Coast Regional Water Quality Control Board, Dated November 17, 2009, received November 17, 2009.
- 2. Local Government Correspondence
  - a. Letter from City of Eureka, dated December 4, 2009, received December 4, 2009, with two enclosures (Commissioner copies to be hand-distributed).
  - b. Letter from City of Eureka, dated December 8, 2009, received December 8, 2009 (Commissioner copies to be hand-distributed).
- 3. <u>Applicant Correspondence</u>
  - Letter from David Ivester, Briscoe Ivester & Bazel, LLC, dated December 4, 2009, received December 7, 2009, with excerpted enclosures (see Exhibit No. 8 of November 20, 2009 staff report for City of Eureka Findings-of-Fact Resolution No. 2009-51)
- 4. <u>Appellant Correspondence</u>
  - a. Letter from Ralph Faust, dated December 3, 2009, received December 3, 2009.
- 5. Interested Parties Correspondence
  - a. Email from Gina Miller, dated December 3, 2009, received December 3, 2009.
  - b. Email from Cindi Clark, dated December 3, 2009, received December 3, 2009.
  - c. Email from Gretchen Barnick, dated December 3, 2009, received December 3, 2009.
  - d. Email from Sherry Pilgram, dated December 3, 2009, received December 3, 2009.
  - e. Email from Nanc and Ted Frazel, dated December 3, 2009, received December 3, 2009.
  - f. Email from Jeff Harrison, dated December 3, 2009, received December 3, 2009.
  - g. Email from Jack Retzloff, dated December 4, 2009, received December 4, 2009, with attached letter.
  - h. Email from Katie Kubala, dated December 4, 2009, received December 4, 2009.
  - i. Email from Greg Gardiner, dated December 4, 2009, received December 4, 2009, with attached letter.
  - j. Email from Michael Munson, dated December 4, 2009, received December 4, 2009.
  - k. Email from Jennifer Miller, dated December 4, 2009, received December 4, 2009.
  - 1. Email from Nick Robinson, dated December 5, 2009, received December 7, 2009.
  - m. Transcribed voicemail from An Intellectual Citizen, recorded December 5, 2009, received December 7, 2009.

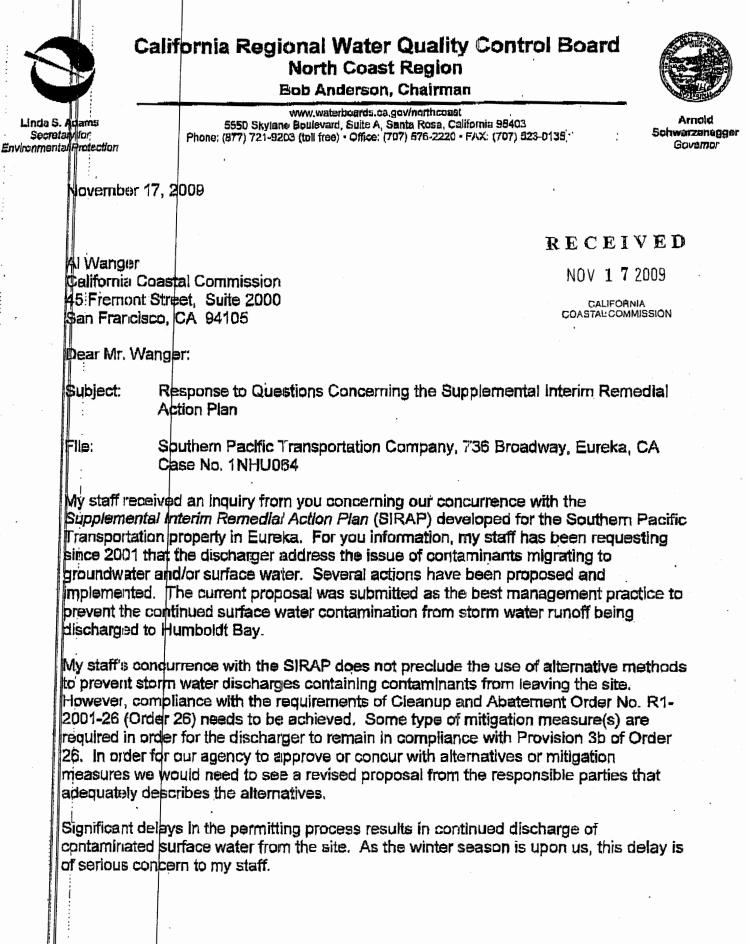
Addendum to Commission Meeting for Thursday December 10, 2009 North Coast District (Item No. Th14c), Appeal No. A-1-EUR-09-049 CUE VI, LLC

Page 3

- n. Email from Marilyn Colsun, dated December 6, 2009, received December 7, 2009.
- o. Email from Thomas Long, dated December 7, 2009, received December 7, 2009.
- Email from Richard Marshall, District Representative Operating Engineers Local #3, dated December 7, 2009, received December 7, 2009.
- q. Letter from Charlene McCombs, Executive Director, Humboldt Builders' Exchange, dated December 4, 2009, received December 7, 2009.
- r. Email from Dennis Costa (via Commissioner Neely's office), dated December 2, 2009, received December 7, 2009.
- s. Email from Ralph Matsen (via Commissioner Neely's office), dated December 2, 2009, received December 7, 2009.
- t. Email from Megan McKenzie (via Commissioner Neely's office), dated December 3, 2009, received December 7, 2009.
- u. Email from Margaret Gordon (via Commissioner Neely's office), dated December 3, 2009, received December 7, 2009.
- v. Email from Dan Leppek (via Commissioner Neely's office), dated December 3, 2009, received December 7, 2009.
- w. Email from Royal McCarthy PE (via Commissioner Neely's office), dated December 4, 2009, received December 7, 2009.
- Email from Heather Toland (via Commissioner Neely's office), dated December 4, 2009, received December 7, 2009.
- y. Letter from Donna Poliak (via Commissioner Neely's office), undated, received December 7, 2009.
- z. Letter from Katie Kubala (via Commissioner Neely's office), undated, received December 7, 2009.
- aa. Letter from Robin Bostwick (via Commissioner Neely's office), undated, received December 7, 2009.
- bb. Letter from Cynthia Burger (via Commissioner Neely's office), undated, received December 7, 2009.
- cc. Letter from Sarah Chapman (via Commissioner Neely's office), undated, received December 7, 2009.
- dd. Facsimile letter from Paul J. Beard II, Principal attorney, Pacific Legal Foundation, dated December 7, 2009, received December 7, 2009.
- ee. Letter from J. Warren Hockaday, President/CEO, Greater Eureka Chamber of Commerce, dated December 4, 2009, received December 7, 2009.
- ff. Letter from Larry Bollmann, dated December 7, 2009, received December 8, 2009, with attached cover letter and *Petition to Clean up the Balloon Track* to North Coast Regional Water Quality Control Board.
- gg. Letter from Joe Mark, CEO, St. Joseph & Redwood Memorial Hospitals, dated December 7, 2009, received December 8, 2009.
- 6. <u>Ex Parte Communications Disclosure Forms</u>
  - a. Commissioner Mark W. Stone, dated December 2, 2009, received December 2, 2009.

Addendum to Commission Meeting for Thursday December 10, 2009 North Coast District (Item No. Th14c), Appeal No. A-1-EUR-09-049 CUE VI, LLC Page 4

- b. Commissioner Patrick Kruer, dated December 4, 2009, received December 7, 2009.
- c. Commissioner Bonnie Neely, dated December 2, 2009, received December 7, 2009.
- d. Commissioner Bonnie Neely, dated December 4, 2009, received December 7, 2009, with attached emails (49).
- e. Commissioner Bonnie Neely, dated December 4, 2009, received December 7, 2009, with attached phone log.
- f. Commissioner Bonnie Neely, dated December 7, 2009, received December 8, 2009.
- g. Commissioner Bonnie Neely, dated December 7, 2009, received December 8, 2009, with attached letter.
- h. Commissioner Bonnie Neely, dated December 7, 2009, received December 8, 2009, with attached letter.
- i. Commissioner Bonnie Neely, dated December 7, 2009, received December 8, 2009, with attached letter.
- j. Commissioner Bonnie Neely, dated December 7, 2009, received December 8, 2009, with attached emails (5).
- k. Commissioner Esther Sanchez, dated December 7, 2009, received December 8, 2009.



## **ATTACHMENT 1**

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Mr. Al Wanger

-2-

November 17, 2009

please contact Caryn Woodhouse of my staff at (707) 576-2701 if you have any questions.

Sincerely,

attering Kuhema

atherine Kuhiman xecutive Officer

B1117\_KSA\_kabain13

Mr. Tom Hannah, 2142 Hodgson Street, Eureka, CA 95503-5616 Ms. Mary Shively-Boughton, 814 J Street, Eureka, CA 95501

Mr. David Tyson, Eureka City Manager, 531 K Street, Eureka, CA 85501

Ms. Sidnie Olsen, City of Eureka, 531 K Street, Eureka, CA 95501

Ms. Patty Clary, CATS, 315 P Street, Eureka, CA 95501

City Enginber, City of Eureka, 531 K Street, Eureka, CA 95501 Humboldt Bay Herbor, Recreation, and Conservation District, P.O. Box 1030, Eureka, CA 95502

Vicki Frey California Department of Fish and Game, 619 Second Street, Eureka, CA 95501

Frans Lowman, ERM, 5909 Hampton Oaks Parkway, Suite D, Tampa, FL 33610

Erik Nielsen, SHN Consulting Engineers & Geologists, 812 W. Wabash, Eureka, CA 95501

Fred Evenson, Law Offices of Fredric Evenson, 424 First Street, Eureka, CA 95501

Michelle Smith, Humboldt Baykeeper, 217 E Street, Eureka, CA 95501 James Diel, Union Pacific Railroad Company, 9451 Atkinson Street, Roseville, CA 95747

David Tyson, Eureka City Manager, 531 K Street, Eureka, CA 95501 Randy Gans, CUE VI, LLC, Security National Properties, P. O. Box 1028, Eureka, CA 95502

California Environmental Protection Agency

# CITY OF EUREKA

MAYOR

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531 K Street • Eureka, California 95501-1146 • (707) 441-4200

December 2, 2009

RECEIVED

DEC 0 4 2009

CALIFORNIA COASTAL COMMISSION

Bonnie Neely, Chairperson California Coastal Commission c/o Humboldt County Board of Supervisors 825 5<sup>th</sup> Street, Room 111 Eureka, CA 95501

## Subject: Coastal Development Permit, Marina Center Phase 1. Appeal No. A-1-EUR-09-049, Item Th14c, December 10, 2009 Commission Agenda.

Chairperson Bonnie Neely:

The purpose of this letter is twofold; first, the City respectfully requests the courtesy of allowing city representatives to speak to the Coastal Commission at the Commission's December 10, 2009 meeting concerning the appeal referenced above. Second is to entreat your support of the Eureka City Council's action to approve the coastal development permit for Phase 1 of the Marina Center project by finding that there is "No Substantial Issue" with the appeal.

As a Coastal Commissioner and member of the Humboldt County Board of Supervisors, you have consistently supported and approved projects that are good for the environment. The purpose of Phase 1 of the Marina Center project is to clean-up the environment, and to improve and enhance coastal resources. We urge you to continue your defense of the environment by supporting the City Council's action to approve the Coastal Development Permit for Phase 1.

The City Council recognizes that additional cleanup will be required to achieve a "full clean-up" of the subject property. However, the Council approved Phase 1 of the Marina Center project, in part, because it will abate a nuisance identified by the Regional Water Quality Control Board by preventing storm water runoff containing contaminated soils from leaving the property and entering Humboldt Bay and Phase 1 will take additional steps to further remediate the site.

# **ATTACHMENT 2**

City staff is preparing a detailed response to the appeal and will be sending it to the Coastal Commission under separate cover. Nonetheless, briefly, the existing wetlands on the site were largely created incidental to, and as a result of, past human activities on the site; are contaminated with elevated levels of substances harmful to human health and wildlife; are usually dry, subject to vegetation removal to protect against fires; and are scattered, such that they have limited habitat value. The proposed Phase 1 cleanup will restore wetlands on-site in a quantity slightly greater than that which presently exists and to enhance their value by not only consolidating them but also by improving their hydrologic connectivity with Humboldt Bay and providing them with an upland buffer.

Approval of Phase 1 is consistent with past actions of the Coastal Commission. The Coastal Commission has employed balancing under Section 30007.5 to approve projects in circumstances analogous to those presented by this project on many occasions. For instance, in 2002, the Commission approved a Local Coastal Plan amendment of the City of Oxnard to annex a 91-acre site to the City and authorize a project providing remediation of contamination on the site, development of residential uses, and open space and habitat areas. The site was contaminated as a result of 30 years of use as an oil field waste disposal facility. The project proposed to remediate the contamination and pay for it from the proceeds of the residential development. Because the project required filling about 4.2 acres of wetlands, it was inconsistent with Section 30233, which limits development in wetlands to certain uses that do not include residential uses. The Commission found a conflict between this policy and the policies of Sections 30230, 30231, and 30240 calling for maintenance and improvement of the quality of sensitive coastal resources and water quality. The Commission resolved the conflict by finding that remediation of the site contamination together with mitigation of impacts on wetlands and sensitive resources was most protective of coastal resources.

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

I am attaching to this letter a copy of the California Regional Water Quality Control Board North Coast Region's response dated November 2009 to public review

comments on the June 2009 Supplemental Interim Remedial Action Plan for the Balloon Track. We received this document Tuesday and feel that the information contained therein is germane to some of the issues raised in the appeal.

The Eureka City Council strongly supports the proposed Phase 1 project and the Council is asking for your support to ensure the successful completion of the Phase 1 environmental cleanup and coastal resource enhancement and improvement. Respectfully, at the Coastal Commission's upcoming December 10, 2009 meeting, the City Council requests your support of their action to approve the Coastal Development Permit for Phase 1 of the Marina Center project by finding "No Substantial Issue" with the appeals and allow the Phase 1 project to move forward.

Finally, the City of Eureka will have representatives from both the City Council and City Staff in attendance at the December 10<sup>th</sup> meeting. As the current Coastal Commission Chair, we ask that you please solicit support from your fellow Commissioners to allow City representatives to address the Coastal Commission on this very important issue.

Thank you in advance for your consideration of our request.

Sincerely,

Virginie Bass Virginia Bass

Mayor

cc: Honorable Board Members, California Coastal Commission Bob Merrill, Director Manager, North Coast District Office Jim Baskin, Coastal Planner, North Coast District Office Eureka City Council David Tyson, City Manager Sheryl Schaffner, City Attorney Kevin Hamblin, Director of Community Development Sidnie Olson, Principal Planner Randy Gans, Security National



## California Regional Water Quality Control Board North Coast Region

#### Geoffrey M. Hales, Acting Chairman

Linda S. Adams Secretary for Environmental Protection www.waterboards.ca.gov/northcoast 5550 Skylane Boulevard, Sulte A, Santa Rosa, California 95403 Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold Schwarzenegger Governor

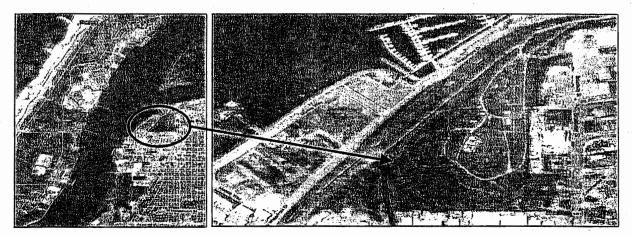
FACT SHEET

#### SOIL & GROUNDWATER CLEANUP AT THE

#### SOUTHERN PACIFIC TRANSPORTATION COMPANY SITE - EUREKA, CALIFORNIA

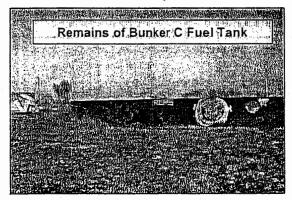
#### NOVEMBER 2009

Site Location - The Southern Pacific Transportation Co. site is located in Eureka at 736 Broadway.



#### Site History & Background -

From the late 1800's until the mid-1980's the Southern Pacific Transportation Co. site was used as a rail yard that included railroad car maintenance and repair, and fueling of locomotives. The site has also contained two petroleum bulk fuel collection and storage sites operated by ARCO and General Petroleum. The site is locally referred to as the "Balloon Track."



Bunker C oil was the primary fuel used for locomotives at the site until 1954. After 1954, diesel fuel was used for locomotives. During site operations, Bunker C oil was stored in a 650,000-gallon aboveground tank. In 1954, the top of the large Bunker C fuel tank was removed to make a secondary containment structure for two 12,700-gallon diesel fuel tanks. Fuel storage at the site was discontinued in 1984 as site operations decreased and a tank truck was used to fuel locomotives.

Chemicals of Concern - The contamination that was expected from the site history includes:

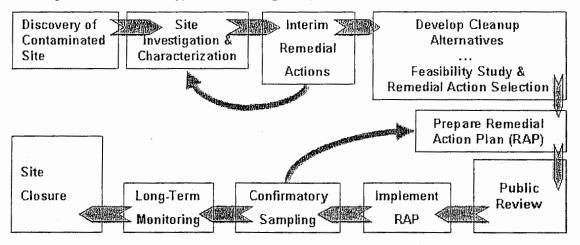
- · Petroleum hydrocarbons from Bunker C fuel, diesel fuel, oil, and lubricants
- Gasoline and gasoline additives
- Polynuclear aromatic hydrocarbons
- Metals, such as lead and copper

This contamination was confirmed during site sampling and investigation. Additional contamination, including dioxins and polychlorinated biphenyls (PCBs), also has been detected.

What is Being Done -

- Cleanup and Abatement Order & Monitoring and Reporting Program The Regional Water Board has issued orders that require the site owners to cleanup the contamination at the site and to regularly monitor and report on the quality of the groundwater and surface water at the site.
- Cleanup Process The Regional Water Board has worked with the site owners on a phased, stepby-step investigation and cleanup process since 1988.

The diagram below shows a typical site investigation process.



- Sampling & Investigations There is on-going monitoring of groundwater and surface water and numerous soil borings and trenches scattered throughout the site. Hundreds of water and soil samples have been analyzed for chemical contamination. Other site work has included site trenching studies, hydrogeological investigations, health risk assessments, and tidal influence studies.
- Interim Remedial Actions While working with the Regional Water Board, the site owners have performed various interim actions and source removals, including removal of:
  - Contaminated soil
  - · Potentially hazardous waste
  - Underground and aboveground storage tanks
  - · Oily waste and petroleum-impacted water
- Supplemental Interim Remedial Action Plan Currently, the site owners are obtaining permits needed to perform additional interim remedial actions, including:
  - Removal of debris piles, concrete, and old foundations
- · Site grading to eliminated stormwater runoff
- Wetlands restoration
- Focused excavation of contaminated soil

**Next Steps** – The site owner will work with the Regional Water Board to prepare a final remedial action plan (RAP) for the site. The RAP will detail the site cleanup so that it will be protective of public health and the environment. Remedial goals for specific contaminants (also called cleanup levels) will be specified in the RAP. The draft RAP will be available for public review and comment.

More Information & Contact – For more information, contact Ms. Caryn Woodhouse of the North Coast Regional Water Quality Control Board at 707-576-2701 or at cwoodhouse@waterboards.ca.gov. Pertinent site documents can be found on the State's Geotracker Website at: https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155



California Regional Water Quality Control Board North Coast Region Geoffrey M. Hales, Acting Chairman

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



Arnold Schwarzenegger Governor

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Response to Public Review Comments on the Supplemental Interim Remedial Action Plan Southern Pacific Transportation Co. Site 736 Broadway, Eureka, CA NOVEMBER 2009

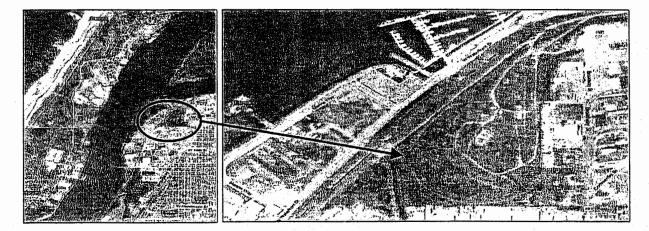
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#### Site Background

In June 2009, the North Coast Regional Water Quality Control Board (Regional Water Board) received, reviewed, and conditionally concurred with a Supplemental Interim Remedial Action Plan (SIRAP) prepared by Environmental Resources Management on behalf of CUE VI for the Southern Pacific Transportation Co. Site in Eureka (Case Number 1NHU064). Both the SIRAP and the Regional Water Board letter of concurrence were posted on the publicly-available State Water Board website, Geotracker, at:

https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155.

The Southern Pacific Transportation Co. Site is located at located at 736 Broadway in Eureka. The location is shown in the aerial photo below. The Site is locally referred to as the "Balloon Track."



At the request of an interested party, the Regional Water Board opened the SIRAP to public comment in mid-August 2009 for a 30-day comment period. This document and an accompanying fact sheet provide response to the comments that were received.

From the late 1800's until the mid-1980's the Southern Pacific Transportation Co. Site was used as a rail yard that included railroad car maintenance and repair, and fueling of locomotives. The Site also contained two petroleum bulk fuel collection and storage sites operated by ARCO and General Petroleum. In this document, the combined sites will be referred to as the Southern Pacific Transportation Co. (SPTC Site) or Site.

Bunker C oil was the primary fuel used for locomotives at the Site until 1954. After 1954, diesel fuel was used for locomotives. During Site operations, Bunker C oil was stored in a 650,000-gallon aboveground tank. In 1954, the top of the large Bunker C fuel tank was removed to make a secondary containment structure for two 12,700-gallon diesel fuel tanks. Fuel storage at the Site was discontinued in 1984 as rail yard operations decreased and a tank truck was used to fuel locomotives.

Groundwater and soils at the Site became contaminated with the chemical compounds used for railroad maintenance and petroleum storage.

The Regional Water Board is the regulatory agency responsible for overseeing the environmental investigations and cleanup work at the SPTC Site since 1988, and has supervised a wide variety of sampling and interim remedial actions. There have been hundreds of soil and groundwater samples collected and analyzed during site investigations. Site investigations have indicated that longchain petroleum hydrocarbons (Bunker C, diesel, motor oil, and gasoline), lead, copper, and other metals are the primary contaminants of concern. More recently, dioxins and polychlorinated biphenyls have also been found in sediments at the SPTC Site in a limited number of samples.

in May 2001, the Regional Water Board issued a Cleanup and Abatement Order (CAO No. R1-2001-26), ordering the discharger (at that time Union Pacific Railroad) to cleanup the discharges and threatened discharges from the property. The discharger submitted an Interim Redial Action Plan in December of the same year.

In July 2002, the Regional Water Board issued a Monitoring and Reporting Program for the Site (M&RP R1-2002-0082) requiring the collection, analysis, and reporting of groundwater and storm water runoff samples. Based on data gathered under the Monitoring and Reporting Program, the Regional Water Board required the Site owner to implement practices to control the stormwater runoff. Additional monitoring showed copper in stormwater runoff that was still of concern to the Regional Water Board, which then ordered the Site owner to propose additional stormwater controls. In response, the Site owner submitted a SIRAP in June 2009, which proposed:

- Removal of debris piles, concrete, and old foundations,
- · Focused excavation of contaminated soil,
- Site grading to eliminated stormwater runoff, and

#### Wetlands restoration.

If additional information about the site history and use, topography, drainage, geology, hydrogeology, prior investigations, the nature and extent of contamination (including a summary of the findings), or proposed actions is wanted please refer to the SIRAP, which can be found online at: https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155

#### Comments & Response

#### #1 The Regional Water Board Role in the Cleanup Process Comments:

- Several commentators stated that the Regional Water Board must review all known information before remedial action is taken.
  - Some commentators stated that the Regional Water Board must have complete knowledge of site contamination before any remedial measures can be approved.
  - Some of the commentators suggested that by approving the SIRAP, the Regional Water Board is allowing an incomplete site cleanup.
  - Several comments were related to the site cleanup process and the role of the Regional Water Board in that process.
  - Some of the comments suggested that the Regional Water Board is allowing the SPTC Site owner to dictate cleanup levels and conditions.

#### Response:

Since many of the comments are related to the Regional Water Board site remediation process, the following information about the site cleanup process may be useful in providing context for the responses.

#### Regional Water Board Contaminated Site Cleanup Process

Throughout the site investigation and remediation process, the Regional Water Board must comply with:

- Applicable State and federal statutes and regulations.
- Applicable water quality control plans (known as Basin Plans) adopted by the State and Regional Water Boards. Basin Plans include beneficial uses, water quality objectives, and implementation plans.
- State Water Board and Regional Water Board policies, such as the non-degradation policy (68-16) and the policy and procedures for site investigation and cleanup (92-49).
- Relevant standards and criteria adopted by other federal and State agencies.

In general, the site cleanup process can include the following steps: 1. Site investigation – This step includes evaluating the site history, uses of chemicals, geology, hydrology, tidal influence, soil types, previous sampling, and environmental conditions to determine the nature and extent of contamination and the potential threats to human health and the environment. Soil and groundwater sampling locations and depths should consider the potential source(s) of contamination, the fate and transport properties of the contaminants (i.e., how the chemical moves through the environment), potential exposure route(s), and the human and nonhuman receptors and resources (waters of the State) that are likely to be affected. Determining where to collect samples depends on how much is known about the site, past uses of chemicals, and the behavior of the chemical in the environment. If the site history is known, sampling tends to be around the areas where chemicals were used, stored, transferred, and discharged. The information gathered during the site investigation is used to build a conceptual model of the site to understand the risk to human health and the environment, the present and future sampling needs, and the type of remedial actions that might be appropriate. The conceptual site model changes as the investigation and remediation of the site reveals additional information.

<u>2. Interim remediation</u> – The remediation of a contaminated site can take many years. Interim activities remove or stabilize sources of contamination thereby allowing some portion of the remediation to proceed. Interim activities can occur during the site investigation and can reduce the risk to human health and the environment while decisions about the final site cleanup are being made. Interim remedial measures can include actions such as fencing, drainage controls, topographical re-grading, removal of wastes, and excavation of contaminated soils.

3. More site investigation and more interim remediation – These steps are repeated as needed. As more is learned, more studies, investigations, and interim remedial measures are performed. The goal is to learn enough about the site to select appropriate remedial measures and to ensure that the final remediation is protective of human health and the environment.

<u>4. Feasibility study</u> – In this step, potential remedial alternatives are developed in order to prepare a cleanup plan. The feasibility study provides the information needed to evaluate and chose among the possible remediation options. These options may include removal of contaminants from the site, safely containing the contaminants on-site, allowing natural degradation to occur, or destroying or treating the contaminants on-site through treatment technologies. Appropriate remedial alternatives are evaluated

considering: the overall protection of human health and the environment; compliance with state and local requirements; shortand long-term effectiveness; reduction of toxicity, mobility or volume of the contaminants; implementability; cost; and community acceptance.

5. Remedial action plan (RAP) – Using the data from the Feasibility Study a remedial option is selected and a Remedial Action Plan (RAP) is developed. A draft RAP is made available for public review and comment prior to concurrence by the Regional Water Board. Development of the RAP incorporates the extensive data that has been gathered, along with the selected remedial alternative(s). The RAP includes discussion of the necessary cleanup objectives to ensure that the remedial action will comply with all applicable laws and regulations. The RAP workplan(s) will include the technical plans and specifications needed to implement the selected remedial actions.

The uses of the site may affect the selected cleanup objectives. State regulations and policies require cleanup to background levels where technologically and economically feasible. The term "background" refers to the concentration of naturally occurring contaminants found in environmental media not influenced by a site. Remedial goals (cleanup levels) will not be more stringent than background levels. A remedial goal that is less stringent than background could be selected if:

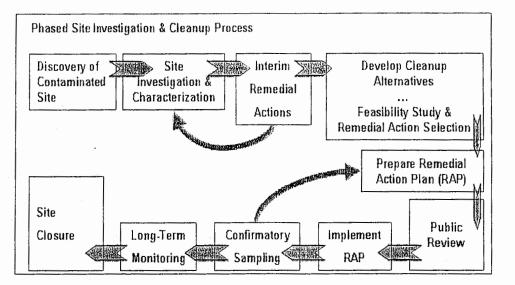
- The level is consistent with maximum benefit to the people of the State;
- The level does not unreasonably affect present and anticipated beneficial uses of waters of the State; and
- The level does not result in water quality less than that prescribed in the Water Quality Control Plans (including the Water Quality Control Plan for the North Coast Region – The Basin Plan) and Policies adopted by the State and Regional Water Boards (including State Water Board Resolutions No. 68-16 and 88-63).

Remedial goals that are less stringent than background must meet specific regulatory criteria and may depend, in part, on the intended uses of the property and may change if the property use changes.

<u>6. Verification monitoring</u> – Monitoring is conducted to ensure that the remedial actions continue to be protective of human health and the environment. The extent and composition of verification monitoring is detailed in the RAP.

7. Site closure – A site is closed when it is determined that no further regulatory action is needed because the conditions remaining at the site will not adversely impact water quality, human

health, the environment and safety, or other current and future beneficial uses of water.



The following diagram shows a generalized cleanup process:

Responsible parties and their consultants propose and conduct remedial actions and site investigations and the Regional Water Board reviews and oversees the proposals, plans, and activities. The Regional Water Board reviews all known information before remedial action is taken, but, site investigations are on-going and interim remedial measures are implemented throughout the process. The Regional Water Board has not received a Remedial Action Plan for the SPTC Site. The Interim Remedial Action Plans for the SPTC Site were considered by the Regional Water Board in light of all known information. Interim remedial actions, however, are often implemented before all possible site data are gathered.

At the SPTC Site, past operations consisted of a former railroad yard for locomotive and railroad car maintenance and repair, fuel storage and fueling facilities, and former petroleum bulk fuel plants and a vehicle fueling station. The Site history indicated that petroleum hydrocarbons and metals would be the likely chemicals of potential concern. Sampling was initially directed toward areas around the storage tanks, sumps, and surface drainage features. Numerous studies have been conducted over the years at the SPTC Site, including soil sampling, groundwater sampling, stormwater sampling, soil borings and trenching, field testing, site inspections, and laboratory analysis. The existing data are used to direct additional sampling efforts.

The Cleanup and Abatement Order requires remediation and the evidence collected at the Site clearly supports the conclusion that remediation is needed. Numerous interim remedial measures have been conducted over the years at the SPTC Site, including: fencing, removal of fuel storage tanks, and targeted

removal of contaminated soils, groundwater and oily wastes. The latest Interim Remedial Action Plan (the SIRAP submitted in June 2009) was prepared in order to address continued concerns about elevated copper levels in storm water.

When the Remedial Action Plan is developed, it will have to address potential future uses of the Site such as wetlands, residential, commercial, park space, etc. If contamination is left in place that would restrict future uses then a deed restriction is required for the property. A deed restriction is an environmental covenant incorporated into a property's deed to restrict the use of the property. The intent of the deed restriction is to protect present and future human health and safety and the environment from chemicals that may remain on a contaminated site. It also serves to inform future property owners of residual contamination and requirements for site activities that might result in exposure to the residual contamination. If the uses of a site covered by a deed restriction change, the deed restriction will have to be evaluated to ensure that it remains protective.

#### #2 Adeguacy of Public Notice

Comment:

- Several of the commentators were concerned about lack of public review of the Supplemental Interim Remedial Action Plan before the Regional Water Board concurred with the proposed plan.
- One commentator stated that public notice is required by CEQA.
- One commentator protested "the secret approval" of the Supplemental Interim Remedial Action Plan.
- One commentator stated that the limited post-approval review failed to facilitate adequate agency and public comments.
- One commentator stated that California Water Code §13307.5 requires the Regional Water Board to provide a public review period before consideration of any remedial actions at the Site.
- One commentator expressed concern that the public would have to travel to Santa Rosa to review information about the Site in order to adequately review the Supplemental Interim Remedial action Plan.

#### Response:

The Regional Water Board does not interpret California Water Code §13307.5 as requiring public review prior to concurrence with *interim* remedial actions. In addition, it has not been the practice of the Regional Water Board to routinely solicit public review of interim remedial actions. A public review period was not conducted prior to consideration of previous remedial actions at the SPTC Site.

The CEQA public notice requirements are not applicable to the Regional Water Board concurrence with the SIRAP since the concurrence was not a discretionary action for the purposes of CEQA. At the request of an interested party, a 30-day public review period was provided for the SIRAP. The Regional Water Board has considered all of the comments during the comment period and continues to concur with the SIRAP with the conditions expressed in the Regional Water Board June 18, 2009 letter:

- Contaminated soils discovered under the removed concrete foundations must be sampled and analyzed for the appropriate contaminants of concern.
- A workplan must be prepared and approved for replacing monitoring well MW-13.
- All necessary local, State, and federal authorization must be obtained prior to performing the work described in the SIRAP.
- The Regional Water Board requested, and subsequently received, additional information regarding the split sample that was analyzed for dioxins that showed a wide discrepancy in results.

When a Remedial Action Plan is proposed for the SPTC Site, it will be available for a public review and comment period. Documents and information about the Site, including monitoring information, the Cleanup and Abatement Order, staff letters, site plans, and contact information can be obtained online at the State Water Board's Geotracker website, which can be found at:

https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155

#### #3 Site Characterization

Comments:

- Many of the commentators indicated that there has not been a complete site characterization and that the property owner has not presented all relevant information.
- Some commentators stated that the vertical and lateral extent of contamination has not been defined, including the impact of the SPTC Site on Humboldt Bay.
- Some stated that the Regional Water Board should require an extensive above- and below-ground environmental study.
- Some commentators stated that the site characterization should specifically address dioxins and pentachlorophenol.
- Some of the commentators suggested that the Site history includes storage and use of pentachlorophenol-treated lumber or the herbicide 2,4,5-T.
- One commentator stated that the Site is contaminated from being used by the logging industry.
- One commentator stated that grading the Site would violate the so-called mixture or "land-ban" rules.
- The same commentator stated that the site characterization is incomplete because there are not a sufficient number of samples to satisfy the requirements of the federal Superfund program.

#### Response:

Regional Water Board staff agrees that the site characterization is not complete and more characterization will need to be performed prior to the development of a Remedial Action Plan. However, staff does not agree with comments asserting that there has been little or no site characterization or that there is insufficient characterization to take interim remedial measures. Hundreds of samples and analyses have been conducted to assess the extent of contamination and to characterize Site conditions. Information about the SPTC Site setting and operational history was used to indicate which areas are likely subject to a particular type of contamination, and these areas have been intensively sampled. over the past 20 years. Sampling has also occurred throughout the SPTC Site soil, groundwater, and stormwater samples have been collected from areas around the Site and analyzed for a broad suite of chemicals. There are currently 19 wells that are used to monitor groundwater quality, in addition to numerous temporary wells that have been used in the past. There have been 190 soil borings and 32 trenches to sample soil guality. The SIRAP summarizes the past Site investigations, reviews the results of those investigations, and includes summary tables of the data.

Characterization to date shows that long-chain petroleum hydrocarbons, such as diesel and bunker fuel, and metals are the primary constituents of concern at the Site. The Regional Water Board is not aware of any information supporting the comment that 2,4,5-T was used at the Site.

The impact of the SPTC Site on the water quality of Humboldt Bay was addressed, in part, by tidal influence studies. There are two aquifers (underground water-bearing strata) at the Site. The uppermost "A" zone and the lower "B" zone are separated by a layer of fine-grained bay mud that acts to restrict the movement of water between the two aquifers. The A zone is a shallow, perched aquifer occurring in fill material that fluctuates based on rainfall and occasionally goes dry. The A zone is located at about three to eight feet below the ground surface. Tidal-influence studies show that the A zone aquifer is not tidally-influenced by Humboldt Bay and indicates that contamination in the A zone does not enter Humboldt Bay. The B zone aquifer is present in coarse-grained material and is influenced by the daily tidal fluctuations of the bay, indicating that contamination in the B zone can enter Humboldt Bay. The B zone is located at about six to 12 feet below the ground surface.

Arsenic, barium, copper, lead, and zinc have been detected in both A and B zone groundwater samples. Some of the metals are related to past Site operations and some may be naturally-occurring. Background concentrations will be considered when the final remedial goals are developed for the Site.

Precipitation generally percolates into the ground and into the A zone aquifer. Precipitation also will fill ditches and depressions on-site. The Site topography is relatively flat so the ditches and depressions often act like ponds with little or no flow. Apart from Clark Slough, the wetlands at the Site do not appear to be subject to tidal flow.

The Regional Water Board requires routine monitoring of stormwater at the SPTC Site under the Monitoring and Reporting Program R1-2002-0082. Petroleum hydrocarbons and metals have been identified in stormwater. Based on data gathered, the Regional Water Board required the Site owner to implement practices to control stormwater runoff. Even after the implementation of those storm water control measures, additional monitoring showed copper levels in stormwater runoff that were still of concern. Therefore the Site owner was required to propose additional stormwater controls, and in response, the June 2009 SIRAP was submitted.

Petroleum hydrocarbons and metals have been found in soil samples throughout the SPTC Site. Some locations have high concentration levels. Prior interim remedial actions at the Site have involved removal of contaminated soils. The SIRAP proposes to remove additional soils that have elevated contaminant concentrations.

The commentators are correct that dioxins have been found on-site and also that dioxins are found in Humboldt Bay. The area surrounding Humboldt Bay has been home to many significant sources of dioxins – notably, the many mills that treated lumber with pentachlorophenol and the many wood combustion operations, such as teepee burners, that released dioxins into the air. Regardless of the source of the dioxins, the Regional Water Board will require the Site owner to define the vertical and lateral extent of dioxin contamination, even if the dioxin contamination originates from off-site sources.

In a site investigation, the number of samples needed to evaluate the site is related to the intended use of the data, the associated data quality objectives, and the variability of the data. The objective is to obtain data of sufficient quality and quantity to facilitate site evaluation and remedial action selection, while considering the horizontal and vertical extent of contamination, site-specific stratigraphy, and the statistical distribution of the dataset. There is no default rule for the number of samples required to adequately characterize a site – each site is evaluated on site-specific conditions.

The mixture rule, derived-from rule, and land ban regulations apply only to hazardous wastes. In order for the soil to be considered a hazardous waste, the soil must be a waste and it also must exhibit a characteristic of hazardous waste (either RCRA or non-RCRA) or be listed as a RCRA hazardous waste. The "mixture rule" applies to RCRA-listed hazardous wastes that are mixed with any other substance and the rule confers the hazardous listing on the entire mixture. The "derived-from" rule applies to wastes that were generated from the treatment, storage, or disposal of RCRA-listed wastes. There is no mixture rule or derived-from rule for non-RCRA (California-only) wastes or for RCRA-

characteristic wastes. The Site contaminated soils are not RCRA-listed hazardous wastes, nor are they derived from RCRA-listed hazardous wastes. Therefore, the mixture and derived-from rules do not apply. The prohibition on land disposal, similarly, applies only to hazardous wastes that are banned from land disposal without treatment.

#### #4 Remedial Actions

Comment:

- Several commentators stated that the Regional Water Board should not allow the developer to "muck around in Clark Slough."
- Several commentators were concerned that that moving soils around the SPTC Site would lead to "smearing" the contamination around the Site and would make a final cleanup more difficult and has the potential to mobilize contaminants, which would enter Humboldt Bay.
- Several commentators requested that the Site be cleaned-up (fully, completely, to preindustrial levels, to safe levels, to bedrock, stringently, totally, etc.).
- Several commentators stated that the Supplemental Interim Remedial Action Plan is inadequate although the commentators did not provide any details of specific concerns.
- Some commentators stated that capping the Site is not an acceptable remedial action.

#### Response:

The SIRAP was prepared because the Regional Water Board directed the SPTC Site owner to implement practices to control stormwater runoff. To accomplish this, the Site owner proposed re-grading portions of the Site, excavation of contaminated soils, and placement of clean cover material on the Site as interim remedial actions.

Re-grading the topography of a contaminated site is a common remedial measure. Remedial activities often require moving soils from one part of a site to another or removing soils to an off-site disposal location. Excavation of contaminated soils also is a common remedial action. Focused excavations have been performed at the SPTC Site in the past and are proposed by the SIRAP. Excavation of the entire SPTC Site is not feasible and is not needed based on laboratory analyses of the soil samples.

When the Regional Water Board considers a proposal for on-site reuse of soils, the decision is based on the contaminant concentrations, the toxicity of the contaminants, the volume of the soils, and the reuse location (including separation from groundwater, separation from surface water, protection from erosion, and proximity to sensitive receptors). These factors help to define the potential impact of the proposed reuse. The excavation of contaminated soils at the SPTC Site will require confirmation sampling on the bottom and sides of the

excavation pits. The excavated soils will need to be adequately characterized in order to determine the final disposal location. The plan for confirmation and verification sampling will account for any redistribution of on-site soils. Sampling locations and depths will reflect the potential mixing and disturbance of the soil profile that is likely to occur.

Capping is another common remedial action in which a site or parts of a site are covered with clean material so that receptors are not exposed to the contamination. The design of the cap (or cover) is dependant on the nature of the site and contamination. The goal is to provide a physical barrier between the contamination and potential human or non-human receptors and to keep the contaminated material from migrating. Capping generally is not performed to the exclusion of other remedial actions – it is often used in conjunction with excavation or treatment to reduce the toxicity of the contaminants.

The final remedial action for the SPTC Site has not been proposed so it is premature to speculate on the final remedial measures. Remedial goals (cleanup levels) will be developed as part of the final Remedial Action Plan. In general, the Regional Water Board requires cleanup to background levels where technologically and economically feasible. Cleanup levels that are less stringent than background may depend, in part, on the intended and approved uses of the property. The development of remedial goals considers the effect of the contaminants on human health and the environment. The Regional Water Board will consider the level and nature of contamination, the pathways of exposure, and potential future uses of the SPTC Site when reviewing proposed final remediation actions and remedial goals.

#### #5 Assessment of Risk

<u>Comments</u>:

- Many of the commentators expressed concern about the safety of the SPTC Site and any remedial action.
- Some commentators are concerned about the levels of dioxins in Humboldt Bay and suggest that the dioxins in the bay originate from the SPTC Site.
- Some of the commentators are concerned about the levels of dioxins in fish and shellfish in Humboldt Bay.

#### Response:

In order for contamination to present a risk, there must be a completed exposure pathway. That is, toxic chemicals must contaminate environmental media (such as air, water, dust, or soil) and the receptor (such as, a human) must come into contact with the contaminated media. An example of a complete exposure pathway is:

- A chemical leaks from a drum.
- The chemical enters the groundwater.
- The contaminated groundwater migrates to a drinking water well.

• A human ingests the contaminated water.

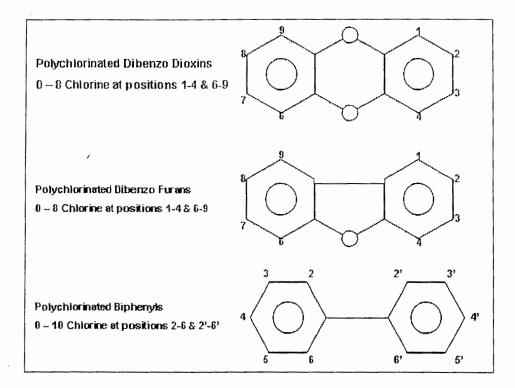
The health effects of exposure to a contaminant is influenced by the exposure route, the duration of exposure, the frequency of exposure, and the magnitude of the exposure. If any point in the pathway is blocked or not present, then the exposure does not occur. If the exposure does not occur, an adverse health effect does not occur. This applies to both human and non-human receptors. It is important to remember that an individual may be more or less sensitive to the exposure than the community or whole population. This is generally accounted for in how a risk assessment is performed – e.g., whether the assessment is designed to estimate the risk to the most sensitive individuals or to an average member of a population.

During site cleanup, the primary effort is to treat, remove, or reduce the contamination. If the contamination cannot be completely eliminated or reduced to the point where it is not harmful to human health and the environment, then the effort focuses on containing the contamination so that a sensitive receptor cannot come into contact with the contamination. The analysis considers all contaminants, all receptors, all pathways, and all likely land uses. The Remedial Action Plan for the SPTC Site will have to address both human and ecological risk.

Based on the Site history, past uses, and the results of numerous sampling efforts, the contaminants of concern at the SPTC Site are petroleum hydrocarbons and metals. Dioxins also have been found in on-site soils. Since several commentators expressed concerns about dioxins, the following information about the dioxins may be useful.

#### Dioxins

"Dioxins" refers to group of chlorinated chemical compounds that share certain similar chemical structures, properties and biological characteristics, including toxicity, persistence in the environment, and bioaccumulation potential. Generally, the term "dioxins" includes polychlorinated dibenzodioxins (PCDDs), polychlorinated dibenzofurans (PCDFs or furans) and co-planar polychlorinated biphenyls (PCBs), which have similar chemical and toxicological characteristics. There are several hundred of these compounds, but there are but there are 29 that have significant toxicity. In the environment, dioxins typically occur as mixtures of the various dioxins, furans, and co-planar PCBs. The chemical structures of these compounds are shown below.



Although there are natural processes that create dioxins, human activities are responsible for the creation of the great majority of dioxins. Dioxins are a product of combustion processes, are created in metals smelting, refining and processing, and are contaminants in chemicals and chemical processing. There is widespread contamination of air and soil with dioxins from human activities.

Dioxins are highly toxic to freshwater and marine fish, birds, and mammals. Dioxins can cause a cause a wide range of toxic effects including lethality, carcinogenicity, reproductive and developmental adverse effects, endocrine and immune system dysfunction, hemorrhaging, and biochemical effects.

Dioxins are resistant to natural degradation, so they persist and build up in the environment. Since they are insoluble in water, they attach to particles, and tend to settle out in depositional areas such as slow moving water.

The concern about dioxins in soil and sediments is not only from toxicity to organisms that are in contact with the soil or sediment, but also from the persistence in the environment and their tendency to bioaccumulate, leading to increased concentrations in animals as you move up the food chain. In biota, dioxins accumulate in the fatty tissue and internal organs. Human exposure to dioxins is primarily through eating foods in which dioxins have accumulated.

There is no information that attributes the source of dioxins in Clark Slough to the SPTC Site. Regardless of the source of the dioxins the Site owner will be required to address the presence of dioxins in the Remedial Action Plan, including the potential risks to human health and the environment.

The sediments in Humboldt Bay are contaminated with dioxins. This is of concern because of both the toxic effect to humans and ecological receptors (especially at sensitive life stages) and because of the potential for the dioxins to bioaccumulate in fish and shellfish. Humboldt Bay is on the State's list of impaired water bodies because of dioxin contamination. The Regional Water Board will address this situation, including investigating the sources of dioxin contamination in Humboldt Bay, under the Total Maximum Daily Load (TMDL) program.

 Information about the TMDL program in the North Coast Region can be obtained at:

http://www.waterboards.ca.gov/northcoast/water\_issues/programs/tmdls/index.shtml.

 Information specific to the dioxin listing of Humboldt Bay can be obtained at:

http://www.waterboards.ca.gov/northcoast/water\_issues/programs/tmdls/303d/2008\_integrated\_report.shtml.

#### #6 Other Comments

Comment:

- The SPTC Site is of archeological interest. There is credible evidence of sensitive archeological resources and the commentator requests consultation prior to remedial action.
- Many commentators are opposed to developing the Site for a big box store.
- Many commentators expressed support for developing the Site to provide housing and shopping opportunities.
- Many commentators expressed support for cleaning up the Site so that it could be developed.
- Some commentators suggested that the Regional Water Board staff are in collusion with the Site developer, and another stated that the Regional Water Board is serving as a shield for City employees who are working for the developer.

#### Response:

The comment regarding the archeological interest in the SPTC Site was provided to the City of Eureka so that it would be addressed during Site development activities.

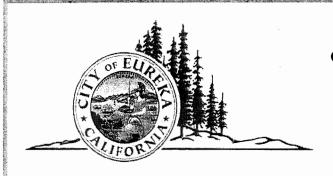
Regarding specific development plans for the SPTC Site, the Regional Water Board is charged with overseeing the cleanup of the contaminated property. The Regional Water Board does not determine local land use or development. The appropriate venue for discussion of local land use is the City of Eureka. Additionally, in order for the SIRAP to be implemented, the property owner will have to receive permits or authorization from various local, State, and federal agencies, including, but not limited to: the City of Eureka, the California Coastal Commission, the California Department of Fish and Game, the California Regional Water Quality Control Board, and the U.S. Army Corps of Engineers. The same agencies will have to be consulted when a Remedial Action Plan is developed for the Site.

The other comments are not pertinent to the Supplemental Interim Remedial Action Plan or to the role of the Regional Water Board.

#### Further Information

Additional information about the Southern Pacific Transportation Co. Site can be obtained from the publicly-available State Water Board website, Geotracker, at: https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155.

You may also contact the Regional Water Board case worker, Ms. Caryn Woodhouse, at cwoodhouse@waterboards.ca.gov or at 707-576-2701.



## CITY OF EUREKA COMMUNITY DEVELOPMENT DEPARTMENT Kevin R. Hamblin, AICP, Director

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December 8, 2009

Robert Merrill Executive Director, North Coast District California Coastal Commission P. O. Box 4908 Eureka, CA 95502 RECEIVED

DEC 0 8 2009

CALIFORNIA COASTAL COMMISSION

Subject: Coastal Development Permit, Marina Center Phase 1. Appeal No. A-1-EUR-09-049, Item Th14c, December 10, 2009 Commission Agenda.

Dear Bob:

The purpose of this letter is to provide to the Coastal Commission the city's response to the findings contained in the Commission staff report dated November 20, 2009 for the above referenced appeal.

On November 3, 2009, the Eureka City Council approved the coastal development permit for the first phase of the Marina Center Mixed-use development project. Phase 1 of the Marina Center project includes implementation of the Supplemental Interim Remedial Action Plan (SIRAP) which received concurrence in June 2009 from the California Regional Water Quality Control Board, North Coast Region (RWQCB). The SIRAP was prepared under the direction of the RWQCB in compliance with Cleanup and Abatement Order No. R1-2001-26.

Phase 1 includes the removal of various debris piles, old foundations and other structures and remnants that remain on site as a result of the past use of the site as a railroad maintenance facility, including:

- Scrap metal and piles of old railroad ties that are present at various locations across the site.
- The remains of an above ground storage tank.

- A sump measuring approximately 3 feet in diameter by approximately 4 feet deep.
- An old oil/water separator used as part of the former oil-collection system for the site.
- A communication tower.
- A turntable used to maneuver railroad engines.

Phase 1 remediates soils in five focused areas by excavating the contaminated soils and then back-filling with clean material.

Phase 1 includes the restoration of wetlands surrounding Clark Slough. The restoration will be accomplished by excavating and re-contouring a portion of the area surrounding Clark Slough to create new seasonal and muted tidal wetlands. In addition, debris that has accumulated within Clark Slough and concrete rip-rap that has been placed along the banks of Clark Slough in this area will be removed.

Phase 1 also includes grading of the site to alter the flow of storm water on the site to promote natural infiltration of storm water and reduce or eliminate storm water from leaving the site. As part of the site grading work, cover material will be imported and placed over the site to provide additional storm water infiltration capacity at the site and eliminate potential pathways between the existing site soils and human and environmental receptors. Although the final thickness of the cover material is not known at this time, it is anticipated that a cover approximately two feet thick will be placed over the site. If appropriate, impermeable materials may be used to capture and detain stormwater to be directed into the municipal stormwater system.

According to the Commission staff report, pursuant to Coastal Act Sections 30603(a)(2) and 30613, the City's approval is appealable to the Commission because the approved development is: (a) within 100 feet of a wetland; and (b) on lands, in whole or in part, for which coastal development permitting authority has been delegated to a local government that the commission, after consultation with the State Lands Commission, has determined are: (1) filled and developed and are (2) located within an area which is committed to urban uses, but nonetheless may be subject to the public trust.

The standard of review is the City of Eureka's adopted and certified Local Coastal Program. The appeals filed on the City's action are summarized on page 2 of the Commission staff report. Commission staff recommends that the Coastal Commission find that the appeals raise a substantial issue. The underlying justification posed by Commission staff is the assertion that Phase 1 of the Marina Center project is not consistent with Eureka's adopted and certified Local Coastal Program and that the City's use of "balancing" to find compliance with the Local Coastal Program was done in error.

We respectfully disagree and argue that the City Council acted appropriately and within the law by finding that Phase 1 of the Marina Center project consistent with the adopted and certified Local Coastal Program.

Commission staff acknowledge that the Coastal Zoning Regulations of the City of Eureka's adopted and certified Local Coastal Program § 10-5.2904 contains a specific balancing provision which is repeated below.

§ 10-5.2904 Interpretation.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements. No provision of this article is intended to repeal, abrogate, annul, impair, or interfere with any provision of this Code; provided, however, where the provisions of this article impose a greater restriction on the use of land or structures, or the height or bulk of structures, or require greater open spaces about structures, or greater areas or dimensions of sites, or impose a greater restriction on the location, size, illumination, or subject matter of signs than is imposed or required by other provisions of this Code, the provisions of this article shall control. If any conflict occurs between one or more provisions of this article, such conflict shall be resolved in a manner which on balance is the most protective of significant coastal resources. [emphasis added] If any provision of this article conflicts with any provision of any regulation contained in any previously adopted ordinance of the city, the provisions of this article shall control.

As referenced in the City's findings on this matter, this provision of the City's approved Local Coastal Program parallels Public Resources Code 30007.5.

The fact that Commission staff acknowledges the City's authority to balance under the Coastal Zoning Regulations would, based on the Record, eliminate the substantial issue grounds for all arguments concerning compliance of Phase 1 with the Coastal Zoning Regulations.

Commission staff argues on page 8 of the Commission staff report that the balancing provision contained in the Coastal Zoning Regulations does not carry over to the Land Use Plan. We do not disagree with this assertion, however, we do disagree with the extension of this argument that because the Coastal Zoning Regulations balancing provision does not extend to the Land Use Plan that the Council is precluded from balancing competing goals and policies contained in the Land Use Plan. In reality, the courts have stated very clearly that the City Councils have the duty and the authority to weigh the competing policies contained within a city's adopted General Plan and by extension the Land Use Plan, and determine which policies take precedence. (No Oil, Inc. v. City of Los Angeles (1987) 196 Cal.App.3d 223; Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (1998) 62

Cal.App.4th 1332; <u>Sequoayah Hills Homeowners Association v. City of Oakland</u>, (1998) 23 Cal. App 4th 704 (1993)).

The California State Office of Planning and Research (OPR) provides guidance concerning state law and the General Plan and includes the following:

"The General Plan and Zoning are not the same. A general plan is a set of long-term goals and policies that the community uses to guide development decisions. Although the plan establishes standards for the location and density of land uses, it does not directly regulate land use. Zoning, on the other hand, is regulatory. Under the zoning ordinance, development must comply with specific, enforceable standards such as minimum lot size, maximum building height, minimum building setback, and a list of allowable uses. Zoning is applied lot-by-lot, whereas the general plan has a community-wide perspective."

As the Commission is aware, the Land Use Plan is the applicable portion of the General Plan for lands located within the coastal zone. Although the Coastal Act requires that the Land Use Plan contain more specificity than is normally contained within a General Plan, the primary role and purpose remains the same - identifying goals, policies and implementation programs used to guide policy decisions of the city. The General Plan and by extension the Local Use Plan are policy documents, not regulations.

The authority of the City Council to interpret its own certified Local Coastal Program cannot be usurped by the Coastal Commission. Because the Land Use Plan is an arm of the General Plan, the laws concerning the role and the purpose of the Land Use Plan and the City Council's authority to interpret it cannot be modified by the Coastal Commission. The Commission cannot chose to ignore the city's certified Local Coastal Program or state law with regard to general plans.

The City Council, as the legislative body of the City of Eureka, is ultimately responsible for determining whether an activity is consistent with the Land Use Plan. The Courts have opined that perfect conformity with a general plan is not required; instead, the City Council must balance various competing considerations and may find overall consistency with the plan despite minor inconsistencies with specific provisions. It is well recognized that the City Council's finding of a project's consistency with the plan would not be reversed by a court if, based on the evidence before the City Council, a reasonable person could have reached the same conclusion (No Oil, Inc. v. City of Los Angeles (1987) 196 Cal.App.3d 223).

In <u>Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of</u> <u>Supervisors</u> (1998) 62 Cal.App.4th 1332, the court held that "[The] nature of the policy and the nature of the inconsistency are critical factors to consider." A project is clearly inconsistent when it conflicts with one or more specific, fundamental, and mandatory

policies of the general plan (<u>Families Unafraid</u>, *supra*). However, any given project need not be in perfect conformity with each and every policy of the general plan if those policies are not relevant or leave the city or county room for interpretation (<u>Sequoayah</u> <u>Hills Homeowners Association v. City of Oakland</u>, (1998) 23 Cal. App 4th 704 (1993)).

The City Council determined that the proposed project presented a true conflict between policies of the Land Use Plan. The record of the City Council's action to certify the Environmental Impact Report and approve the coastal development permit, including the adoption of findings, clearly show the logic and reasoning employed by the Council to determine that Phase 1 of the Marina Center is, in fact, consistent with the adopted and certified Local Coastal Program policies for the protection of the environment and enhancement of coastal resources.

Phase 1 will place fill in wetland habitat for a use not enumerated under the Land Use Plan. However, to not approve Phase 1 will result in significant adverse impacts to marine resources and water quality that are inconsistent with other more imperative goals and polices of the Land Use Plan that call for the maintenance and restoration of marine resources and coastal water quality. Soil and groundwater sampling conducted on the project site reveal levels of contamination that exceed state and/or federal thresholds. The SIRAP was developed with the primary objective of removing the most contaminated soil on the project site, and site grading and placement of a layer of clean fill over the site to eliminate pathways of contamination. Thus the project will remove contaminants and pathways that continue to threaten groundwater and coastal waters.

Although Phase 1 is inconsistent with the policies that any fill placed in coastal waters or wetlands be for one of several listed allowable uses, Phase 1 will also enable the cessation of ongoing resource degradation. Phase 1 is fully consistent with the Land Use Plan's mandates to maintain and restore marine resources and coastal water quality, and Phase 1 offers to tangibly enhance water quality over existing conditions. Thus, denial would result in impacts that would be inconsistent with the Land Use Plan's mandates for protection of marine resources and improved water quality. Moreover, it is the very essence of Phase 1, not an ancillary amenity offered as a trade-off, that is both inconsistent with certain Land Use Plan policies and yet also provides benefits.

Because the authority of the City Council to interpret competing policies of the Land Use Plan is made on a project-by-project basis, it would be inappropriate for the Commission to adopt its staff's position that the City Council's approval of the coastal development permit for Phase 1 "could set a troublesome precedent with respect to how the City may interpret its LCP in future permitting actions." The Coastal Commission is not in the position to act as a super-planning agency for doing the project-by-project land use element interpretation that occurs in every city and county in the Coastal Zones of this state. That would be an unreasonable expectation and an undue encroachment on local planning decisions. The LCP provides the more appropriate vehicle for

ensuring that the purposes of the Coastal Act are met, and there is no need to venture out on the limb to which staff invites the Commission.

We respectfully request that the Coastal Commission acknowledge the City's duty and right to interpret what are commonly and inherently competing policies of its Land Use Plan and to implement its adopted and certified Local Coastal Program as provided in the Coastal Zoning Regulations and state law. Therefore, based on the record, the action of the City Council to approve the coastal development permit for Phase 1 of the Marina Center project is, in fact, consistent with the adopted and certified Local Coastal Program. And, consequently, there is no substance to the appeal.

Respectfully,

Sidnie L. Olson, AICP

Principal Planner

cc: Mayor and City Council David Tyson, City Manager Sheryl Schaffner, City Attorney Randy Gans, CUE VI

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December 4, 2009

DEC 0 8 7009

CALIFORNIA COASTAL COMMISSION

Ms. Bonnie Neely, Chair and Commissioners California Coastal Commission 45 Fremont Street, Ste. 2000 San Francisco, CA 94105

> Re: Appeal No. A-1-EUR-09-049 (CUE VI, LLC, Eureka); Balloon Track Cleanup Project; No Substantial Issue Raised by Appeal

Dear Chair Neely and Commissioners:

#### INTRODUCTION

On behalf of CUE VI, LLC, I write to request the Commission to determine that no substantial issue is raised by appeals of a coastal development permit issued by the City of Eureka for the Balloon Track Cleanup Project. That project would remediate contamination and abate a nuisance at the site of a former railroad yard in keeping with a plan ordered and approved by the Regional Water Quality Control Board and the City of Eureka. Wetland vegetation has grown on the site in small depressions, tire ruts, ditches, and the like, leading some to claim that Coastal Act provisions protecting wetlands stand in the way of cleanup of the contamination.

The Coastal Act generally calls on the Commission to hear an appeal of a coastal development permit unless it determines that "no substantial issue exists with respect to the grounds on which [the] appeal has been filed." Pub. Resources Code § 30625(b)(2). No such issue exists here.

- Because the Coastal Act is not a limitation of the City's power to abate nuisances and the City exercised that power in ordering and approving the project, the Commission has no authority to impose a limitation on the City's decision. The appeals, thus, do not raise a substantial issue for the Commission to resolve.
- Because the Coastal Act prohibits the Commission from modifying, conditioning, or taking any action in conflict with a determination of the Regional Water Quality Control Board in water quality matters and the Board made such a determination in ordering site cleanup and approving an interim remediation plan, the Commission

# **ATTACHMENT 3**

BRISCOE IVESTER & BAZEL LLP December 4, 2009 Page 2

> cannot modify, condition, or take action in conflict with implementation of that plan. The appeals, thus, do not raise a substantial issue for the Commission to resolve.

• Because the coastal development permit plainly conforms to the City's certified local coastal program, no substantial issue exists.

#### SUMMARY

CUE VI, LLC ("CUE VI"), owner of a 43-acre brownfield site known as the Balloon Track located in Eureka, California, proposes to remediate contamination at the site and abate the nuisance such contamination has created by implementing a Supplemental Interim Remediation Action Plan ("SIRAP") that calls for excavating and removing soil from discrete areas of the site, covering and grading the surface of portions of the site, and creating and enhancing wetlands on approximately 11.89 acres in the southwest corner of the site. CUE VI has been ordered by the Regional Water Quality Control Board ("RWQCB") to cleanup the site, and directed by the Board to implement the SIRAP to comply with the order. CUE VI also has been ordered by the City of Eureka to abate the nuisance created by the contaminated condition of the site. Toward this end, the City adopted a resolution by which it issued a nuisance abatement order requiring CUE VI to implement the SIRAP and a coastal development permit ("CDP") authorizing the activities necessary to implement that order.

Three appeals to the Commission have been filed, contending that the CDP does not comply with certain provisions of the City's certified local coastal program ("LCP").

None of these appeals raises a substantial issue. As the City found, the CDP conforms to the LCP, and that is a sound basis for determining the appeals do not raise a substantial issue. There are, though, more fundamental reasons no substantial issue exists here: Two provisions of the Coastal Act govern this matter and effectively supersede the issues raised by appellants.

The Coastal Act preserves the City's power to declare and abate nuisances and establishes that "[n]o provision of the [Act] is a limitation . . . on the power of any city . . . to declare, prohibit, and abate nuisances." Pub. Resources Code § 30005. Exercising its nuisance abatement power, the City ordered and authorized the Balloon Track Cleanup Project. Appellants, thus, cannot invoke a provision of the Coastal Act, such as the provision authorizing appeals of CDPs or calling for CDPs to conform to LCPs, and contend it somehow operates as "a limitation" on the City's decision ordering and approving the project to abate a nuisance.

The Coastal Act also recognizes that "[t]he State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality," and prohibits the Coastal Commission from "modify[ing], adopt[ing] conditions, or tak[ing] any action in conflict with any determination by

BRISCOE IVESTER & BAZEL LLP December 4, 2009 Page 3

the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality . . . ." Pub. Resources Code § 30412(b). The RWQCB ordered CUE VI to "cleanup and abate the discharges and threatened discharges" from the site to protect water quality and approved CUE VI's implementation of the SIRAP to comply with the CAO. Because each of these actions constitute a "determination by the [RWQCB] in matters relating to water quality" and the project simply implements the RWQCB's determination on the SIRAP, section 30412 effectively precludes the Commission from modifying the project, adopting conditions for the project, or taking any action in conflict with the RWQCB's determination on the project.

Because sections 30005 and 30412(b) govern consideration of the project under the Coastal Act and override the contentions of appellants predicated on other provisions of the Act, their appeals do not raise a substantial issue.

#### DISCUSSION

#### I. PROJECT DESCRIPTION

The project site comprises approximately 43 acres located in the City of Eureka, California. It is separated from Humboldt Bay by West Waterfront Drive and other properties to the west and north.

The site, long used as a railroad yard, became contaminated by various substances, including petroleum-related contaminants such as Bunker C oil, diesel, and gasoline, metals such as arsenic, copper, lead, and zinc, and other substances such as dioxin. Many studies have been conducted to determine the extent of contamination present in soil and groundwater at the site.

The RWQCB issued Cleanup and Abatement Order No. R1-2001-26 ("CAO") in 2001 to Union Pacific Railroad, then owner of the site, requiring it to develop and implement a cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. CUE VI later acquired the site from Union Pacific, developed the SIRAP to comply with the CAO, and submitted it to the RWQCB. The RWQCB reviewed the SIRAP and, on June 18, 2009, concurred with it and ordered that it be implemented. At the behest of one of the appellants here, in August 2009, the RWQCB again reviewed the SIRAP, this time with a 30-day public comment period. The RWQCB completed its review in November 2009 and announced that, having considered all of the comments, it "continues to concur with the SIRAP." (A copy of the RWQCB's Response to Public Review Comments on the Supplemental Remedial Action Plan, Southern Pacific Transportation Co. Site, 736 Broadway, Eureka, CA (Nov. 2009) and accompanying Fact Sheet are enclosed.)

The City of Eureka also declared the contaminated conditions of the site to be a nuisance and ordered that it be abated by implementation of the SIRAP. On November 3, 2009, the City issued Resolution 2009-51 (a copy of which is enclosed) in which it (1) described the conditions of the site, including contamination, overgrown vegetation creating a fire threat, and scattered trash and rubbish, (2) observed that the RWQCB had issued the CAO and approved the SIRAP to cleanup and abate a "condition of pollution or nuisance," (3) declared "[t]he conditions on the site, including the soils contaminated with metals, debris, and other refuse, are a threat to the public welfare and have created and continue to threaten to create a public nuisance" under the Eureka Municipal Code, (4) ordered CUE VI "to abate the nuisance by implementing the [SIRAP] approved by the RWQCB under its CAO," and (5) issued a CDP for the activities implementing the SIRAP. On November 12, 2009, the City followed up its action with a letter (a copy of which is enclosed) again notifying CUE VI that conditions on the site had been declared a nuisance and ordering CUE VI to abate the nuisance.

The overall purpose of the project, thus, is to contain, stabilize, and/or remove hazardous or toxic waste materials on the site in accordance with the SIRAP and CAO to meet federal and state environmental cleanup and water quality standards and abate the nuisance created by contaminated conditions on the site in accordance with the City's resolution.

The project will proceed in three phases. The first phase will entail the removal of debris piles, remnant railroad features, and concrete foundations. The debris piles include metal, old railroad ties, and concrete. An old railroad turntable will be removed, and the resulting pit backfilled with clean fill material. The remnants of a 650,000-gallon aboveground metal storage tank will be removed and properly recycled or disposed. The concrete foundations will be removed and properly disposed or recycled.

The second phase will entail excavation of soil from several areas identified in the SIRAP. Excavation will occur in upland areas, wetlands, wetland ditches, and a portion of Clark Slough. Excavation within Clark Slough will require the placement of a cofferdam upstream and downstream of the work activity. If additional contamination is discovered during site work, it will be evaluated by the RWQCB and, if appropriate, removed. Once excavation of soil is complete, excavated pits will be backfilled with clean fill material.

The third phase of the remediation plan will entail covering specified portions of the site and grading the site. The goal of the grading and cover placement is to alter the flow of storm water on the site to promote natural infiltration, eliminate storm water from leaving the site, increase the ability of the site to retain water in shallow soils (akin to a sponge soaking up water in the wet season and drying out in the dry season), and provide protection to human health and the environment though the elimination of potential exposure pathways.

Implementing the SIRAP will entail filling about 5.54 acres of non-tidal wetlands on the site (as delineated in keeping with the Commission's guidance under the Coastal Act) and causing temporary impacts to about 0.47 acre of non-tidal wetlands and 1.06 acre of Clark Slough, a muted-tidal wetland. These wetland impacts will be mitigated by restoring, enhancing, and preserving about 8.89 acres of muted-tidal wetlands on an 11.89-acre portion of the site.

#### II. APPEALS

Three appeals have been filed. On November 17, 2009, Commissioners Stone and Mirkarimi appealed. That same day, three organizations (Humboldt Baykeeper, Environmental Protection Center, and Northcoast Environmental Center) also appealed. On November 19, 2009, an individual, Ralph Faust, also appealed.

In its report of November 20, 2009, to the Commission, the staff distills the appeals to questions whether the project is in conformity with the City's certified LCP in five respects, each of which is discussed in section V below.

First, though, we discuss sections 30005 and 30412, which establish and limit the Commission's authority to act on these appeals.

# III. THE COMMISSION HAS NO AUTHORITY UNDER THE COASTAL ACT TO IMPOSE ANY LIMITION ON THE CITY'S DECISION TO ORDER AND APPROVE THE PROJECT TO ABATE A NUISANCE

Because the Commission has no authority under the Coastal Act to limit the City's decision to order and approve the project to abate a nuisance, the Commission has no authority to consider or act on appeals of the City's decision. The appeals thus cannot and do not raise a "substantial issue" for the Commission to resolve.

Mindful of the backdrop of other state and local laws governing land use and environmental protection, in enacting the Coastal Act, the California Legislature accorded various roles and authority to the Coastal Commission, local governments, ports, and other agencies, such as the RWQCBs. In doing so, the Legislature preserved the ability of cities to abate nuisances without limitation under the Coastal Act: "No provision of the [Coastal Act] is a limitation on . . . the power of any city or county . . . to declare, prohibit, and abate nuisances." Pub. Resources Code § 30005. Section 30005 establishes that when exercising its power to declare and abate nuisances, the City is not limited by any provision of the Coastal Act.

As reflected in its Resolution No. 2009-51, exercising its power to declare and abate nuisances in keeping with section 30005 of the Coastal Act, the City declared the conditions of

the Balloon Track to be a nuisance, ordered CUE VI to abate the nuisance by implementing the SIRAP approved by the RWQCB under its CAO, and issued a CDP authorizing the activities necessary to implement the SIRAP.

Under section 30005, the City need not issue a CDP under the Coastal Act to authorize actions necessary to comply with its nuisance abatement order, since even the procedural step of issuing such a CDP may fairly be regarded a "limitation" on the City's power to declare and abate nuisances. The City may nonetheless choose to employ a CDP as a procedural vehicle under its Municipal Code for exercising its nuisance abatement power without its action being limited by any Coastal Act provision. Exercising its prerogative in this regard, the City did just that, issuing a CDP (which is also a creature of the City's Municipal Code) authorizing the actions necessary to comply with the City's nuisance abatement order.

As the City ordered and authorized the Balloon Track Cleanup Project as an exercise of its nuisance abatement power, section 30005 serves to prevent any provision of the Coastal Act from operating as "a limitation" on the City's decision ordering and approving the project. Subjecting the City's decision to a Coastal Act "appeal," regardless of outcome, is itself a limitation on the City's exercise of its nuisance abatement power, contrary to section 30005's plain declaration. Even if section 30005 were somehow read to allow for an appeal to be filed and processed, it certainly precludes the Commission from taking any action on that appeal that would limit the City's decision. That being so, the appeals cannot and do not raise a substantial issue for the Commission to resolve.<sup>1</sup>

In its report of November 20, 2009, to the Commission, the staff does not mention section 30005 nor even that the City declared the contaminated condition of the site to be a nuisance, even though the City expressly stated in Resolution 2009-51 that it was "[e]xercising its power to declare and abate nuisances in keeping with section 30005 of the Coastal Act." The Commission, of course, cannot simply ignore section 30005.

<sup>&</sup>lt;sup>1</sup> It should be noted that any question of the proper application of section 30005 in this matter, however important that question may be regarded, is not itself a "substantial issue" warranting the Commission to proceed to *de novo* review of the City's decision. Section 30625 authorizes the Commission to hear an appeal unless it determines "that no substantial issue exists with respect to the grounds on which an appeal has been filed." None of the appeals mentions section 30005, let alone presents it as a ground for appeal. Rather, as discussed above, CUE VI submits that section 30005 *overrides* any provision of the Coastal Act invoked in the appeals, precludes the Commission from taking any action predicated on any provision of the Coastal Act invoked in the appeals, and thus renders any issue raised in those appeals "not substantial" within the meaning of section 30625. Because the Commission lacks authority to process or act on the appeals to limit the City's decision, it has no authority or need to conduct a *de novo* hearing on them.

# IV. EVEN IF THE COMMISSION COULD ACT ON AN APPEAL OF THE CITY'S NUISANCE ABATEMENT DECISION, THE COMMISSION CANNOT TAKE ANY ACTION ON THAT DECISION IN CONFLICT WITH THE RWQCB'S DETERMINATION ON THE SIRAP

Assuming arguendo the Commission has any authority to process and act on the City's nuisance abatement decision, the Commission nonetheless has no authority to modify, condition, or otherwise take any action in conflict with the RWQCB's determination on the CAO or the SIRAP and, thus, the appeals challenging the project to implement the SIRAP cannot and do not raise a "substantial issue" for the Commission to resolve.

In enacting the Coastal Act, the Legislature recognized that "[t]he State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality." Pub. Resources Code § 30412(b). Accordingly, the Legislature prohibited the Coastal Commission from "modify[ing], adopt[ing] conditions, or tak[ing] any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality ...." *Id*.

The RWQCB issued the CAO ordering that the land owner of the Balloon Track "cleanup and abate the discharges and threatened discharges" from the site to protect water quality. Pursuant to its authority under sections 13267 and 13304 of the California Water Code, the RWQCB obligated CUE VI to implement interim measures to comply with the CAO and address identified stormwater quality issues and concurred with the SIRAP to do just that.

Because the RWQCB's actions on the CAO and SIRAP constitute "determination[s] by the [RWQCB] in matters relating to water quality" and the project implements those determinations, section 30412 effectively precludes the modification, adoption of conditions, or taking of any other action on the project that would be "in conflict" with the RWQCB's determinations. Accordingly, even if section 30005 were somehow read to allow the Commission to act on an appeal of the City's decision to order and approve the project to abate a nuisance by implementing the SIRAP, section 30412 deprives the Commission of any authority to modify, condition, or otherwise take any action on the project in conflict with the RWQCB's determinations on the CAO and SIRAP. That being so, the appeals cannot and do not raise a substantial issue for the Commission to resolve.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> Much as was noted with respect to section 30005, any question of the proper application of section 30412 in this matter is not itself a "substantial issue" of the sort warranting the Commission to proceed to *de novo* review of the City's decision under section 30625.

In its report of November 20, 2009, to the Commission, the staff does not mention section 30412, even though the City expressly stated in Resolution 2009-51 that by ordering cleanup of the site and obligating CUE VI to implement the SIRAP, "the RWQCB has made a determination relating to water quality within the meaning of section 30412 of the Coastal Act."<sup>3</sup> The Commission, of course, cannot simply disregard section 30412.

# V. IN ANY EVENT, EVEN IF THE COMMISSION COULD ACT ON THESE APPEALS, THEY DO NOT RAISE A SUBSTANTIAL ISSUE BECAUSE THE PROJECT IS IN CONFORMITY WITH THE LCP

The Coastal Act establishes a planning and regulatory program governing land use in California's coastal zone. It generally sets forth several statewide planning and management policies (largely found in Chapter 3) and two procedural means of implementing them—planning and permitting. The Act calls on local governments to develop "local coastal programs" (consisting of "land use plans" and "implementation plans") and submit them to the Coastal Commission to review and certify their "conformity with the policies of Chapter 3." Pub. Resources Code § 30512(a)(1). Anyone "wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit." Pub. Resources Code § 30600(a). After certification of a local government's local coastal program ("LCP"), the authority to issue coastal development permits resides in the local government. The local government, or the Commission on appeal, must issue a CDP if it finds that the proposed development is "in conformity with the certified local coastal program." Pub. Resources Code § 30604(b).

As noted above, the City declared conditions on the site a nuisance and ordered CUE VI to abate the nuisance by implementing the SIRAP. While not limited by any provision of the Coastal Act in exercising its nuisance abatement power (Pub. Resources Code § 30005) and thus not required to issue a CDP under the Coastal Act for the activities necessary to implement its nuisance abatement order, the City nonetheless exercised its prerogative under its Municipal Code to use a CDP to authorize the project. In doing so, the City considered the project's conformity with the many policies set forth in its certified LCP and found the project in conformity with the LCP. The basis for the City's finding in this regard is presented in the

<sup>&</sup>lt;sup>3</sup> In discussing another point (i.e., the CDP's conformity with the LCP provision regarding least environmentally damaging feasible alternatives), the staff distinguishes between the RWQCB's issuance of its CAO and its concurrence with the SIRAP and notes that the RWQCB does not "dictate" precise remediation measures to responsible parties. Whatever relevance this distinction has in other contexts, it has no bearing on the application of section 30412 because both the RWQCB's issuance of the CAO and its concurrence with the SIRAP to comply with the CAO are "determination[s] by the [RWQCB] in matters relating to water quality" that the Commission cannot modify, condition, or otherwise disturb.

City's administrative record, including its Resolution 2009-51, the supporting staff report, the Marina Center FEIR, and my letter of November 3, 2009, to the City.

In its November 20, 2009, report, the staff proposes five potential substantial issues, each of which we address in turn.

# a. The Project Is In Conformity With The LCP Provision Prescribing Uses In Wetlands

The City's LCP generally restricts the uses allowed in wetlands to those specified in General Plan Policies 6.A.9 and 6.A.14 and Coastal Zoning Regulation ("CZR") sections 10-5.2942.6(a) and 10-5.2942.10. Appellants contend that the project is not in conformity with those provisions.

For at least two reasons, the project complies with the LCP's wetland provisions. First, the LCP establishes various land use designations, including those in the foregoing sections, to guide the City in determining which types of uses, e.g., industrial, commercial, or residential uses, to allow in various areas. Resolution 2009-51, as the City explained in the supporting staff report, orders and approves interim measures to remediate contamination in order to abate a nuisance at the site and does *not* establish a use (for most of the site) and, accordingly, there is no need or occasion to apply provisions of the LCP pertaining to such a use.

In its report of November 20, 2009, to the Commission, the staff says nothing of the City's explanation and instead simply supposes remediation of contamination to be a "use" of land under the LCP, finds no such use listed among those permitted under the foregoing sections, and concludes that remediation of contamination is not in conformity with the LCP. Actually, no such "use" is mentioned *anywhere* in the LCP. The LCP establishes various zones, e.g., commercial and residential, and prescribes the uses permitted in each such zone; remediation of contamination is not allowed anywhere under the LCP? Of course not. Remediation of contamination is not allowed anywhere under the LCP? Of course not. Remediation is an activity sometimes required on land that has been contaminated; it is not a "use" in the same sense as housing, commercial offices, or the like. Remediation of contamination is not enumerated as a permitted use because the LCP (and the Coastal Act) do not treat such activities as a "use" at all.

Second, the one aspect of the project that involves an end use is the establishment of a wetland reserve on a portion of the site. As the wetland reserve entails restoring wetlands on a former tidal marsh area, that aspect of the project is in conformity with General Plan policy 6.A.14 and CZR section 10-5.2942.10, which explicitly permit "[r]estoration projects" in wetlands.

In its report of November 20, 2009, the staff questions whether the Balloon Track Cleanup Project is for "restoration purposes," failing to recognize that the only component of the project involving an end use is the establishment of the wetland reserve and failing even to consider whether establishment of that reserve is a "restoration project" within the meaning of the LCP. The staff acknowledges that "[r]estoration' comprises actions that result in returning an article 'back to a former position or condition,' especially to 'an unimpaired or improved condition."" The staff fails, though, to discuss whether establishment of the wetland preserve will result in these effects. In fact, establishment of the preserve will do just that, returning a former tidal marsh area back to tidal wetlands-the epitome of a restoration project. Instead, without explanation, the staff disregards the wetland reserve's effects, shifts to its purpose, and asserts that "the primary impetus for the restorative actions being undertaken must be to reestablish and possibly enhance former habitat conditions." Establishment of the wetland reserve actually aims to do just that. The staff further asserts, though, that the impetus must not be "to compensate for habitat areas being simultaneously converted or lost to another use." Why a project that intentionally and actually restores wetlands should be regarded as anything other than a "restoration project" depending on the motivation of those restoring the wetlands, the staff does not say.<sup>4</sup>

Establishment of the wetland reserve to restore wetlands on a portion of the site is in conformity with the LCP's authorization of "[r]estoration projects" in wetlands.

# b. The Project Is In Conformity With The LCP Provision Limiting Uses In Wetlands To The Least Environmentally Damaging Feasible Alternative

The City's LCP provides that diking, filling, or dredging of coastal waters and wetlands is permitted only if there is no feasible less environmentally damaging alterative. General Plan

<sup>&</sup>lt;sup>4</sup> The staff adds that the court clarified in *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493 that filling wetlands and mitigating the impact by creating wetlands in other locations is not a legitimate form of "restoration purposes" under section 30233 of the Coastal Act. For at least two reasons, this assertion fails. First, the pertinent standard for issuance of the CDP is not section 30233 of the Coastal Act, but rather the City's certified LCP, which expressly permits "[r]estoration projects" and says nothing of "restoration purposes." Second, *Bolsa Chica* says nothing to support the staff's assertion. In that case, the court considered certification of an LCP, not issuance of a CDP, and held that neither section 30411(b) nor section 30233 authorize development of residential projects in wetlands. In doing so, the court quoted section 30233 in its entirety, but made no further mention of its "restoration purposes" provision. The proposed project in that case included mitigation of wetland impacts, but no party broached the issue whether that mitigation conformed to the "restoration purposes" permitted under section 30233 and the court neither discussed nor decided any such issue.

Policy 6.A.9; CZR § 10-4.2942.6. Appellants contend that the project is not in conformity with these provisions.

The purpose of the CDP is to remediate contamination and abate the nuisance on the site. The CDP accomplishes this purpose by implementing actions described in the SIRAP which generally entail: (1) removing the most contaminated soils; (2) covering the remaining contaminated surface soils with a layer of clean material to eliminate exposure pathways to wildlife, people, and stormwater; and (3) grading the surface soils to retain stormwater on the site.

There is no feasible, less environmentally damaging alternative to accomplish this purpose that would avoid impacts to wetlands on the site. Site remediation is necessary to protect Humboldt Bay and its aquatic ecosystem. Contamination of surface soil is present across the site, and so remediation cannot be accomplished without impacting the wetlands present across the site. Dioxin, for example, has been found at every location tested, and is likely present in all wetlands on the site. To cleanup the site, the contamination must be dug out or covered over, either of which would destroy existing wetlands. Moreover, controlling stormwater on the site requires a comprehensive grading plan, so even if particular spots lacked contamination requiring the soil to be removed or covered, they would nonetheless need to be graded in order to control stormwater. The CDP, thus, is in conformity with General Plan Policy 6.A.9 and CZR section 10-4.2942.6.

Appellants posit five possible options, none of which is a feasible less environmentally damaging alternative to accomplish the purpose of the project. Each is discussed in turn.

(a) Appellants suggest installing perimeter berms to impound contaminated surface and groundwater flows. This approach would not solve the problem that the RWQCB identified, i.e., elevated levels of copper in surface waters. Impounding surface water flows would create onsite ponds, which would be subject to water quality standards, including standards for copper. Onsite surface waters contain enough copper so that standards would be exceeded in any such onsite ponds, which would require additional remedial action to eliminate the ponds. The only reasonable way of resolving the copper issue is to fill the site to increase its water-retention capacity and eliminate ponds and wetlands. Filling the property allows rainwater to sink into the shallow soils, where it is filtered and retained.

(b) Appellants suggest grading the site to drain to onsite retention/detention basins. This approach is merely a variation of alternative (a), and it would fail for the same reasons.

(c) Appellants suggest controlling the entry of stormwater into hazardous contaminated areas. There is no way to control the entry of stormwater into contaminated areas. Rain falls on all areas of the site. All areas of the site are expected to contain copper.

(d) Appellants suggest in-situ remedial treatment. There is no in-situ treatment that can eliminate copper or that can reasonably degrade other onsite contaminants such as dioxin.

(e) Appellants suggest removing the underlying contaminated materials and restoring wetlands in place. This approach is not an "alternative" to dredging the wetlands, since it entails dredging and effectively removing the wetlands. Once the wetlands are removed, the only remaining question would be how to mitigate that impact—whether by restoring wetlands in the same locations scattered across the site or in some other fashion, such as the wetland reserve as proposed in the project. While CUE VI would gladly discuss the comparative merits of its proposed mitigation and that suggested by appellants, such a discussion has no bearing on identifying a feasible less environmentally damaging alternative to dredging the wetlands.

#### c. The Project Is In Conformity With The LCP ESHA Provision

The City's LCP also protects ESHA against "significant disruption of habitat values" and allows "only uses dependent on such resources, including restoration and enhancement projects," within such areas. General Plan Policy 6.A.7; CZR § 10-5.2942.4. Appellants contend that the project is not in conformity with these provisions.

At the outset, it should be recognized that with respect to ESHA that also are wetlands, the more specific provisions of the LCP governing wetlands control the more general provisions governing ESHA. See Bolsa Chica Land Trust v. Superior Court (1999) 71 Cal.App.4th 493, 514-517. As discussed above, the CDP is in conformity with those more specific and controlling provisions.

In any event, to the extent the LCP's ESHA provisions apply here, for at least three reasons, the project complies with those provisions. First, as explained above, the CDP merely approves interim measures to remediate contamination and abate a nuisance at the site and, for most of the site, does not establish a "use" at all. In this respect, the project simply does not implicate, and thus is in conformity with, the use limitations of the ESHA provisions of the LCP.

Second, as also explained above, the one aspect of the project that involves an end use is the establishment of a wetland reserve on a portion of the site. As the wetland reserve entails restoring and enhancing wetlands, it is in conformity with CZR section 10-5.2942.4, which permits uses dependent on such resources, including particularly "restoration and enhancement projects."

Third, the project protects against significant disruption of habitat values in a number of ways. At the outset, it should be observed that the wetlands on the site, regardless of whether they are labeled "ESHA," have "limited" habitat value. Marina Center Mixed Use Development Project Draft Environmental Impact Report ("DEIR") IV.D-11 to IV.D-12. Owing to the limited habitat value of those wetlands, their filling does not result in a "significant disruption of habitat values" within the meaning of the LCP. As explained in the DEIR, "[t]he filling of wetlands may generally be considered potentially significant, but here, given that the existing wetlands provide few to none of the functions and values commonly associated with wetlands, the filling of those wetlands correspondingly would have little or no impact on wetland functions and values." DEIR IV.D-22. The project includes measures to further protect against any significant disruption of habitat values by avoiding and minimizing impacts to those wetlands on the site with a modicum of habitat value and limiting adverse effects to the maximum extent practicable to those on the site with little or no habitat value. Moreover, even these effects are offset by creating and enhancing wetlands on the site, so that in the end the site will contain wetlands of equal or greater size and of higher value than the wetlands currently found there. As explained in the DEIR, "even if the filling [of wetlands on the site] were considered to have a significant effect, the project includes measures that would offset that effect. The characteristics of the project (including the restoration component) along with the recommended mitigation measures, would thus render this impact less-than-significant." DEIR IV.D-22. The project thus is in conformity with the LCP's call to protect ESHA against significant disruption of habitat values.

In its report of November 20, 2009, to the Commission, the staff does not mention or discuss the project's conformity with CZR section 10-5.2942.4's "use" provision, which permits "restoration and enhancement projects" in ESHA. Nor does the staff mention or discuss the limited, indeed negative, habitat value of the ESHA on site and the correspondingly limited disruption of habitat value, or actual improvement of habitat value, resulting from the project.<sup>5</sup> Instead, without explanation or reference to evidence, the staff asserts that "management of polluted stormwater does not functional necessitate [sic], *per se*, the grading and filling of wetlands to be accomplished" and that "[t]he development has not been sited and designed to prevent impacts which would significantly degrade the affected wetland ESHA and to be compatible with the continuance of the affected wetland ESHA." It bears noting that the purpose of the project is not limited to management of polluted stormwater as the staff suggests and thus its consideration of alternatives to achieve that purpose is fundamentally flawed. The project

<sup>&</sup>lt;sup>5</sup> The fact is that these wetlands, regardless of whether labeled "ESHA," are contaminated with toxic substances that are accused of threatening wildlife. Their habitat "value" is not just "limited," but rather is negative to the extent it includes exposing wildlife to contaminants. The project, by remediating the contamination, benefits habitat values and, in this sense, restores the areas designated as ESHA to a nontoxic condition.

also aims to remediate contamination of surface soils and abate the nuisance conditions on the site by, in part, removing some materials and covering portions of the site in order to separate wildlife and people from any remaining contamination. In any event, based on its unsubstantiated assertions, the staff comes to a non sequitur: "Thus, the public record for the project lacks substantive factual and legal support for the City's decision to approve the development as being consistent with the requirements of the certified LCP that only resource dependent uses be allowed within ESHAs and that development adjacent to such environmentally sensitive areas be designed and sited to prevent to prevent [sic] impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas." Contrary to the staff's assertion, the public record does provide substantive factual and legal support of the City's decision on this point—in its resolution, supporting findings and staff report, and the FEIR.

# d. The Project Is In Conformity With The LCP Provision Calling For Maintenance Of Biological Productivity And Water Quality Of Waters and Wetlands

The City's LCP includes a provision, corresponding to section 30231 of the Coastal Act, declaring:

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

#### Eureka General Plan Policy 6.A.3, p. 6-1.

As the City explained in its resolution, supporting findings and staff report, and FEIR, the project plainly furthers this policy inasmuch as it is designed to remediate contamination at the site, control the quantity and quality of stormwater runoff and minimize its adverse effects, and maintain natural vegetation buffers to protect riparian habitat, all to thereby maintain and restore the quality of coastal waters and wetlands for the benefit of wildlife and the protection of human health.

The staff asserts that although the project includes "stockpile sampling protocols and procedures" for the reuse of excavated materials onsite, excavating materials for the wetland reserve "before full characterization of the site . . . could result in exposing the aquatic resources within the slough and, in turn, Humboldt Bay, to toxics." Why the staff discounts the stockpile sampling protocols and procedures for reuse of materials onsite, which the RWQCB approved, and instead touts so-called "full characterization" (whatever the staff means by that), which the RWQCB did not find necessary, is not explained. There is good reason, we submit, that the Legislature entrusted such water quality matters to the Regional Board and not the Commission. Pub. Resources Code § 30412. Based on its speculation that, notwithstanding the RWQCB's approved measures, excavation "could" expose Clark Slough to toxics, the staff comes to another non sequitur—that the public record lacks substantive factual and legal support for the City's decision that the project is in conformity with its LCP.

The staff further asserts that the record does not include analysis of contributions, if any, of contaminants from up-gradient sources and concludes thus that "maintenance of biological productivity and water quality of lower Clark Slough has not been assured." In keeping with the LCP, the project maintains and enhances the biological productivity and water quality of Clark Sough as described above. The remediation and wetland restoration project does all that can be done on the site in this regard. The LCP says nothing about "assuring" maintenance of water quality, nor of addressing the effects of possible future activities by others. That others may conduct activities on other sites detrimental to Clark Slough hardly renders this project inconsistent with the LCP.

The project entirely conforms to, and substantially furthers, the LCP's policy to maintain the biological productivity and quality of coastal waters and wetlands.

# e. Even If The Project Presents A Conflict With LCP Policies, That Conflict Is Properly Resolved Under The LCP By Recognition That On Balance Approval Of The Project Is More Protective Of Significant Coastal Resources

Even if it is assumed that the Commission has authority to act on these appeals (notwithstanding sections 30005 and 30412) and that the project presents a conflict with the policies of the LCP (notwithstanding the foregoing discussion), the CDP is in conformity with the LCP because that conflict is resolved by recognition that on balance approval of the CDP is more protective of significant coastal resources than denial of the CDP.

The Legislature anticipated situations where strict adherence to any one section of the Coastal Act might impede attainment of the Act's broader goals and provided a mechanism for local governments and the Commission to resolve such conflicts. The Legislature declared that

"in carrying out the provisions of this [Act] such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources." Pub. Resources Code § 30007.5. Offering an illustration pertinent here, the Legislature added that "[i]n this context . . . broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies." *Id.* Accordingly, the Legislature authorized local governments and the Commission to resolve such conflicts through this balancing process: "Where the commission or any local government in implementing the provisions of this [Act] identifies a conflict between the policies of [Chapter 3], Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts." Pub. Resources Code § 30200(b).

The City included a corresponding provision in its LCP providing that "[i]f any conflict occurs between one or more provisions of this article, such conflict shall be resolved in a manner which on balance is the most protective of significant coastal resources." CZR § 10-5.2904.<sup>6</sup>

As explained above, approval of the CDP for the project would further Eureka General Plan Policy 6.A.3 by remediating contamination at the site, controlling the quantity and quality of stormwater runoff and minimizing its adverse effects, and maintaining natural vegetation buffers to protect riparian habitat, thereby maintaining and restoring the quality of coastal waters and wetlands for the benefit of wildlife and the protection of human health. Denial of the CDP,

<sup>6</sup> Even though the Coastal Act expressly states that "any local government" may employ balancing to resolve identified conflicts of Coastal Act policies and the City's LCP echoes this authorization, stating that conflicts between LCP polices shall be resolved by balancing, the staff contends in its November 20, 2009, report that the City cannot resolve conflicts by balancing, rather only the Commission can. Apart from conflicting with the plain language of both the Coastal Act and LCP, this strained interpretation would needlessly deprive local governments of the very means identified by the Legislature for resolving policy conflicts that inevitably arise from time to time. Why the Legislature would intend such an odd, counterproductive result the staff does not venture to explain. Having certified that the City's LCP, including its balancing provision, is in conformity with the Coastal Act under section 30512, the Commission has no basis now for repudiating that provision. Nor can the Commission render that provision meaningless by "interpreting" it away, as the staff suggests, by reading it not to authorize resolution of identified conflicts between LCP policies, but rather only conflicts between the policies of the LCP's implementation program, i.e., the CZR, but not the rest of the LCP. Why the staff would suppose any drafter of the LCP would intend such a bizarre result is not explained. In any event, it is hardly surprising that a conflict-resolution provision appears in the implementation program of the LCP, since it is one means of implementing the LCP. That placement of the provision hardly suggests an intention that it is to apply only to provisions of the implementation program and not the entirety of the LCP.

moreover, would *conflict* with the policy by leaving contamination and the nuisance it creates in place and thus failing to maintain and, where feasible, restore the biological productivity and quality of waters and wetlands for the benefit of wildlife and protection of human health.

To the extent thus that approval of the project may be regarded to conflict with the LCP policies regarding wetlands and ESHA, but denial of the project would conflict with the LCP policy calling for maintaining and restoring the quality of waters and wetlands for protection of wildlife and human health, that conflict can, and should, be resolved pursuant to EMC section 156.004 and sections 30007.5 and 30200(b) of the Coastal Act by determining that on balance it is more protective of significant coastal resources to remediate the site contamination while mitigating resulting impacts on wetlands as proposed in the project, rather than leave the low value wetlands and the contamination in place.

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

The Commission's explanation of its decision is instructive and so is presented here at length:

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that there exists a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that an amendment is consistent with one policy and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to deny the amendment based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

In this case . . . the proposed amendment is inconsistent with the wetland protection policies of the Coastal Act because it is not an allowable wetland fill activity as identified by Section 30233(a)(1-8). However, to deny the project based on this inconsistency with Section 30233(a)(1-8) would result in significant adverse impacts inconsistent with Coastal Act water quality and sensitive resource policies, specifically Sections 30230, 30231, and 30240. The soil and groundwater remediation activities proposed under this LCP amendment will prevent adverse impacts to surface and ground water quality and sensitive coastal resources due to contamination. As such the project is consistent with Section 30230, 30231 and 30240 of the Coastal Act. Without the project, significant adverse impacts on water quality and sensitive coastal resources will occur.

If the Commission were to deny the amendment based on its nonconformity to the wetland fill provisions of Section 30233, the water quality would be threatened and sensitive resources would suffer worsened health and loss of native habitat, including the potential loss of a previously thought to be extinct plant species, thus resulting in adverse impacts on these resources and directly contradicting Sections 30230, 30231, and 30240, which mandate protection of said resources. Therefore, the no project alternative would have unavoidable significant adverse impacts on coastal resources. The second alternative presented does not eliminate the need for wetland fill that is not an allowable use, and in addition, this alternative is not feasible or environmentally preferable.

The proposed amendment involves fill in degraded wetland areas that have been created as a result of past disturbance by the operation and closure of an oil waste disposal facility, nevertheless, fill in a wetland for the purpose of the proposed amendment to include residential development is inconsistent with the wetland policies of the Coastal Act. However, this amendment will preserve water quality, protect a previously thought to be extinct plant community and restore highly degraded sensitive habitats. Much of the sensitive habitat onsite is dying back and appears generally unhealthy. Because of the contaminated condition of the site, Dr. Allen [of the Commission staff] does not believe that over time this site would regenerate to a healthy due habitat representative of the area. The existence of very contaminated materials just beneath the surface prevents deeprooted plants from growing to maturity over most of the site, and this will not allow this site to regenerate naturally without soil remediation. The amendment will also serve to enhance habitat values of the wetland created offsite. Therefore, the Commission finds that the proposed amendment creates a conflict among Coastal Act policies.

> After establishing a conflict among Coastal Act policies, Section 30007.5 mandates that the Commission resolve the conflict in a manner that is on balance most protective of coastal resources. In this case the proposed amendment would result in the fill of approximately 4.2 acres of wetland. The critical factors in the Commission's assessment of the conflict resolution are the following: that the soils onsite are highly contaminated and pose a threat to human health and the environment; soil remediation is required to eliminate these threats; the soil remediation will impact 4.2 acres of wetlands that have formed due to past industrial uses that modified the site; and following the soil remediation, these areas will no longer exhibit the conditions that are required to support wetland habitat. In addition, approval of the proposed project, as opposed to denial, will result in more healthy functional wetland habitat areas through relocation and restoration offsite in more suitable locations, which will in turn benefit sensitive wildlife species. The amendment incorporating the suggested modifications will result in the creation of 4:1 wetland habitat as mitigation for impacted wetland area which will be located offsite at a more suitable location creating a more diverse and larger wetland habitat than those existing onsite and will also serve to enhance surrounding resources.

Therefore, the Commission concludes that impacts on coastal resources that would result from denial of the amendment would be more significant that the impact on wetland habitat allowed under the amendment. Therefore, the Commission finds that approving the amendment is, on balance, most protective of coastal resources and is consistent with Section 30007.5 of the Coastal Act.

California Coastal Commission, Revised Findings on City of Oxnard LCP Amendment No. OXN-MAJ-1-00, North Shore at Mandalay Bay (May 22, 2002; approved June 10, 2002), pp. 54-55.

To the extent that resolution of a policy conflict by balancing is necessary, the Balloon Track Cleanup Project presents an even more compelling case than did City of Oxnard matter. The project does not entail residential or other such uses, but rather only implementation of the SIRAP to remediate site's contamination, resulting from years of use of the site as a railroad yard, to benefit human health, wildlife, and the environment. Without remediation, the existing degraded conditions will persist. Remediation of the site contamination entails filling approximately 5.54 acres of wetlands as delineated under the Coastal Act. To the extent that implementing this remediation is considered not in conformity with LCP policies regarding wetlands and ESHA, but failing to implement the remediation conflicts with other LCP policies regarding maintaining and restoring the quality of waters and wetlands for the protection of wildlife and human health, this policy conflict can be resolved by determining that on balance it

is more protective of significant coastal resources to remediate the site contamination while mitigating resulting impacts on wetlands as proposed in the project, rather than leave the low value wetlands—and the contamination—in place.

The Commission has employed balancing under section 30007.5 to resolve policy conflicts in other analogous circumstances, as illustrated by the following examples.

- CDP No. 1-08-017 (Wiyot Tribe) (Staff report June 27, 2008; approved July 11, 2008), balancing conflict between policies on protecting wetlands and policies on protecting water quality with respect to remediation of site contamination.
- LCP Amendment No. 2-06B (City of San Diego, Creekside Villas) (Staff Report June 5, 2007; approved Jan. 9, 2008), balancing conflict between policies on protecting ESHA and policies on concentrating development with respect to residential uses.
- Consistency Certification No. CC-008-07 (North County Transit District, San Diego County) (Approved June 15, 2007), balancing conflict between policies on protecting wetlands and policies on protecting water quality and air quality, promoting energy conservation, maximizing public access, and reducing vehicle miles traveled with respect to extension of a railroad line.
- CDP No. 6-03-098 (Pardee Homes) (Staff Report Sept. 27, 2006; approved Oct. 11, 2006; Staff Report on Revised Findings Mar. 28, 2007; approved Apr. 10, 2007), balancing conflict between policies on protecting ESHA and policies on concentrating development with respect to residential uses.
- LRDP Amendment No. 1-06 and CDP No. 4-06-097 (U.C. at Santa Barbara) (Staff Report Nov. 3, 2006; approved Nov. 17, 2006), balancing conflict between policies on protecting wetlands and ESHA and policies on protecting water quality, maximizing public access, and concentrating development with respect to university residential uses.
- CDP No. 1-06-033 (Tilch) (Staff Report Sept. 22, 2006; approved Oct. 13, 2006), balancing conflict between policies on protecting wetlands and policies on protecting water quality.
- Consistency Certification No. CC-004-05 (North County Transit District, San Diego County) (Approved Nov. 16, 2005), balancing conflict between policies on protecting wetlands and ESHA and policies on protecting water quality and air quality, promoting energy conservation, and reducing vehicle miles traveled with respect to adding a second railroad line within an existing right of way.
- LCP Amendment No. 3-03B (City of San Diego, Crescent Heights) (Staff Report Feb. 16, 2005; approved Mar. 16, 2005), balancing conflict between policies on protecting ESHA and policies on concentrating development with respect to residential uses.

- LCP Amendment No. 1-03 (City of Dana Point) (Staff Report Dec. 20, 2003; approved Jan 15, 2004), in a context "close to the point of presenting a conflict," using a "balancing approach" to reach a "trade off" between policies on protecting ESHA and policies on maximizing public access, protecting water quality, and concentrating development with respect to residential and commercial uses.
- LCP Amendment No. 3-01 (San Luis Obispo) (Staff Report July 24, 2002; approved Aug. 8, 2002), balancing conflict between policies on protecting ESHA and policies on protecting water quality with respect to land use designation to accommodate future wastewater treatment facility.
- Appeal No. A5-IRC-99-301 of CDP No. 97-0152 (Irvine Community Development District) (Staff Report Feb. 22, 2001; approved Mar. 12, 2001), balancing conflict between policies on protecting wetlands and ESHA and policies on protecting water quality with respect to mass grading and installation of backbone infrastructure for future residential and recreational development.
- CDP 6-98-127 (City of San Diego, State Route 56) (Staff Report Apr. 25, 2000; approved May 10, 2000), balancing conflict between policies on protecting wetlands and policies on protecting water quality with respect to construction of segment of freeway.
- CDP No. 1-98-103 (O'Neil) (Approved July 16, 1999), balancing conflict between policies on protecting wetlands and policies on protecting water quality with respect to construction of a cattle barn.

In considering the project and any policy conflict, sections 30512.2 and 30001.5 of the Coastal Act are instructive as well. *See Douda v. Cal. Coastal Comm.* (2008) 159 Cal.App.4th 1181. Section 30512.2 provides:

The following provisions shall apply to the commission's decision to certify or refuse certification of a land use plan pursuant to Section 30512:

- (a) The commission's review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.
- (b) The commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) *only to the extent necessary to achieve the basic state goals* specified in Section 30001.5.

Emphasis added. As set forth in section 30001.5, those goals are:

- (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- (b) Assure orderly, balanced utilization and conservation or coastal zone resources taking into account the social and economic needs of the people of the state.
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound conservation principles and constitutionally protected rights of private property owners.
- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

Again, the project would not impede these goals. Indeed, it would help conserve, protect, maintain, enhance, and restore the coastal environment and coastal resources.

The CDP is in conformity with the LCP because any policy conflict presented by the CDP is resolved by recognition that on balance approval of the CDP is more protective of significant coastal resources than denial of the CDP. The appeals thus do not raise a substantial issue requiring resolution by the Commission.

#### CONCLUSION

The Balloon Track Cleanup Project remediates contamination on the site in keeping with measures required and approved by the RWQCB in order to protect water quality and further required by the City to abate the nuisance created by the contamination. As the Coastal Act explicitly preserves the authority of the RWQCB and the City to take these actions and establishes that the Coastal Act does not limit their exercise of their respective authorities, the project, which implements the actions of the RWQCB and the City, is in conformity with the Coastal Act. Moreover, the Coastal Act withholds from the Commission any authority to modify, condition, or otherwise take action in conflict with the RWQCB's determination on the SIRAP or limit the City's decision to order and approve implementation of the SIRAP.

The project, furthermore, is in conformity with the City's certified LCP. To the extent that approval of the project would conflict with the LCP's policies protecting wetlands or ESHA,

but denial of the project would conflict with other LCP policies calling for maintaining and restoring the quality of waters and wetlands for protection of human health, that conflict is resolved—in conformity with the LCP and Coastal Act—by recognizing that on balance it is more protective of significant coastal resources to remediate the site contamination while mitigating resulting impacts on wetlands as proposed in the project, rather than leave the low value wetlands and the contamination in place.

For all these reasons, the appeals do not raise a "substantial issue" for the Commission to resolve, and the Commission has no authority or need to conduct a *de novo* hearing on those appeals.

Sincerely yours,

BRISCOE IVESTER & BAZEL LLP

David M. Ivester

DMI/DMI

Enclosures

cc: James Baskin, AICP, Coastal Planner Hope Schmeltzer, Chief Counsel David Tyson, City Manager

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# California Regional Water Quality Control Board North Coast Region

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Arnold Schwarzenegger Governor

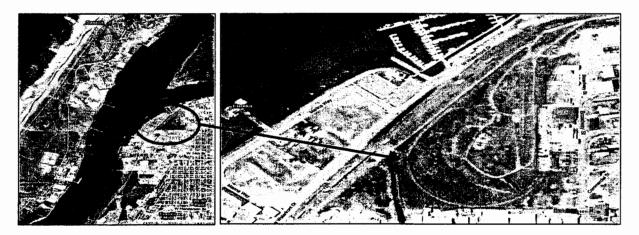
Response to Public Review Comments on the Supplemental Interim Remedial Action Plan Southern Pacific Transportation Co. Site 736 Broadway, Eureka, CA NOVEMBER 2009

# Site Background

In June 2009, the North Coast Regional Water Quality Control Board (Regional Water Board) received, reviewed, and conditionally concurred with a Supplemental Interim Remedial Action Plan (SIRAP) prepared by Environmental Resources Management on behalf of CUE VI for the Southern Pacific Transportation Co. Site in Eureka (Case Number 1NHU064). Both the SIRAP and the Regional Water Board letter of concurrence were posted on the publicly-available State Water Board website, Geotracker, at:

https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155.

The Southern Pacific Transportation Co. Site is located at located at 736 Broadway in Eureka. The location is shown in the aerial photo below. The Site is locally referred to as the "Balloon Track."



At the request of an interested party, the Regional Water Board opened the SIRAP to public comment in mid-August 2009 for a 30-day comment period. This document and an accompanying fact sheet provide response to the comments that were received.

From the late 1800's until the mid-1980's the Southern Pacific Transportation Co. Site was used as a rail yard that included railroad car maintenance and repair, and fueling of locomotives. The Site also contained two petroleum bulk fuel collection and storage sites operated by ARCO and General Petroleum. In this document, the combined sites will be referred to as the Southern Pacific Transportation Co. (SPTC Site) or Site.

Bunker C oil was the primary fuel used for locomotives at the Site until 1954. After 1954, diesel fuel was used for locomotives. During Site operations, Bunker C oil was stored in a 650,000-gallon aboveground tank. In 1954, the top of the large Bunker C fuel tank was removed to make a secondary containment structure for two 12,700-gallon diesel fuel tanks. Fuel storage at the Site was discontinued in 1984 as rail yard operations decreased and a tank truck was used to fuel locomotives.

Groundwater and soils at the Site became contaminated with the chemical compounds used for railroad maintenance and petroleum storage.

The Regional Water Board is the regulatory agency responsible for overseeing the environmental investigations and cleanup work at the SPTC Site since 1988, and has supervised a wide variety of sampling and interim remedial actions. There have been hundreds of soil and groundwater samples collected and analyzed during site investigations. Site investigations have indicated that longchain petroleum hydrocarbons (Bunker C, diesel, motor oil, and gasoline), lead, copper, and other metals are the primary contaminants of concern. More recently, dioxins and polychlorinated biphenyls have also been found in sediments at the SPTC Site in a limited number of samples.

In May 2001, the Regional Water Board issued a Cleanup and Abatement Order (CAO No. R1-2001-26), ordering the discharger (at that time Union Pacific Railroad) to cleanup the discharges and threatened discharges from the property. The discharger submitted an Interim Redial Action Plan in December of the same year.

In July 2002, the Regional Water Board issued a Monitoring and Reporting Program for the Site (M&RP R1-2002-0082) requiring the collection, analysis, and reporting of groundwater and storm water runoff samples. Based on data gathered under the Monitoring and Reporting Program, the Regional Water Board required the Site owner to implement practices to control the stormwater runoff. Additional monitoring showed copper in stormwater runoff that was still of concern to the Regional Water Board, which then ordered the Site owner to propose additional stormwater controls. In response, the Site owner submitted a SIRAP in June 2009, which proposed:

- Removal of debris piles, concrete, and old foundations,
- Focused excavation of contaminated soil,
- Site grading to eliminated stormwater runoff, and

2

• Wetlands restoration.

If additional information about the site history and use, topography, drainage, geology, hydrogeology, prior investigations, the nature and extent of contamination (including a summary of the findings), or proposed actions is wanted please refer to the SIRAP, which can be found online at: https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155

#### Comments & Response

#### **#1** The Regional Water Board Role in the Cleanup Process Comments:

- Several commentators stated that the Regional Water Board must review all known information before remedial action is taken.
- Some commentators stated that the Regional Water Board must have complete knowledge of site contamination before any remedial measures can be approved.
- Some of the commentators suggested that by approving the SIRAP, the Regional Water Board is allowing an incomplete site cleanup.
- Several comments were related to the site cleanup process and the role of the Regional Water Board in that process.
- Some of the comments suggested that the Regional Water Board is allowing the SPTC Site owner to dictate cleanup levels and conditions.

#### Response:

Since many of the comments are related to the Regional Water Board site remediation process, the following information about the site cleanup process may be useful in providing context for the responses.

#### Regional Water Board Contaminated Site Cleanup Process

Throughout the site investigation and remediation process, the Regional Water Board must comply with:

- Applicable State and federal statutes and regulations.
- Applicable water quality control plans (known as Basin Plans) adopted by the State and Regional Water Boards. Basin Plans include beneficial uses, water quality objectives, and implementation plans.
- State Water Board and Regional Water Board policies, such as the non-degradation policy (68-16) and the policy and procedures for site investigation and cleanup (92-49).
- Relevant standards and criteria adopted by other federal and State agencies.

In general, the site cleanup process can include the following steps: 1. Site investigation - This step includes evaluating the site history, uses of chemicals, geology, hydrology, tidal influence, soil types, previous sampling, and environmental conditions to determine the nature and extent of contamination and the potential threats to human health and the environment. Soil and groundwater sampling locations and depths should consider the potential source(s) of contamination, the fate and transport properties of the contaminants (i.e., how the chemical moves through the environment), potential exposure route(s), and the human and nonhuman receptors and resources (waters of the State) that are likely to be affected. Determining where to collect samples depends on how much is known about the site, past uses of chemicals, and the behavior of the chemical in the environment. If the site history is known, sampling tends to be around the areas where chemicals were used, stored, transferred, and discharged. The information gathered during the site investigation is used to build a conceptual model of the site to understand the risk to human health and the environment, the present and future sampling needs, and the type of remedial actions that might be appropriate. The conceptual site model changes as the investigation and remediation of the site reveals additional information.

2. Interim remediation – The remediation of a contaminated site can take many years. Interim activities remove or stabilize sources of contamination thereby allowing some portion of the remediation to proceed. Interim activities can occur during the site investigation and can reduce the risk to human health and the environment while decisions about the final site cleanup are being made. Interim remedial measures can include actions such as fencing, drainage controls, topographical re-grading, removal of wastes, and excavation of contaminated soils.

3. More site investigation and more interim remediation – These steps are repeated as needed. As more is learned, more studies, investigations, and interim remedial measures are performed. The goal is to learn enough about the site to select appropriate remedial measures and to ensure that the final remediation is protective of human health and the environment.

<u>4. Feasibility study</u> – In this step, potential remedial alternatives are developed in order to prepare a cleanup plan. The feasibility study provides the information needed to evaluate and chose among the possible remediation options. These options may include removal of contaminants from the site, safely containing the contaminants on-site, allowing natural degradation to occur, or destroying or treating the contaminants on-site through treatment technologies. Appropriate remedial alternatives are evaluated

4

considering: the overall protection of human health and the environment; compliance with state and local requirements; shortand long-term effectiveness; reduction of toxicity, mobility or volume of the contaminants; implementability; cost; and community acceptance.

<u>5. Remedial action plan (RAP)</u> – Using the data from the Feasibility Study a remedial option is selected and a Remedial Action Plan (RAP) is developed. A draft RAP is made available for public review and comment prior to concurrence by the Regional Water Board. Development of the RAP incorporates the extensive data that has been gathered, along with the selected remedial alternative(s). The RAP includes discussion of the necessary cleanup objectives to ensure that the remedial action will comply with all applicable laws and regulations. The RAP workplan(s) will include the technical plans and specifications needed to implement the selected remedial actions.

The uses of the site may affect the selected cleanup objectives. State regulations and policies require cleanup to background levels where technologically and economically feasible. The term "background" refers to the concentration of naturally occurring contaminants found in environmental media not influenced by a site. Remedial goals (cleanup levels) will not be more stringent than background levels. A remedial goal that is less stringent than background could be selected if:

- The level is consistent with maximum benefit to the people of the State;
- The level does not unreasonably affect present and anticipated beneficial uses of waters of the State; and
- The level does not result in water quality less than that prescribed in the Water Quality Control Plans (including the Water Quality Control Plan for the North Coast Region – The Basin Plan) and Policies adopted by the State and Regional Water Boards (including State Water Board Resolutions No. 68-16 and 88-63).

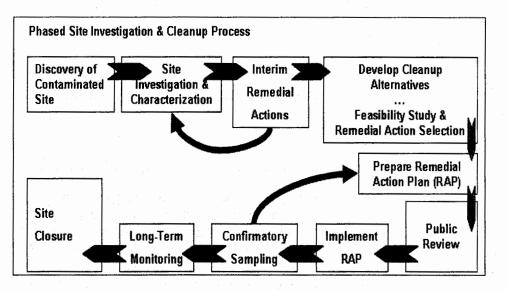
Remedial goals that are less stringent than background must meet specific regulatory criteria and may depend, in part, on the intended uses of the property and may change if the property use changes.

<u>6. Verification monitoring</u> – Monitoring is conducted to ensure that the remedial actions continue to be protective of human health and the environment. The extent and composition of verification monitoring is detailed in the RAP.

<u>7. Site closure</u> – A site is closed when it is determined that no further regulatory action is needed because the conditions remaining at the site will not adversely impact water quality, human

5

health, the environment and safety, or other current and future beneficial uses of water.



The following diagram shows a generalized cleanup process:

Responsible parties and their consultants propose and conduct remedial actions and site investigations and the Regional Water Board reviews and oversees the proposals, plans, and activities. The Regional Water Board reviews all known information before remedial action is taken, but, site investigations are on-going and interim remedial measures are implemented throughout the process. The Regional Water Board has not received a Remedial Action Plan for the SPTC Site. The Interim Remedial Action Plans for the SPTC Site were considered by the Regional Water Board in light of all known information. Interim remedial actions, however, are often implemented before all possible site data are gathered.

At the SPTC Site, past operations consisted of a former railroad yard for locomotive and railroad car maintenance and repair, fuel storage and fueling facilities, and former petroleum bulk fuel plants and a vehicle fueling station. The Site history indicated that petroleum hydrocarbons and metals would be the likely chemicals of potential concern. Sampling was initially directed toward areas around the storage tanks, sumps, and surface drainage features. Numerous studies have been conducted over the years at the SPTC Site, including soil sampling, groundwater sampling, stormwater sampling, soil borings and trenching, field testing, site inspections, and laboratory analysis. The existing data are used to direct additional sampling efforts.

The Cleanup and Abatement Order requires remediation and the evidence collected at the Site clearly supports the conclusion that remediation is needed. Numerous interim remedial measures have been conducted over the years at the SPTC Site, including: fencing, removal of fuel storage tanks, and targeted

removal of contaminated soils, groundwater and oily wastes. The latest Interim Remedial Action Plan (the SIRAP submitted in June 2009) was prepared in order to address continued concerns about elevated copper levels in storm water.

When the Remedial Action Plan is developed, it will have to address potential future uses of the Site such as wetlands, residential, commercial, park space, etc. If contamination is left in place that would restrict future uses then a deed restriction is required for the property. A deed restriction is an environmental covenant incorporated into a property's deed to restrict the use of the property. The intent of the deed restriction is to protect present and future human health and safety and the environment from chemicals that may remain on a contaminated site. It also serves to inform future property owners of residual contamination and requirements for site activities that might result in exposure to the residual contamination. If the uses of a site covered by a deed restriction change, the deed restriction will have to be evaluated to ensure that it remains protective.

#### #2 Adequacy of Public Notice

Comment:

- Several of the commentators were concerned about lack of public review of the Supplemental Interim Remedial Action Plan before the Regional Water Board concurred with the proposed plan.
- One commentator stated that public notice is required by CEQA.
- One commentator protested "the secret approval" of the Supplemental Interim Remedial Action Plan.
- One commentator stated that the limited post-approval review failed to facilitate adequate agency and public comments.
- One commentator stated that California Water Code §13307.5 requires the Regional Water Board to provide a public review period before consideration of any remedial actions at the Site.
- One commentator expressed concern that the public would have to travel to Santa Rosa to review information about the Site in order to adequately review the Supplemental Interim Remedial action Plan.

#### Response:

The Regional Water Board does not interpret California Water Code §13307.5 as requiring public review prior to concurrence with *interim* remedial actions. In addition, it has not been the practice of the Regional Water Board to routinely solicit public review of interim remedial actions. A public review period was not conducted prior to consideration of previous remedial actions at the SPTC Site.

The CEQA public notice requirements are not applicable to the Regional Water Board concurrence with the SIRAP since the concurrence was not a discretionary action for the purposes of CEQA. At the request of an interested party, a 30-day public review period was provided for the SIRAP. The Regional Water Board has considered all of the comments during the comment period and continues to concur with the SIRAP with the conditions expressed in the Regional Water Board June 18, 2009 letter:

- Contaminated soils discovered under the removed concrete foundations must be sampled and analyzed for the appropriate contaminants of concern.
- A workplan must be prepared and approved for replacing monitoring well MW-13.
- All necessary local, State, and federal authorization must be obtained prior to performing the work described in the SIRAP.
- The Regional Water Board requested, and subsequently received, additional information regarding the split sample that was analyzed for dioxins that showed a wide discrepancy in results.

When a Remedial Action Plan is proposed for the SPTC Site, it will be available for a public review and comment period. Documents and information about the Site, including monitoring information, the Cleanup and Abatement Order, staff letters, site plans, and contact information can be obtained online at the State Water Board's Geotracker website, which can be found at:

https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155

#### #3 Site Characterization

Comments:

- Many of the commentators indicated that there has not been a complete site characterization and that the property owner has not presented all relevant information.
- Some commentators stated that the vertical and lateral extent of contamination has not been defined, including the impact of the SPTC Site on Humboldt Bay.
- Some stated that the Regional Water Board should require an extensive above- and below-ground environmental study.
- Some commentators stated that the site characterization should specifically address dioxins and pentachlorophenol.
- Some of the commentators suggested that the Site history includes storage and use of pentachlorophenol-treated lumber or the herbicide 2,4,5-T.
- One commentator stated that the Site is contaminated from being used by the logging industry.
- One commentator stated that grading the Site would violate the so-called mixture or "land-ban" rules.
- The same commentator stated that the site characterization is incomplete because there are not a sufficient number of samples to satisfy the requirements of the federal Superfund program.

#### Response:

Regional Water Board staff agrees that the site characterization is not complete and more characterization will need to be performed prior to the development of a Remedial Action Plan. However, staff does not agree with comments asserting that there has been little or no site characterization or that there is insufficient characterization to take interim remedial measures. Hundreds of samples and analyses have been conducted to assess the extent of contamination and to characterize Site conditions. Information about the SPTC Site setting and operational history was used to indicate which areas are likely subject to a particular type of contamination, and these areas have been intensively sampled over the past 20 years. Sampling has also occurred throughout the SPTC Site soil, groundwater, and stormwater samples have been collected from areas around the Site and analyzed for a broad suite of chemicals. There are currently 19 wells that are used to monitor groundwater guality, in addition to numerous temporary wells that have been used in the past. There have been 190 soil borings and 32 trenches to sample soil quality. The SIRAP summarizes the past Site investigations, reviews the results of those investigations, and includes summary tables of the data.

Characterization to date shows that long-chain petroleum hydrocarbons, such as diesel and bunker fuel, and metals are the primary constituents of concern at the Site. The Regional Water Board is not aware of any information supporting the comment that 2,4,5-T was used at the Site.

The impact of the SPTC Site on the water quality of Humboldt Bay was addressed, in part, by tidal influence studies. There are two aquifers (underground water-bearing strata) at the Site. The uppermost "A" zone and the lower "B" zone are separated by a layer of fine-grained bay mud that acts to restrict the movement of water between the two aquifers. The A zone is a shallow, perched aquifer occurring in fill material that fluctuates based on rainfall and occasionally goes dry. The A zone is located at about three to eight feet below the ground surface. Tidal-influence studies show that the A zone aquifer is not tidally-influenced by Humboldt Bay and indicates that contamination in the A zone does not enter Humboldt Bay. The B zone aquifer is present in coarse-grained material and is influenced by the daily tidal fluctuations of the bay, indicating that contamination in the B zone can enter Humboldt Bay. The B zone is located at about six to 12 feet below the ground surface.

Arsenic, barium, copper, lead, and zinc have been detected in both A and B zone groundwater samples. Some of the metals are related to past Site operations and some may be naturally-occurring. Background concentrations will be considered when the final remedial goals are developed for the Site.

Precipitation generally percolates into the ground and into the A zone aquifer. Precipitation also will fill ditches and depressions on-site. The Site topography is relatively flat so the ditches and depressions often act like ponds with little or no

9

flow. Apart from Clark Slough, the wetlands at the Site do not appear to be subject to tidal flow.

The Regional Water Board requires routine monitoring of stormwater at the SPTC Site under the Monitoring and Reporting Program R1-2002-0082. Petroleum hydrocarbons and metals have been identified in stormwater. Based on data gathered, the Regional Water Board required the Site owner to implement practices to control stormwater runoff. Even after the implementation of those storm water control measures, additional monitoring showed copper levels in stormwater runoff that were still of concern. Therefore the Site owner was required to propose additional stormwater controls, and in response, the June 2009 SIRAP was submitted.

Petroleum hydrocarbons and metals have been found in soil samples throughout the SPTC Site. Some locations have high concentration levels. Prior interim remedial actions at the Site have involved removal of contaminated soils. The SIRAP proposes to remove additional soils that have elevated contaminant concentrations.

The commentators are correct that dioxins have been found on-site and also that dioxins are found in Humboldt Bay. The area surrounding Humboldt Bay has been home to many significant sources of dioxins – notably, the many mills that treated lumber with pentachlorophenol and the many wood combustion operations, such as teepee burners, that released dioxins into the air. Regardless of the source of the dioxins, the Regional Water Board will require the Site owner to define the vertical and lateral extent of dioxin contamination, even if the dioxin contamination originates from off-site sources.

In a site investigation, the number of samples needed to evaluate the site is related to the intended use of the data, the associated data quality objectives, and the variability of the data. The objective is to obtain data of sufficient quality and quantity to facilitate site evaluation and remedial action selection, while considering the horizontal and vertical extent of contamination, site-specific stratigraphy, and the statistical distribution of the dataset. There is no default rule for the number of samples required to adequately characterize a site – each site is evaluated on site-specific conditions.

The mixture rule, derived-from rule, and land ban regulations apply only to hazardous wastes. In order for the soil to be considered a hazardous waste, the soil must be a waste and it also must exhibit a characteristic of hazardous waste (either RCRA or non-RCRA) or be listed as a RCRA hazardous waste. The "mixture rule" applies to RCRA-listed hazardous wastes that are mixed with any other substance and the rule confers the hazardous listing on the entire mixture. The "derived-from" rule applies to wastes that were generated from the treatment, storage, or disposal of RCRA-listed wastes. There is no mixture rule or derived-from rule for non-RCRA (California-only) wastes or for RCRA-

characteristic wastes. The Site contaminated soils are not RCRA-listed hazardous wastes, nor are they derived from RCRA-listed hazardous wastes. Therefore, the mixture and derived-from rules do not apply. The prohibition on land disposal, similarly, applies only to hazardous wastes that are banned from land disposal without treatment.

#### #4 Remedial Actions

Comment:

- Several commentators stated that the Regional Water Board should not allow the developer to "muck around in Clark Slough."
- Several commentators were concerned that that moving soils around the SPTC Site would lead to "smearing" the contamination around the Site and would make a final cleanup more difficult and has the potential to mobilize contaminants, which would enter Humboldt Bay.
- Several commentators requested that the Site be cleaned-up (fully, completely, to preindustrial levels, to safe levels, to bedrock, stringently, totally, etc.).
- Several commentators stated that the Supplemental Interim Remedial Action Plan is inadequate although the commentators did not provide any details of specific concerns.
- Some commentators stated that capping the Site is not an acceptable remedial action.

#### Response:

The SIRAP was prepared because the Regional Water Board directed the SPTC Site owner to implement practices to control stormwater runoff. To accomplish this, the Site owner proposed re-grading portions of the Site, excavation of contaminated soils, and placement of clean cover material on the Site as interim remedial actions.

Re-grading the topography of a contaminated site is a common remedial measure. Remedial activities often require moving soils from one part of a site to another or removing soils to an off-site disposal location. Excavation of contaminated soils also is a common remedial action. Focused excavations have been performed at the SPTC Site in the past and are proposed by the SIRAP. Excavation of the entire SPTC Site is not feasible and is not needed based on laboratory analyses of the soil samples.

When the Regional Water Board considers a proposal for on-site reuse of soils, the decision is based on the contaminant concentrations, the toxicity of the contaminants, the volume of the soils, and the reuse location (including separation from groundwater, separation from surface water, protection from erosion, and proximity to sensitive receptors). These factors help to define the potential impact of the proposed reuse. The excavation of contaminated soils at the SPTC Site will require confirmation sampling on the bottom and sides of the

excavation pits. The excavated soils will need to be adequately characterized in order to determine the final disposal location. The plan for confirmation and verification sampling will account for any redistribution of on-site soils. Sampling locations and depths will reflect the potential mixing and disturbance of the soil profile that is likely to occur.

Capping is another common remedial action in which a site or parts of a site are covered with clean material so that receptors are not exposed to the contamination. The design of the cap (or cover) is dependant on the nature of the site and contamination. The goal is to provide a physical barrier between the contamination and potential human or non-human receptors and to keep the contaminated material from migrating. Capping generally is not performed to the exclusion of other remedial actions – it is often used in conjunction with excavation or treatment to reduce the toxicity of the contaminants.

The final remedial action for the SPTC Site has not been proposed so it is premature to speculate on the final remedial measures. Remedial goals (cleanup levels) will be developed as part of the final Remedial Action Plan. In general, the Regional Water Board requires cleanup to background levels where technologically and economically feasible. Cleanup levels that are less stringent than background may depend, in part, on the intended and approved uses of the property. The development of remedial goals considers the effect of the contaminants on human health and the environment. The Regional Water Board will consider the level and nature of contamination, the pathways of exposure, and potential future uses of the SPTC Site when reviewing proposed final remediation actions and remedial goals.

#### #5 Assessment of Risk

Comments:

- Many of the commentators expressed concern about the safety of the SPTC Site and any remedial action.
- Some commentators are concerned about the levels of dioxins in Humboldt Bay and suggest that the dioxins in the bay originate from the SPTC Site.
- Some of the commentators are concerned about the levels of dioxins in fish and shellfish in Humboldt Bay.

#### Response:

In order for contamination to present a risk, there must be a completed exposure pathway. That is, toxic chemicals must contaminate environmental media (such as air, water, dust, or soil) and the receptor (such as, a human) must come into contact with the contaminated media. An example of a complete exposure pathway is:

- A chemical leaks from a drum.
- The chemical enters the groundwater.
- The contaminated groundwater migrates to a drinking water well.

• A human ingests the contaminated water.

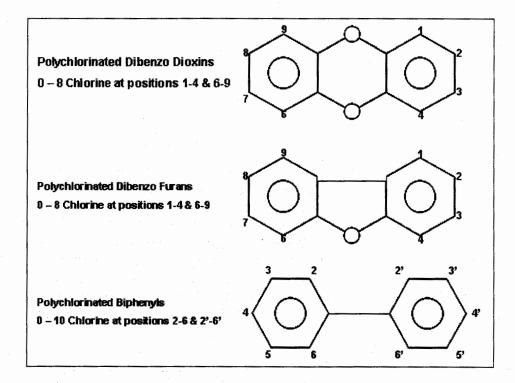
The health effects of exposure to a contaminant is influenced by the exposure route, the duration of exposure, the frequency of exposure, and the magnitude of the exposure. If any point in the pathway is blocked or not present, then the exposure does not occur. If the exposure does not occur, an adverse health effect does not occur. This applies to both human and non-human receptors. It is important to remember that an individual may be more or less sensitive to the exposure than the community or whole population. This is generally accounted for in how a risk assessment is performed - e.g., whether the assessment is designed to estimate the risk to the most sensitive individuals or to an average member of a population.

During site cleanup, the primary effort is to treat, remove, or reduce the contamination. If the contamination cannot be completely eliminated or reduced to the point where it is not harmful to human health and the environment, then the effort focuses on containing the contamination so that a sensitive receptor cannot come into contact with the contamination. The analysis considers all contaminants, all receptors, all pathways, and all likely land uses. The Remedial Action Plan for the SPTC Site will have to address both human and ecological risk.

Based on the Site history, past uses, and the results of numerous sampling efforts, the contaminants of concern at the SPTC Site are petroleum hydrocarbons and metals. Dioxins also have been found in on-site soils. Since several commentators expressed concerns about dioxins, the following information about the dioxins may be useful.

#### Dioxins

"Dioxins" refers to group of chlorinated chemical compounds that share certain similar chemical structures, properties and biological characteristics, including toxicity, persistence in the environment, and bioaccumulation potential. Generally, the term "dioxins" includes polychlorinated dibenzodioxins (PCDDs), polychlorinated dibenzofurans (PCDFs or furans) and co-planar polychlorinated biphenyls (PCBs), which have similar chemical and toxicological characteristics. There are several hundred of these compounds, but there are but there are 29 that have significant toxicity. In the environment, dioxins typically occur as mixtures of the various dioxins, furans, and co-planar PCBs. The chemical structures of these compounds are shown below.



Although there are natural processes that create dioxins, human activities are responsible for the creation of the great majority of dioxins. Dioxins are a product of combustion processes, are created in metals smelting, refining and processing, and are contaminants in chemicals and chemical processing. There is widespread contamination of air and soil with dioxins from human activities.

Dioxins are highly toxic to freshwater and marine fish, birds, and mammals. Dioxins can cause a cause a wide range of toxic effects including lethality, carcinogenicity, reproductive and developmental adverse effects, endocrine and immune system dysfunction, hemorrhaging, and biochemical effects.

Dioxins are resistant to natural degradation, so they persist and build up in the environment. Since they are insoluble in water, they attach to particles, and tend to settle out in depositional areas such as slow moving water.

The concern about dioxins in soil and sediments is not only from toxicity to organisms that are in contact with the soil or sediment, but also from the persistence in the environment and their tendency to bioaccumulate, leading to increased concentrations in animals as you move up the food chain. In biota, dioxins accumulate in the fatty tissue and internal organs. Human exposure to dioxins is primarily through eating foods in which dioxins have accumulated. There is no information that attributes the source of dioxins in Clark Slough to the SPTC Site. Regardless of the source of the dioxins the Site owner will be required to address the presence of dioxins in the Remedial Action Plan, including the potential risks to human health and the environment.

The sediments in Humboldt Bay are contaminated with dioxins. This is of concern because of both the toxic effect to humans and ecological receptors (especially at sensitive life stages) and because of the potential for the dioxins to bioaccumulate in fish and shellfish. Humboldt Bay is on the State's list of impaired water bodies because of dioxin contamination. The Regional Water Board will address this situation, including investigating the sources of dioxin contamination in Humboldt Bay, under the Total Maximum Daily Load (TMDL) program.

 Information about the TMDL program in the North Coast Region can be obtained at:

http://www.waterboards.ca.gov/northcoast/water\_issues/programs/tmdls/index.shtml.

 Information specific to the dioxin listing of Humboldt Bay can be obtained at:

http://www.waterboards.ca.gov/northcoast/water\_issues/programs/tmdls/303d/2008\_integrated\_report.shtml.

#### #6 Other Comments

<u>Comment</u>:

- The SPTC Site is of archeological interest. There is credible evidence of sensitive archeological resources and the commentator requests consultation prior to remedial action.
- Many commentators are opposed to developing the Site for a big box store.
- Many commentators expressed support for developing the Site to provide housing and shopping opportunities.
- Many commentators expressed support for cleaning up the Site so that it could be developed.
- Some commentators suggested that the Regional Water Board staff are in collusion with the Site developer, and another stated that the Regional Water Board is serving as a shield for City employees who are working for the developer.

#### Response:

The comment regarding the archeological interest in the SPTC Site was provided to the City of Eureka so that it would be addressed during Site development activities.

Regarding specific development plans for the SPTC Site, the Regional Water Board is charged with overseeing the cleanup of the contaminated property. The Regional Water Board does not determine local land use or development. The appropriate venue for discussion of local land use is the City of Eureka. Additionally, in order for the SIRAP to be implemented, the property owner will have to receive permits or authorization from various local, State, and federal agencies, including, but not limited to: the City of Eureka, the California Coastal Commission, the California Department of Fish and Game, the California Regional Water Quality Control Board, and the U.S. Army Corps of Engineers. The same agencies will have to be consulted when a Remedial Action Plan is developed for the Site.

The other comments are not pertinent to the Supplemental Interim Remedial Action Plan or to the role of the Regional Water Board.

#### Further Information

Additional information about the Southern Pacific Transportation Co. Site can be obtained from the publicly-available State Water Board website, Geotracker, at: https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155.

You may also contact the Regional Water Board case worker, Ms. Caryn Woodhouse, at cwoodhouse@waterboards.ca.gov or at 707-576-2701.



# California Regional Water Quality Control Board North Coast Region Geoffrey M. Hales, Acting Chairman



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

Schwarzenegger Governor

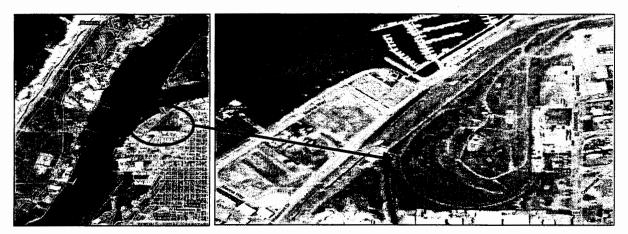
FACT SHEET

# SOIL & GROUNDWATER CLEANUP AT THE

# SOUTHERN PACIFIC TRANSPORTATION COMPANY SITE - EUREKA, CALIFORNIA

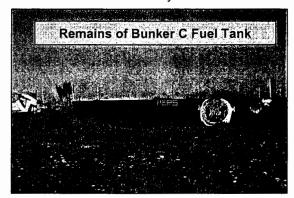
### NOVEMBER 2009

Site Location - The Southern Pacific Transportation Co. site is located in Eureka at 736 Broadway.



#### Site History & Background -

From the late 1800's until the mid-1980's the Southern Pacific Transportation Co. site was used as a rail yard that included railroad car maintenance and repair, and fueling of locomotives. The site has also contained two petroleum bulk fuel collection and storage sites operated by ARCO and General Petroleum. The site is locally referred to as the "Balloon Track."



Bunker C oil was the primary fuel used for locomotives at the site until 1954. After 1954, diesel fuel was used for locomotives. During site operations, Bunker C oil was stored in a 650,000-gallon aboveground tank. In 1954, the top of the large Bunker C fuel tank was removed to make a secondary containment structure for two 12,700-gallon diesel fuel tanks. Fuel storage at the site was discontinued in 1984 as site operations decreased and a tank truck was used to fuel locomotives.

Chemicals of Concern - The contamination that was expected from the site history includes:

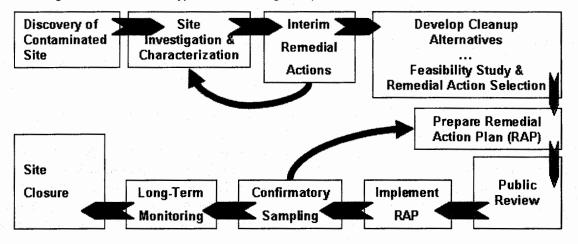
- · Petroleum hydrocarbons from Bunker C fuel, diesel fuel, oil, and lubricants
- · Gasoline and gasoline additives
- Polynuclear aromatic hydrocarbons
- · Metals, such as lead and copper

This contamination was confirmed during site sampling and investigation. Additional contamination, including dioxins and polychlorinated biphenyls (PCBs), also has been detected.

#### What is Being Done -

- Cleanup and Abatement Order & Monitoring and Reporting Program The Regional Water Board has issued orders that require the site owners to cleanup the contamination at the site and to regularly monitor and report on the quality of the groundwater and surface water at the site.
- Cleanup Process The Regional Water Board has worked with the site owners on a phased, stepby-step investigation and cleanup process since 1988.

The diagram below shows a typical site investigation process.



- Sampling & Investigations There is on-going monitoring of groundwater and surface water and numerous soil borings and trenches scattered throughout the site. Hundreds of water and soil samples have been analyzed for chemical contamination. Other site work has included site trenching studies, hydrogeological investigations, health risk assessments, and tidal influence studies.
- Interim Remedial Actions While working with the Regional Water Board, the site owners have
  performed various interim actions and source removals, including removal of:
  - Contaminated soil
  - Potentially hazardous waste
  - Underground and aboveground storage tanks
  - · Oily waste and petroleum-impacted water
- Supplemental Interim Remedial Action Plan Currently, the site owners are obtaining permits needed to perform additional interim remedial actions, including:
  - Removal of debris piles, concrete, and old
  - foundations

- · Site grading to eliminated stormwater runoff
- Wetlands restoration
- Focused excavation of contaminated soil

**Next Steps** – The site owner will work with the Regional Water Board to prepare a final remedial action plan (RAP) for the site. The RAP will detail the site cleanup so that it will be protective of public health and the environment. Remedial goals for specific contaminants (also called cleanup levels) will be specified in the RAP. The draft RAP will be available for public review and comment.

**More Information & Contact** – For more information, contact Ms. Caryn Woodhouse of the North Coast Regional Water Quality Control Board at 707-576-2701 or at cwoodhouse@waterboards.ca.gov. Pertinent site documents can be found on the State's Geotracker Website at: https://geotracker.waterboards.ca.gov/profile\_report.asp?global\_id=T0602391155

California Environmental Protection Agency

#### Resolution No. 2009-51

# RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA ADOPTING THE STATEMENT OF FINDINGS, ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM, AND APPROVING THE COASTAL DEVELOPMENT PERMIT FOR PHASE 1 OF THE MARINA CENTER PROJECT

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 with Phase 1 being 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. The future phase(s) would include a mixed-use development containing retail, office, restaurant, museum, light industrial, and multi-family residential uses;

WHEREAS, CUE VI, LLC is seeking a Coastal Development Permit for Phase 1 only;

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, a Draft EIR on the Marina Center project was prepared (SCH# 2006012024) pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the Guidelines for Implementation of the California Environmental Quality Act (14 California Administrative Code Section 15000 et seq.);

WHEREAS, the City prepared a Final EIR (SCH# 2006012024) 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");

**WHEREAS**, after due consideration, on October 27, 2009, the City Council certified the Marina Center EIR (SCH# 2006012024) in accordance with the requirements of CEQA;

WHEREAS, soil samples have been taken from the project site over the years which revealed that there is petroleum, lead, copper, and arsenic in the shallow soils on the site, which are a detriment to the public welfare. In addition, overgrown vegetation, which creates a health and fire threat to neighboring properties, continues to be a problem on the site. Vegetation overgrowth on the site has been exacerbated by the

trash and rubbish that is scattered throughout the site which make regular mowing and weed abatement difficult if not impossible. To address these violations of the Eureka Municipal Code, the City has previously issued notices and orders to the landowner requiring the landowner to abate public nuisances. The notices and orders were issued on the following dates including but not limited to: September 6, 200; January 3, 2001; September 4, 2002; December 5, 2002; May 28, 2003; November 14, 2006; October 20, 2006; April 23, 2007; June 11, 2007; October 22, 2007; February 21, 2008; May 29, 2008; and May 30, 2008. The North Coast Regional Water Quality Control Board ("Regional Board") has approved a Supplemental Interim Remediation Action Plan ("SIRAP") in keeping with the Regional Board's Cleanup and Abatement Order for the project site (No. R1-2001-26) ("CAO"). The SIRAP includes a plan for general site clearing and debris removal, a focused soil remediation of areas with contaminated soil, a restoration of the wetlands area, and a grading of the overall site;

WHEREAS, the State Lands Commission has expressed a strong desire to have outstanding title and boundary issues relating to trust lands on the subject property resolved before the project commences;

WHEREAS, the City Council has reviewed and considered all of the environmental and other documentation prepared to evaluate the proposed Project, including but not limited to the Staff report and all elements of the EIR;

WHEREAS, Section 21081 of CEQA and Section 15091 of the CEQA Guidelines require that prior to approval of the Project for which the EIR was certified, the City Council must make one or more findings for each significant effect identified in the EIR, along with a brief explanation of the rationale for each finding. The Statement of Findings as required by CEQA is attached hereto as Exhibit "A";

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;

WHEREAS, in accepting this permit, CUE VI, LLC acknowledges and understands that any subsequent permits or approvals for later phases of the project as described in the Final EIR are subject to independent and separate discretionary approvals that may or may not be granted, and that no rights are created to any subsequent approvals by the performance of the site remediation or other work authorized by this permit.

**NOW, THEREFORE BE IT RESOLVED** that the City Council makes the findings contained in the Statement of Findings with respect to significant effects identified in the EIR and finds that each fact in support of the findings is true and is based upon substantial evidence in the record, including the EIR. The Statement of Findings is attached hereto as Exhibit "A" and is incorporated herein by this reference.

**BE IT FURTHER RESOLVED** that the City Council finds that the EIR has identified all significant environmental effects of the proposed Project and that there are no known potential environmental effects not addressed in the EIR.

**BE IT FURTHER RESOLVED** that the City Council makes the following findings and determinations regarding Phase 1 of the Marina Center project:

- 1. The supplemental interim remedial measures and proposed wetland reserve which constitute Phase 1 of the Marina Center Project conform to and are consistent with the City's certified Local Coastal Program. In summary:
  - a. The Phase 1 site remediation activities are not "uses" which are controlled by the district regulations or for which compliance with the general plan land use designations is strictly required. Phase 1 is necessary to remediate pre-existing contaminated soils resulting from past railroad and industrial activities on the property in order to facilitate development of the type and intensity contemplated in the general plan and zoning regulations. Therefore, Phase 1 is consistent with the general plan land use designations and the coastal zoning regulations.
  - b. The proposed wetland reserve surrounding Clark Slough would be located in the southwest corner of the property on lands designated PQP. Because the proposed wetland reserve would be permanent, a general plan consistency finding must be made. In addition it is subject to the district regulations of the coastal zoning regulations.
  - c. Clark Slough, which drains to Humboldt Bay, is part of the municipal storm drain system collecting water from the commercial and industrial areas upstream of the slough. The manmade channelization of Clark Slough on the property has reduced the ability of the slough to carry stormwater often resulting in on-site and off-site flooding during times of peak flow. The creation of the wetland reserve would improve the ability of Clark Slough to drain municipal storm water to Humboldt Bay and would reduce on- and off-site flooding. Because Clark Slough is part of the municipal storm drain system and the creation of the wetland reserve is a public civic service facility consistent with the purposes of the PQP and the uses allowed in the P zone.
  - d. Because the project site is not located on Humboldt Bay, nor is it between the first public road and the Bay, coastal public access would not be required, nor affected by the project.
  - e. According to the California Wetlands Conservation Policy, there would be no net loss of wetlands; rather there would be at least a 1:1 replacement of wetland acreage on the site, improvement of wetland quality, and

creation of a buffer zone surrounding that wetland. The buffer would be adequate to avoid or minimize effects on wetland and slough resources from direct and indirect disturbances such as entry of sediment, oil, or grease into the preserve; trampling of vegetation; and movement, light, or noise impacts that might interfere with habitat values or wildlife use of the slough and marsh. The buffer would consist of earthen berms sloped toward any road or other source of runoff pollution, fencing, symbolic fencing (split rails), native vegetation such as blackberries that act as a barrier, and signs warning against intrusion. Therefore, the project would be consistent with the land use policies protecting biological resources and the implementation plan Environmental Resource Standards.

Due to the seismic activity and the composition of underlying soils, the project site is susceptible to liquefaction, and soil consolidation and settlement under static and dynamic conditions. The liquefaction potential was found to be highest west of Clark Slough, and this area may be subject to excessive settlement under dynamic loading. The area west of Clark Slough would be rehabilitated as a wetland reserve with no buildings being constructed in this area. Therefore, the natural hazard risks of the project to life and property are minimal.

f.

g. There are no officially designated California Scenic Highway segments in Humboldt County; therefore, the project would not substantially damage scenic resources within a State scenic highway.

h. There are two suspected Wiyot village sites on or near the project site which could be impacted by soils excavations into native soils; the project site was historically covered by fill material and the village sites, if they exist, would be in native soils below the fill material. Phase 1 would involve soils excavation, the depth of which is not fully known but could be below the fill material. Approval of the coastal development permit is conditioned upon compliance with mitigation measures identified in the certified EIR for protection of archaeological resources consistent with the policies of the Land Use Plan and the Development Standards of Implementation Plan.

2. A public hearing was held on November 3, 2009, for the coastal development permit as required in section 10-5.29306 (section 156.102) of the Eureka Municipal Code; and

3. The RWQCB issued Cleanup and Abatement Order No. R1-2001-26 ("CAO") ordering that the land owner of the Balloon Track "cleanup and abate the discharges and threatened discharges" from the site to protect water quality. Pursuant to its authority under sections 13267 and 13304 of the California Water Code, the RWQCB obligated CUE VI, LLC to implement the Supplemental Interim Remedial Action Plan (Appendix S of the EIR) to comply with the CAO

and address identified stormwater quality issues. By these actions, the RWQCB has made a determination relating to water quality within the meaning of section 30412 of the Coastal Act; and

- 4. The conditions on the site, including the soils contaminated with metals, debris, and other refuse, are a threat to the public welfare and have created and continue to threaten to create a public nuisance under the Eureka Municipal Code sections 94.17, 150.163(B), 150.163(E), 150.163(J), and 150.163(K). Further, the Regional Board has issued a cleanup and abatement order requiring CUE VI, LLC to cleanup and abate a "condition of pollution or nuisance." Exercising its power to declare and abate nuisances in keeping with section 30005 of the Coastal Act, the City hereby orders CUE VI, LLC to abate the nuisance by implementing the supplemental interim remedial measures approved by the RWQCB under its CAO; and
- 5. Because the site is not located between the existing first public road and Humboldt Bay, Phase 1 of the Marina Center project will not block or interfere with public access to or along the shoreline.

**BE IT FURTHER RESOLVED** that the coastal development permit for Phase 1 of the Marina Center project, is hereby approved, subject to the Conditions of Approval and Mitigation Monitoring and Reporting Program listed in Exhibit "B", attached hereto.

**BE IT FURTHER RESOLVED** that approval of the coastal development permit for Phase 1 of the Marina Center project does not vest any rights or entitlements to the property owner for construction of the future phase(s) of the Marina Center project that are not otherwise due the property owner under law.

**BE IT FURTHER RESOLVED** that before the Phase 1 may commence, 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 before the project may commence, CUE VI, LLC must resolve, to the City's satisfaction, the outstanding title and boundary issues with the City of Eureka and the State of California State Lands Commission.

**BE IT FURTHER RESOLVED** that if the title and boundary issues are not resolved by April 1, 2010, a report shall be made to the City Council in a regularly scheduled public meeting for further consideration.

**BE IT FURTHER RESOLVED** pursuant to Eureka Municipal Code section 10-5.29319 (section 156.116) the coastal development permit shall lapse and become void if construction or implementation of the permit has not commenced within two years from the date of final approval of the application for a coastal development permit. Upon written request received prior to the expiration of the permit, a one-year extension may be granted by the approving authority.

**BE IT FURTHER RESOLVED** that the Coastal Development Permit shall not become effective until after the applicable appeal period has expired in accordance with Eureka Municipal Code section 10-5.29314 (section 156.112(B)).

**BE IT FURTHER RESOLVED** that the Clerk of the City of Eureka is hereby directed to file a Notice of Determination ("NOD") in accordance with CEQA Guidelines section 15094 with the Humboldt County Clerk and with the State Clearinghouse.

**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.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Eureka, County of Humboldt, State of California, on the 3rd day of November 2009, by the following vote:

AYES: COUNCIL MEMBERS: ATKINS, LEONARD, JAGER, JONES NOES: COUNCIL MEMBERS: GLASS ABSENT: COUNCIL MEMBERS: NONE ABSTAIN: COUNCIL MEMBERS: NONE

ATTEST:

Virginia Bass

Mayor

Pamela J. Powel

City Clerk

APPROVED AS TO ADMINISTRATION:

David W. Tyson City Manager

**APPROVED AS TO FORM:** 

ShervivSchaffner

-SheryiPSchanne City Attorney

# EXHIBIT "A"

# STATEMENT OF FINDINGS

# Section 1

# Introduction

# A Statutory Requirements for Findings

The California Environmental Quality Act (CEQA), Public Resources Code Section 21081, and the *CEQA Guidelines* (14 Cal. Code of Regs. Section 15091) require that a public agency consider the environmental impacts of a project before a project is approved, and make specific findings. *CEQA Guidelines* Section 15091 and Public Resources Code, Section 21081, provide that:

- (a) No public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
  - (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environment effect as identified in the Final Environmental Impact Report (EIR).
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final environmental impact report.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subsection (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

- (d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.
- (e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.
- (f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

### **B** Record of Proceedings

For purposes of CEQA and the findings set forth herein, the record of proceedings for the City Council's decision on the proposed project consists of: (1) matters of common knowledge to the City Council, including but not limited to federal, state, and local laws and regulations; and (2) the following documents that are in the custody of the City of Eureka (City):

- Notice of Preparation, Notice of Availability, and Notice of Completion, which were issued by the City in conjunction with the proposed project.
- The Final EIR (dated October 2009), which includes all written comments submitted by agencies or members of the public during the public comment period on the Draft EIR (dated December 2008) and responses to those comments and all of the documents referenced therein.
- The Mitigation Monitoring and Reporting Program (MMRP).
- All findings and resolutions adopted by the City in connection with the proposed project, and all documents cited or referred to therein.
- All final reports, studies, memorandums, maps, correspondence, and all planning documents prepared by the City, or the consultants or responsible or trustee agencies, with respect to: (1) the City's compliance with CEQA; (2) development of the project site; or (3) the City's action on the proposed project.
- All documents submitted to the City by the applicant, by agencies, and by members of the public in connection with development of the proposed project.
- All documents compiled by the City in connection with the study of the proposed project and the alternatives.

- The testimony and evidence presented at the public scoping meetings on April 13, 2006, the Eureka City Council public study session on October 6, 2009, and the Eureka City Council meeting on October 20, 2009.
- The record of proceeding.

The Final EIR, and the administrative record concerning the project, provides additional facts in support of the findings herein. The mitigation measures set forth in the Phase 1 MMRP (Attachment 1) are incorporated by reference in these findings, and the findings in Sections 3.0 and 4.0 refer to individual mitigation measures as appropriate.

In accordance with CEQA Guidelines Section 15091(d), the City hereby adopts the Phase 1 MMRP to report on and/or monitor the mitigation measures and project design features incorporated to avoid or substantially lessen significant environmental effects associated with Phase 1. Some mitigation measures provide mitigation for more than one environmental effect, but the text of each mitigation measure is included only once after the effect with which it is directly associated. After other effects, the mitigation measures are referenced by alphanumerical designation.

The location and custodian of the documents and other materials, which constitute the record of proceedings, is the City of Eureka, Community Development Department, 531 K Street, Eureka, CA 95501.

## C. Organization/Format of Findings

Section 2.0 of these findings contains a summary description of the proposed project (the Marina Center Mixed Use Development project), sets forth the objectives of the proposed project, and provides related background facts. Section 3.0 identifies the potentially significant effects of Phase 1 of the proposed project that will be mitigated to a less than significant level. All mitigation measures referenced in this document can be found in the Final EIR and Errata. Section 4.0 states the finding that there are no significant impacts associated with Phase 1 of the proposed project that cannot be mitigated to a less than significant level. Section 5.0 discusses the range of alternatives analyzed in the EIR. Section 6.0 includes general findings.

# Section 2

## Marina Center Mixed Use Development Project

### A. Project Objectives

If ultimately approved through subsequent permitting activities, the larger proposed project as evaluated in the EIR would result in the redevelopment of a brownfield site and operation of a mixed-use retail, housing, and open space complex that includes 313,500 square feet of retail space, 104,000 sq. ft of office space, 72,000 sq. ft. of multi-family residential housing (54 dwelling units), 70,000 sq. ft. of light industrial space, 14,000 sq. ft. of restaurant space, 12,500 sq. ft. of museum space, 1,590 parking spaces, and an 11.89-acre wetland reserve. This development would take place on a vacant 43-acre development parcel, which approximately is bounded by Waterfront Drive to the west and north, Washington Street to the south, Broadway to the east, 2<sup>nd</sup> Street to the south, and A Street to the east.

The City of Eureka's basic objectives of the proposed project are below; the City of Eureka's objectives for Phase 1 are identified by **bold underline**:

- Strengthen Eureka as the retail and employment center of Humboldt County.
- Develop an economically viable mixed use project (e.g., retail, office, residential, industrial).
- Facilitate brownfield redevelopment and urban infill development of property in the redevelopment area in the City of Eureka.

The Project Applicant's objectives of the proposed project are below; the Project Applicant's objectives for Phase 1 are identified by **bold underline**:

- To maintain Eureka's status as the "hub" of employment, retail commerce and tourism in Humboldt County.
  - Complement the existing Downtown and Old Town uses.
  - Develop an economically viable mixed-use project to include the following components:
    - Destination retail (home improvement, sporting goods, apparel, home electronics and import, for example)
    - Service retail (pharmacy, banking and financial, hair care, etc.)
    - Lifestyle retail (fashion, entertainment, jewelry, housewares, books, domestics, footwear, etc.)

- Offices
- Restaurants
- Children's Educational Museum
- Residential/multi-family to create both lifestyle and live-work opportunities
- Compatible light industrial
- Implement the goals, policies, and objectives of the Redevelopment Plan.
- To restore the Balloon Track to productive use.
  - Remediate contaminated soil to safe levels for project uses.
  - Restore and enhance habitat through long-term protection activities in and adjacent to the slough.
  - <u>Eliminate unauthorized or illegal activities within the Balloon</u> <u>Track, which are detrimental to public safety and a drain on</u> <u>public resources.</u>
  - Implement earth and environmentally friendly design, construction and operational measures, including:
    - Recycling of demolished structures
    - Use of "green" building materials: recycled; local; renewable
    - Energy-efficient HVAC and lighting and control systems
    - Use of natural ventilation and day-lighting
    - Use of efficient plumbing fixtures
    - Promote energy-efficient and environmentally friendly practices during project operation.
- To develop an economically viable mixed-use project.
  - Increase jobs and tax revenues.
  - Maximize development density to the extent economically feasible.
  - Provide a greater variety of goods and services in Humboldt County.

- Create a full mix of uses to maintain Eureka's status as the "hub" of employment, retail and tourism in Humboldt County.
  - Connect the site into the urban street grid to the extent possible, given the limitations of maintaining the railroad right-of-way and ownership of land for possible street extensions.
  - Improve vehicular circulation to and through the Balloon Track.
- Encourage pedestrian and bicycle interaction with the existing Downtown/Old Town and waterfront.
- Discourage sprawl by promoting an infill development project.
- Create effective links between the Wharfinger Building, Small Boat Basin, and Old Town areas.

This Statement of Findings only applies to Phase 1 of the proposed project, which would include brownfield remediation and wetland restoration. Separate Findings will be prepared for other future phases of the proposed project when they are subject to decision by the City Council.

#### B. Project Description

#### Project Location and Site Characteristics

The project site is located within the incorporated City of Eureka, in Humboldt County on the north coast of California approximately 300 miles north of San Francisco and 100 miles south of the Oregon border (latitude 40°48'00"N, longitude 124°10'40"W). The City of Eureka is the county seat and the center of government and commerce for Humboldt County. Humboldt County is bordered on the west by the Pacific Ocean, on the north by Del Norte County, on the east by Siskiyou and Trinity counties, and on the south by Mendocino County. Humboldt County encompasses 2.3 million acres, 80 percent of which is rural forested area. The City of Eureka is situated on Humboldt Bay in the central west portion of the County; it has an estimated population of 26,380 and occupies approximately 10,500 acres. Eureka is the largest city along the 400 miles of highway between Santa Rosa, CA and Medford, OR.

Humboldt Bay is one of California's larger coastal estuaries and the only deep water port between San Francisco and Coos Bay, Oregon. It is about 14 miles long and 4.5 miles wide at its widest point. Humboldt Bay is separated from the Pacific Ocean by long sand spits to the north and south of the entrance to the Bay. The City of Eureka sits on the eastern shore of Humboldt Bay at about its midway point. The Bay wraps around the City with the western and northern Eureka city limits extending into the Bay. The City's eastern and southern boundaries border the unincorporated Humboldt County.

The main north-south highway serving the north coast is U.S. Highway 101 (U.S. 101). At the south end of Eureka, U.S. 101 is a four-lane major arterial running north-south and is known as Broadway. Just to the east of the project site, Broadway turns ninety-degrees and splits into two one-way couplets running east-west through the heart of the City. The couplets are known as Fourth Street (southbound U.S. 101) and Fifth Street (northbound U.S. 101) which continue to the Eureka Slough Bridge, beyond which U.S. 101 is a divided four-lane highway. State Route 299 is the major east-west highway serving the north coast; it intersects with U.S. 101 in Arcata approximately 7 miles north of Eureka and connects to Interstate 5 in Redding, CA, approximately 140 miles east of Arcata.

The City of Eureka is set up in a traditional grid street pattern with the numbered streets running east-west and the alphanumeric streets running north-south; First Street parallels Humboldt Bay along the northern waterfront. First Street turns into Waterfront Drive west of "C" Street and bends to the south as it continues to parallel the western waterfront along Humboldt Bay. Waterfront Drive forms the western and northern boundaries of the project site. Broadway, for the most part, forms the eastern boundary of the project site and the south boundary is defined roughly by Washington Street. There are several businesses on the west side of Broadway between Fourth and Sixth Streets that are not a part of the project; and the businesses on the north side of Washington Street between Broadway and Clark Slough are not included in the project.

The project site consists of 11 parcels, four of which make up the tract of land known as the Balloon Track, so-called because locomotives were brought in on a circular track shaped like a balloon. The Balloon Track property was historically used as a railroad switching, maintenance and freight yard from the late 1880s until the closure of the Union Pacific rail lines in the mid-1980s. The project site has been vacant since the late 1980s and rail service to the north coast has been discontinued. On-site structures and most of the railroad tracks associated with past railroad use have been removed, although some foundations of former structures as well as some tracks located along the northwestern portion of the site are still present. The existing transmission tower in the middle of the property would be removed.

Clark Slough bisects the lower southwest corner of the property. Non-native vegetation is present throughout the project site with a number of compacted gravel roadways that provide access throughout the site. The entire 43-acre site is surrounded by a temporary 8-foot-tall chain link fence.

General land uses in the vicinity include coastal dependent industrial to the north and northwest; vacant or underutilized lands to the west; coastal dependent industrial to the southwest; a mixture of industrial and office uses to the south; to the southeast is the Clark District, one of the City's oldest residential neighborhoods; and to the east is a broad mixture of light industrial and commercial uses including Downtown and Old Town Eureka.

### Project Characteristics

The Project Applicant, CUE VI, proposes a phased project, with Phase 1 limited to site remediation and wetland restoration, and subsequent phases involving mixed-use development that 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; 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. In addition, the proposed project would include remediation of the brownfield project site to meet federal and state environmental cleanup and water quality standards, including the creation of an 11.89-acre wetland reserve. This area would include landscaped buffers surrounding the slough and restored and enhanced wetlands area providing protection for native plant and wildlife species.

#### Phase 1 Project Characteristics

Phase 1 of the proposed project entails remediation of the project site to meet federal and state environmental cleanup and water quality standards, including implementing the Supplemental Remediation Action Plan (SIRAP). The SIRAP is included as Appendix S of the Final EIR. The remedial action would include soil excavation in focused "hot spot" areas, supported by supplemental testing to ensure remediation success, site grading and the placement of clean material over the entire site provide to address surface soil contamination and to reduce the risk of exposure for human health and the environment. The remedial action would also include site grading with the effect of altering stormwater drainage patterns on the site to address contaminant migration issues, and wetlands enhancement and restoration.

#### General Site Clearing and Debris Removal

The preparation of the project site for the proposed remediation action would include removing existing debris piles, old foundations and other structures that remain on site largely as a result of the past use as a railroad maintenance facility. Items and structures slated to be removed include, but are not limited to, concrete foundation, metal and railroad tie debris, an old 650,000-gailon AST Foundation, a former railroad turntable, and a communication tower.

#### Soil Remediation

Remediation has been identified for five areas, including, the former General Petroleum site, the area near existing well MW-10, and three areas within the eastern and western drainage ditches where elevated levels of dioxins and furans have been detected. These areas would be further remediated through limited excavation and removal of contaminated soils. During the excavation of each area, steps would be taken to ensure the protection of human health, including limited access measures and dust control.

# Wetlands Restoration Area/Clark Slough Remediation

Historical information indicates that portions of the site were once marsh wetlands that were filled in, primarily with bay dredge spoils, and subsequently developed. This area includes the southwest corner of the project site on both sides of Clark Slough. During the development of this area, the Channel for Clark Slough that runs through the site was fortified with concrete rip-rap. Ongoing development and use of this area has resulted in impacts to shallow soil and to Clark Slough. Restoration plans for the site include the restoration of some of the filled-in areas to their former wetlands state. The impacted areas would be remediated as part of the restoration process. The remediation of the wetlands restoration area (including Clark Slough) would be accomplished by excavating existing fill material to return the area to the original wetlands condition.

During the excavation process, excavated soils would be field screened and would be visually inspected for the presence of contamination. Any soils identified as potentially contaminated would be segregated and temporarily stored on plastic and covered with plastic for laboratory testing. The stockpiled soil samples would be submitted to an analytical laboratory and analyzed. The soil stockpile analytical results would be used to assess the proper final use or disposal method for the stockpiled soil. Excavated soil that is not identified as potentially contaminated by the field screening methods would be used as fill material within the proposed grading area.

# Site Grading

The current layout of the project site results in storm water runoff that discharges into Clark Slough and the run-on of storm water from adjoining properties. The proposed grading plan would alter the flow of storm water on the site to promote natural infiltration of storm water and reduce or eliminate storm water leaving the site. This action would also include a cover that would provide additional protection to human health and the environment through the elimination of potential exposure pathways. The site grading plan would be developed and implemented in accordance with City of Eureka requirements.

# C. Project Construction Phasing

The project is expected to be constructed in phases which would also result in implementation of mitigation measures in phases. Phase 1, which is the subject of this Findings Statement, would span 12 months and would include wetland restoration and site remediation. The Project Applicant has not identified the actual construction phasing for the project beyond Phase 1, and is therefore currently only seeking entitlements and approvals for Phase 1.

# D. Approvals

The Project approval requires the City of Eureka, as lead agency, as well as certain "responsible agencies" to take certain regulatory actions to approve Phase 1 of the Marina Center Project. Described below are the land-use entitlements and regulatory

actions necessary to fully implement Phase 1 – Supplemental Interim Remedial Action Plan and Wetland Reserve.

In addition to certifying the Final EIR and adopting these Findings, the following entitlements are requested from the City:

- Approval of a Coastal Development Permit by the City Council, City of Eureka; and
- Approval of a Grading Permit and an Erosion Control Permit by the Building Official, City of Eureka.

Other approvals that must be granted by responsible agencies include or may include the following:

- Section 401 Water Quality Certification from the Regional Water Quality Control Board (RWQCB);
- Streambed Alteration Agreement from the California Department of Fish and Game (CDFG);
- NPDES construction stormwater permit (notice of intent to proceed under general construction permit) from the RWQCB and/or SWRCB.

If and when the Project Applicant pursues future entitlements from the City, those entitlements and permits may include a Local Coastal Program/General Plan Amendment, a second Coastal Development Permit, Design Review, Development Agreement(s), and a second Grading Permit and an Erosion Control Permit. Those separate approvals would require their own findings and perhaps a statement of overriding considerations.

## E. Mitigation, Monitoring and Reporting Program

A Mitigation Monitoring and Reporting Program for Phase 1 of the Marina Center Project (Phase 1 MMRP) has been prepared for the Project, and will be approved by the Eureka City Council by the same Resolution that adopts these findings. The City will use the MMRP to track compliance with Project mitigation measures. The MMRP will remain available for public review during the compliance period. If and when the Project Applicant pursues future entitlements from the City for any subsequent phases of the Marina Center Project, the City will then consider adoption and enforcement of the complete MMRP for the entire Project.

## F. Findings

The City is the Lead Agency for the Marina Center Mixed Use Development project. The City has determined that the EIR identifies 23 significant environmental effects of Phase 1 the project, and that changes or alterations have been required in, or incorporated

into, Phase 1 of the project that avoid or substantially lessen the significant environmental effects as identified in the Final EIR.

The complete evaluation of potential environmental effects of the project is contained in Chapter VI of the Draft EIR (2008) combined with those sections of Chapter VI that have been revised and are noted in Chapter 2 of the Final EIR/Response to Comments document (October 2009).

### Section 3

#### Effects Determined to be Mitigated to Less than Significant Levels

The EIR identified certain significant or potentially significant effects that could result from the proposed project. Based upon substantial evidence in the record, the City finds that for each of the significant or potentially significant impacts associated with Phase 1 of the proposed project and identified in this section, Section 3, changes or alterations have been required or incorporated into Phase 1 of the proposed project that avoid or substantially lessen those effects. As a result, adoption of the mitigation measures set forth below (which are repeated in the Mitigation Monitoring and Reporting Program, which is Attachment 1 of this document) will reduce the identified significant or potentially significant effects to a less than significant level.

The following impacts were determined in the EIR to result in less than significant impacts and no mitigation measures were recommended. Those impacts are not discussed further below and include: Impact A-1, A-2, A-3, A-5, B-1, B-2, B-3, B-4, C-5, C-5, D-6, E-1, E-3, F-4, F-5, G-3, G-5, G-6, G-7, G-8, H-2, H-8, H-9, I-1, I-2, I-3, I-4, J-1, J-2, K-5, K-6, L-1, L-2, L-3, L-4, M-3, M-4, M-5, M-6, N-1, N-2, O-2, O-3, O-5, P-1, P-2, Q-1, Q-2, Q-3, Q-4, Q-5, and Q-6.

#### A. Aesthetics

4. <u>No Impact A-4</u>: The EIR evaluates the impacts of the Marina Center project on light and glare that could affect day or nighttime views in the area of the project site. Because the project site would not include any sources of light or glare once site remediation and wetland restoration in Phase 1 is completed, there would be no change to the amount of light and glare in the project site area. Thus, Phase 1 would have no significant impact on light and glare. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact A-4 would be necessary.

#### C. Air Quality

1. <u>No Impact C-1</u>: The EIR evaluates the long-term operational impacts of the Marina Center project on individual and cumulative air emissions and potential conflicts with implementation of the North Coast Unified Air Quality Management District's (NCUAQMD's) Attainment Plan for PM10. Because the project site would remain in open space once site remediation and wetland restoration in Phase 1 is completed, there would be no operational emissions of PM10 associated with operations related to Phase 1. Thus, Phase 1 would have no significant impact on operational air quality emissions. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, the City will then consider further findings regarding those phases and Impact C-1. 2. Less-than-Significant Effect C-2: The EIR evaluates the potential of the Marina Center project emissions to conflict with air quality plans. Emissions associated with site remediation and wetland restoration in Phase 1 of the Marina Center project would not exceed minimum thresholds established for individual sources under NCUAQMD's Attainment Plan, and therefore Phase 1 of the proposed project would have a less-than-significant impact related to conflict with or obstruction of an air quality plan. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact C-2 would be necessary.

<u>Finding</u>: Site remediation and wetland restoration for Phase 1 of the Marina Center project would adhere to emission regulations that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: Annual project fugitive dust emissions associated with site remediation and wetland restoration in Phase 1 would not exceed NCUAQMD thresholds of significance for ROG, NOx, CO, PM10, and PM2.5. In addition, site remediation and wetland restoration would be short-term in duration and would be required to comply with all applicable NCUAQMD Rules and Regulations, such as Rule 430, which requires implementation of fugitive dust emissions control measures (e.g., covering open bodied trucks when used for transporting materials likely to give rise to airborne dust, installing and using hoods, fans, and fabric filters to enclose and vent the handling of dusty materials). Containment methods can be employed during sandblasting and other similar operations) during site remediation and wetland restoration.

3. <u>Less-than-Significant Effect C-3</u>: The EIR evaluates the potential of the Marina Center project emissions to result in non-attainment of a criteria pollutant threshold. Site remediation and wetlands restoration of Phase 1 of the Marina Center Project would result in a less than cumulatively considerable net increase of PM10, for which the North Coast Air Basin is currently designated as a non-attainment area. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact C-3 would be necessary.

<u>Finding</u>: Site remediation and wetland restoration for Phase 1 of the Marina Center project would adhere to emission regulations that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: Annual project fugitive dust and site remediation and wetland restoration emissions estimates would not exceed NCUAQMD thresholds of significance for PM10 (16 tons/year),

which are within the limits authorized in the PM10 attainment plan. In addition, site remediation and wetland restoration would be short-term in duration and would be required to comply with all applicable NCUAQMD Rules and Regulations, such as Rule 430, which requires implementation of fugitive dust emissions control measures during site remediation and wetland restoration. Finally, because construction-related emissions associated with Phase 1 would precede and therefore not coincide with the timing of construction for any possible future phases, those emissions would not be considered in conjunction with emissions expected in subsequent phases, and would not be cumulatively significant.

6. <u>No Impact C-6</u>: The EIR evaluates the long-term impacts of the Marina Center project on greenhouse gas emissions and global climate change. Because the project site would remain in open space once site remediation and wetland restoration in Phase 1 is completed, and because the construction related impacts are temporary there would be no significant emissions of greenhouse gases or global climate change related to Phase 1. Thus, Phase 1 would have no significant impact on greenhouse gas emissions or global climate change. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact C-6 would be necessary.

#### D. Biological Resources

1. <u>Significant Effect D-1</u>: The EIR evaluates the impact of the Marina Center project on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. Phase 1 of the Marina Center project would have a potentially significant but temporary adverse effect on aquatic species in Humboldt Bay by temporarily increasing sedimentation in the water. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-1 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

1. Migrating steelhead trout could pass by the project site in their travels within Humboldt Bay. In addition, migrating juvenile salmonid species are likely present in Humboldt Bay between December 1st and June 30th. The site remediation and wetland

restoration on the site—including excavation, grading, soil stockpiling, and placement of engineered fill—would disturb aquatic species by creating increased sedimentation in the water or by causing vibration effects.

 Biological Resources Mitigation Measure D-1a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below:

- D-1a: The Project Applicant shall install exclusionary fencing material or other barrier to contain dust and grading materials from site remediation and wetland restoration and avoid any discharges to Clark Slough and surrounding waters.
- 3. Water Quality Mitigation Measure H-3a, which requires implementation of additional erosion, sediment, and dust control measures, and Measure K-2a, which requires implementation of additional noise control measures, are incorporated by reference and described in the applicable section, below. Combined, these measures would reduce sedimentation and associated impacts to species.
- 2. <u>Significant Effect D-2</u>: The EIR evaluates the impact of the Marina Center project on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations by the California Department of Fish and Game or U.S. Fish and Wildlife Service. Phase 1 of the Marina Center project would have a potentially significant but temporary adverse effect on the riparian habitat along Clark Slough. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-2 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Clark Slough provides an existing riparian habitat that would be adversely affected during soil remediation and wetland restoration associated with Phase 1 of the proposed project.
- 2. Biological Resources Mitigation Measure D-3a through D-3f, below are hereby incorporated by reference and described in the applicable section. Measures D-3a through D-3f require wetland replacement at functions and values equal to or greater than those

existing, habitat restoration, creation of a wetland buffer and low lighting near the wetland, monitoring, and an invasive species control plan. This would be accomplished in Phase 1 by enlarging, restoring, and enhancing the riparian habitat within and along Clark Slough.

3. <u>Significant Effect D-3</u>: The EIR evaluates the impact of the Marina Center project on federally protected wetlands as defined by Section 404 of the Clean Water Act. Phase 1 of the Marina Center project would have a potentially significant adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act through direct filling of palustrine emergent wetlands and estuarine wetlands within the Clark Clough muted tidal drainage, non-tidal drainages, and low-lying areas within the rail yard and industrial areas of the site. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-3 may be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. The project proposed to permanently and temporarily fill approximately 5.6 acres of existing palustrine emergent wetlands (as delineated under the Coastal Act). Filling of the wetlands would have a significant effect.
- 2. Biological Resources Mitigation Measures D-3a through D-3f set forth in Table 6-1 of the Final EIR are hereby incorporated by reference and described below:
  - D-3a: The Project Applicant shall obtain the requisite 404 permit and 401 certification from the Corps and RWQCB, which shall, at a minimum, require the Project 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):

1. Replace or restore the affected wetlands on-site at a minimum 1:1 ratio as necessary to ensure that the

wetland functions and values shall be equal to or greater than the affected wetlands; and/or

- Provide wetlands replacement off-site but within the same watershed as the affected wetlands at a minimum 1:1 ratio at a location and of a wetland type approved by the Corps and RWQCB; and/or
- Contribute in-lieu funds for restoration, enhancement, or preservation of off-site wetlands, subject to approval by the Corps and RWQCB.
- D-3b: Prior to site grading, the Project Applicant shall prepare a detailed Restoration Plan in accordance with the U.S. Army Corps of Engineers (Corps) Habitat Mitigation and Monitoring Proposal Guidelines and Regulatory Guidance letters 02-02 and 06-03; Federal Register, 2008. Compensatory Mitigation for Losses of Aquatic Resources; Final Rule. Department of Defense, Department of the Army, Corps of Engineers 33 CFR Parts 325 and 332; and U.S. Environmental Protection Agency 40 CFR Part 230. April 10, 2008; as well as the California Coastal Commission's Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone: Chapter 2 Enhancement and Restoration. The plan shall include, at a minimum: details of methods for site selection, preparation, and remediation; exotic plant removal; excavation, grading, and rip-rap removal; establishment of hydrological function; planting materials and methods; establishment of native species; creation of an effective buffer; maintenance and trash removal; monitoring; contingency plans; and plans for long-term funding for wetland monitoring and maintenance.

For 5 years following completion of the restoration project, a qualified biologist hired by the Project Applicant shall monitor the site bi-annually on the first and last month of the growing season to ensure ongoing success. Upon completion of the restoration, a qualified biologist shall confirm the success of the Restoration Plan and recommend contingency measures, if necessary, to meet the no-net-loss performance requirement.

D-3c: The Project Applicant shall create a buffer zone surrounding the restored wetland area. The buffer shall be adequate to avoid or minimize effects on wetland and slough resources from direct and indirect disturbances such as entry of sediment, oil, or grease into the preserve; trampling of vegetation; and movement, light, or noise impacts that might interfere with habitat values or wildlife use of the slough and marsh. The buffer shall consist of earthen berms sloped toward any road or other source of runoff pollution, fencing, symbolic fencing (split rails), native vegetation such as blackberries that act as a barrier, and signs warning against intrusion.

D-3d: An open space wetland preserve consisting of the restored estuarine wetland and the upland protective buffer area shall be established and protected by a conservation easement in accordance with California Civil Code Sections 815-816, deed restriction, or other means of preservation approved by the City of Eureka, RWQCB, and the Corps. In the event of a conservation easement, the easement holder shall be a public agency or non-profit organization (i) approved by the City of Eureka, RWQCB, and the Corps; and (ii) qualified and authorized to administer conservation lands within the State of California. The conservation easement, deed restriction, or other means of preservation shall protect against land use changes for other than conservation purposes in perpetuity and shall include an endowment for long-term management and protection of the wetland preserve.

D-3e: To minimize the potentially adverse effect of night lighting on habitat use in the restored remnant of Clark Slough, the Project Applicant shall, within 300 feet of the preserve, use low-intensity street lamps, low elevation lighting poles, and internal silvering of the globe or external opaque reflectors to direct light away from the slough and buffer area.

D-3f: The Project Applicant shall implement a non-native invasive species control program for areas disturbed as a result of site remediation and wetland restoration and landscaping activities. Prior to site remediation and wetland restoration, plants considered by the State of California to be exotic pest plants shall be destroyed using environmentally suitable methods, which may include the application of an herbicide approved by the United States Environmental Protection Agency for use near and within aquatic environments. During site remediation and wetland restoration, the Project Applicant shall:

1. Educate construction workers about invasive species and control measures;

2.	Ensure construction-related equipment arrives on-site free of mud or seed-bearing material by, for example, requiring wheel washing upon entry;	
3.	Use native seeds and straw material to the extent feasible;	
4.	Revegetate with appropriate native species; and	
5.	Prohibit the use of the following non-native invasive plants for landscaping or other planting purposes: Pampas grass (Cortaderia jubata, C. selloana) Tree-of-heaven (Ailanthus altissima) Giant reed (Arundo donax) Bamboo (Bambusa spp., et al) Cotoneaster (Cotoneaster pannosa) French broom (Genista monspessulana = Cytisus monspessulanus) Scotch broom (Cytisus scoparius) Blue gum (Eucalyptus globulus) English ivy (Hedera helix) Fig-marigold family members (Conicosia, Carpobrotus and Mesembryanthemum) Tall fescue (Festuca arundinacea) Mattress vine (Muelenbeckia complexa) Tree tobacco (Nicotiana glauca) Fountain grass (Pennisetum setaceum) Pyracantha (Pyracantha angustifolia) Castor bean (Ricinus communis) Black locust (Robinia pseudoacacia) German ivy (Delaina odorata = Senecio mikianoides) Spanish broom (Sparteum junceum) Tamarisk (Tamarix spp.) Gorse (Ulex europaeus) Periwinkle (Vinca major) Purple fountain grass (Pennisetum setaceum)	
cant Effect D-4: The EIR evaluates the potential of the Marina		

4. <u>Significant Effect D-4</u>: The EIR evaluates the potential of the Marina Center to interfere with the movement of native resident or migratory fish or wildlife species, or impede the use of native wildlife nursery sites. Phase 1 of the Marina Center project could interfere with the movement of migrating salmonid species. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-4 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Site remediation and wetland restoration could adversely affect migrating salmonid species and increase sedimentation of Clark Slough and surrounding waters of Humboldt Bay.
- 2. Biological Resources Mitigation Measure D-1a, above, which would require the installation of exclusionary fencing material or other barrier to contain dust and grading materials from site remediation and wetland restoration and avoid any discharges to Clark Slough and surrounding waters, is hereby incorporated by reference. The reduction of sedimentation would reduce impacts to migrating salmonid species.
- 5. <u>Significant Effect D-5</u>: The EIR evaluates the potential of the Marina Center project to conflict with local policies or ordinances protecting biological resources. Phase 1 of the Marina Center project could substantially conflict with Local Coastal Program Policies 6.A.4 and 6.A.7, which protect against significant habitat disruption in the coastal zone. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-5 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Phase 1 of the proposed project would fill wetlands, which could be inconsistent with Local Coastal Program policies that protect biological resources in the coastal zone.
- 2. Biological Resources Mitigation Measures D-1a, and D-3a through D-3f, above, are hereby incorporated by reference and described in the applicable section. Measure D-1a requires installation of a fence or other barrier, which would decrease discharges of sediment into Clark Slough. Measures D-3a through D-3f require wetland replacement at functions and values equal to or greater than those existing, habitat restoration, creation of a wetland buffer and low lighting near the wetland, monitoring, and an invasive species control plan. These measures would further protect biological resources.
- 7. <u>Significant Effect D-7</u>: The EIR evaluates the potential of the Marina Center to result in an adverse temporary loss of wetland value during construction. During the site remediation and preparation of Phase 1 of the Marina Center project, an adverse temporary loss of wetland value

	and function would occur. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-7 would be necessary.
	<u>Finding</u> : Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
	Facts in Support of Finding: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.
	<ol> <li>During site remediation and preparation, the limited wetland functions of Clark Slough and the adjacent wetlands would be adversely affected.</li> </ol>
	<ol> <li>Biological Resources Mitigation Measure D-7a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below:</li> </ol>
	D-7a: Phasing of site remediation and wetland restoration shall minimize the amount of time that both the existing degraded wetlands and the wetlands in the southwest corner of the site (slated for restoration) are non-functional. Wetlands restoration work shall begin and shall continue concurrently with the remediation work. Timely completion of the restoration shall be the highest priority and shall be performed, to the extent possible, during the dry season.
	3. Biological Resources Mitigation Measures D-3a through D-3f, above, and Water Quality Mitigation Measure H-3a, below, are hereby incorporated by reference and described in the applicable section. Measures D-3a through D-3f require wetland replacement at functions and values equal to or greater than those existing, habitat restoration, creation of a wetland buffer and low lighting near the wetland, monitoring, and an invasive species control plan. Measure H-3a requires implementation of additional erosion, sediment, and dust control measures. These measures would further protect biological resources in the near- and long-term.
8.	Significant Effect D-8: The EIR evaluates the potential of the Marina Center project to destroy nests or eggs, or otherwise disturb the reproductive effort of species protected by the Migratory Bird Treaty Act. Soil remediation and associated vegetation removal in Phase 1 of the Marina Center project could destroy nests or eggs, or otherwise disturb the reproductive effort of species protected by the Migratory Bird Treaty Act. If and when the Project Applicant seeks entitlements and regulatory

approvals for subsequent phases of the project, further findings associated with Impact D-8 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Soil remediation and associated vegetation removal in Phase 1 of the Marina Center project could interfere with the use of the site by birds protected under the Migratory Bird Treaty Act.
- Biological Resources Mitigation Measure D-8a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below:
  - D-8a: The Project Applicant shall implement one of the following mitigation measures to reduce the potential impact on breeding birds or their nests or eggs:
    - 1. Refrain from performing vegetation clearing/initial grading activities during the avian breeding season (February 1 to August 31); or
    - Perform pre-construction surveys to locate any nesting birds in the area and establish 100 to 250foot-wide exclusion zones around any identified active nest, depending on site conditions and nature of the work being performed
- 9. <u>Significant Effect D-9</u>: The EIR evaluates the impact of the Marina Center project, in combination with other developments in the immediate vicinity, on biological resources. Phase 1 of the Marina Center project, together with other developments in the immediate vicinity, would contribute to potential cumulative impacts on biological resources, particularly wetlands. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact D-9 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. The proposed project would result in the filling of wetlands, which could result in adverse effects that, when combined with other reasonably foreseeable future development in the project vicinity, could contribute to potential cumulative impacts on biological resources.
- 2. Biological Resources Mitigation Measures D-1a, D-3a through D-3f, D-7a, and D-8a, above, are hereby incorporated by reference and described in the applicable section. Measure D-1a requires installation of a silt fence, which would reduce sedimentation in surrounding waters and reduce impacts to salmonid species. Measures D-3a through D-3f require wetland replacement at functions and values equal to or greater than those existing, habitat restoration, creation of a wetland buffer and low lighting near the wetland, monitoring, and an invasive species control plan. Measure D-7a limits the duration of wetland disturbance, and Measure D-8a requires soil remediation to be scheduled and occur around active nests. Combined, these measures would ensure that the project would not make a considerable contribution to cumulative biological resources impacts.

# E. Cultural Resources

2. <u>Significant Effect E-2</u>: The EIR evaluates the impacts of the Marina Center project on the significance of archaeological resources. Given the potential Wiyot village sites in the project area previously unknown significant deposits could be encountered during Phase 1 of the Marina Center project, which may therefore cause a potentially significant adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5 of the *CEQA Guidelines*. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact E-2 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

1. Archaeological deposits of Wiyot villages or historic-era deposits associated with the American settlement of the area beginning in the 1850s, may be found with the project site or vicinity that may be significant under CEQA, and they could be damaged or destroyed during soil remediation, including any subsurface, ground-disturbing activities.

- 2. Cultural Resources Mitigation Measures E-2a through E-2c set forth in Table 6-1 of the Final EIR are hereby incorporated by reference and described below:
  - E-2a: The following measures shall be required for each phase of development that involves construction or other grounddisturbing 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:

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 geoarcheologist 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.

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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.
- 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 grounddisturbing 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 abovereferenced Cultural Resources Investigation:
  - 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).

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.

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If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a written determination from the City of Eureka that the archaeological material is not significant or unique or a treatment or protection plan is prepared and the field portion adequately completed.

- 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 gualified 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.
- 4. <u>Significant Effect E-4</u>: The EIR evaluates the impacts of the Marina Center project related to the disturbance of human remains. Phase 1 of the Marina Center project could disturb archaeological/human remains, including those interred outside of formal cemeteries, associated with Wiyot village deposits in or near the project site. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact E-4 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

1. A recorded Wiyot village site is located within or near the northeastern boundary of the project site, and demolition or substantial damage to any associated artifacts, or human burials, would be a significant impact on cultural resources.

- 2. Cultural Resources Mitigation Measures E-2a, E-2b, and E-2c, above, are hereby incorporated by reference and described in the applicable section. Measure E-2a requires a subsurface investigation of highly sensitive areas. Measure E-2b requires construction monitoring of areas not designated as "highly sensitive" in case deposits are unearthed. Mitigation Measure E-2c requires halting of construction, descendent notification, and potential reburial arrangements if human remains are discovered. Combined, these measures would reduce the impact to a less-thansignificant level.
- 5. <u>Significant Effect E-5</u>: The EIR evaluates the impacts of the Marina Center project related to the disturbance of human remains. Phase 1 of the Marina Center project, in conjunction with cumulative development, on cultural resources in the project vicinity. Phase 1 of the Marina Center project, in conjunction with cumulative development, could adversely affect cultural resources in the project vicinity could disturb human remains, including those interred outside of formal cemeteries. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact E-5 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Subsurface ground-disturbing activities of the proposed project could have a significant impact on recorded or unrecorded cultural resources, which could be cumulatively significant.
- 2. Cultural Resources Mitigation Measures E-2a, E-2b, and E-2c, above, are hereby incorporated by reference and described in the applicable section. Measure E-2a requires a subsurface investigation of highly sensitive areas. Measure E-2b requires construction monitoring of areas not designated as "highly sensitive" in case deposits are unearthed. Mitigation Measure E-2c requires halting of construction, descendent notification, and potential reburial arrangements if human remains are discovered. Combined, these measures would reduce the impact to a less-thansignificant level and reduce the contribution to less than cumulatively considerable.

## F. Geology, Soils and Seismicity

- 1. <u>No Impact F-1</u>: The EIR evaluates the impacts of the Marina Center project related to exposure of people or structures to rupture of known earthquake faults, seismic ground shaking, seismic-related ground failure, and landslides. Because the project site would remain in open space once site remediation and wetland restoration in Phase 1 is completed, there would be no new structures built on site as part of Phase 1 that would result in such exposure. Thus, Phase 1 would have no significant impact related to seismic events. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact F-1 would be necessary.
- Significant Effect F-2: The EIR evaluates the impacts of the Marina Center project related to substantial erosion or loss of topsoil. The excavation and soil stockpiling activities of Phase 1 of the Marina Center project could result in potentially significant erosion or the loss of topsoil. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the Project, further findings associated with Impact F-2 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Most of the original topsoil on the project site has been previously removed, reworked, or buried with a veneer of fill that covers the entire site. Soil remediation and wetland restoration would disturb these materials.
- Water Quality Mitigation Measure H-3a, which requires implementation of additional erosion, sediment, and dust control measures, is hereby incorporated by reference. The impact of erosion or loss of topsoil would therefore be mitigated to a lessthan-significant level.
- 3. <u>No Impact F-3</u>: The EIR evaluates the impacts of the Marina Center project related to location on a geologic unit or soil that is unstable or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. Because the project site would remain in open space once site remediation and wetland restoration in Phase 1 is completed, there would be no new structures built on site as part of Phase 1 that would result in such exposure. Thus, Phase 1 would have no significant impact related to

location on unstable geologic units or soil. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact F-3 would be necessary.

6. <u>Significant Effect F-6</u>: The EIR evaluates the impacts of the Marina Center project, together with other developments in the community, to contribute to potential cumulative geologic or seismic hazards. Excavation and soil stockpiling actions of Phase 1 of the Marina Center project, together with other developments in the immediate vicinity, would contribute to potential cumulative soil erosion. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact F-6 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Most of the original topsoil on the project site has been previously removed, reworked, or buried with a veneer of fill that covers the entire site. Soil remediation and wetland restoration would disturb these materials.
- 2. Water Quality Mitigation Measure H-3a, which requires implementation of additional erosion, sediment, and dust control measures, is hereby incorporated by reference. The impact of erosion or loss of topsoil would therefore be mitigated to a lessthan-significant level, and the project's cumulative contribution to erosion would not be cumulatively considerable.

### G. Hazards and Hazardous Materials

 <u>Significant Effect G-1</u>: The EIR evaluates the impacts of the Marina Center project through creation of a significant hazard to the public or environment through the routine transport, use, or disposal of hazardous materials. Phase 1 of the Marina Center project could create a significant hazard to the public or the environment through the excavation of contaminated soil or exposure of construction workers to contaminated groundwater. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact G-1 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Remaining and/or previously unidentified contamination may be present on or below ground surface. Encountering contaminated soil, surface water, and groundwater without taking proper precautions during site remediation and wetland restoration could result in the exposure of construction workers to hazardous materials and consequently result in associated significant adverse human health and environmental impacts.
- 2. The Project Applicant has prepared a Supplemental Interim Remedial Action Plan (SIRAP), and submitted the SIRAP to the RWQCB for approval. The RWQCB on June 18, 2009, concurred in the SIRAP and its identified remedial measures, and has obligated CUE VI to carry out those further cleanup activities described in the SIRAP pursuant to the RWQCB's authority. The SIRAP is Appendix S of the Final EIR and is hereby incorporated by reference. Following is a summary the steps to be implemented in Phase 1:
  - General site clearing and removal of debris consisting of concrete foundations, wooden rail road ties, remnants of rail yard maintenance equipment and fuel storage tanks, and other abandoned industrial materials which shall be dismantled, tested, recycled, and disposed of, as appropriate;
  - Focused soil remediation through limited excavation, field testing, and offsite disposal of soil and sediments in seven specific areas including the former General Petroleum site, areas near existing well MW-10, areas within the eastern and western drainage ditches, and areas within Clark Slough;
  - Excavation of areas around Clark Slough to the northeast and southwest, and placement of excavated material on other areas of the site; and
  - Importing, placing, and grading clean cover material over most of the site.

Implementation of the SIRAP, combined with Mitigation Measure G-1a (below), would reduce the potential impact to a less-thansignificant level.

3. Hazards and Hazardous Materials Mitigation Measures G-1a through G-1e set forth in Table 6-1 of the Final EIR are hereby incorporated by reference and described below:

- G-1a: The Project Applicant shall prepare a health and safety plan that meets the requirements of the Regional Water Quality Control Board (RWQCB) or other overseeing agency and shall comply with all federal and state regulations including Occupational Safety and Health Administration (OSHA) requirements for worker safety. Applicable regulations and methods of compliance shall depend upon the level of contamination discovered.
- 2. <u>Significant Effect G-2</u>: The EIR evaluates the impacts of the Marina Center project through reasonably foreseeable upset and accident conditions involving release of hazardous materials. Phase 1 of the Marina Center project would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident involving the release of hazardous materials—such as gasoline, diesel fuel, hydraulic fluid, solvents or oils—during grading and remediation activities. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact G-2 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- Site remediation and grading activities could require limited quantities of hazardous materials that would be stored in 55-gallon drums or other storage tanks. If a spill were to occur in significant quantity the accidental release could pose a hazard to both construction employees as well as the general public.
- 2. Hazards and Hazardous Materials Mitigation Measures G-2a and G-2b set forth in Table 6-1 of the Final EIR are hereby incorporated by reference and described below:
  - G-2a: The following measures shall be undertaken to the satisfaction of the RWQCB and the County Department of Environmental Health, HazMat Division. All potentially hazardous or regulated materials that are used at the project site during site remediation and wetland restoration shall be appropriately covered, handled, stored, and secured in accordance with local and state laws. No hazardous wastes shall be disposed of at the project site. Absorbent materials shall be maintained at locations where hazardous materials are used or stored, in order to capture spilled materials in the

event of an accidental release. An emergency response plan shall be developed and implemented for the project site. All jobsite employees shall be trained to respond to any accidental releases.

- G-2b: The Project Applicant shall prepare a Storm Water Pollution Prevention Plan (SWPPP) and implement construction site best management practices in accordance with the guidelines for erosion control and pollution prevention during site remediation and wetland restoration that can be found in the *California Stormwater Best Management Practices Handbooks*. The guidelines recommend techniques for erosion and sediment control, non-storm water management, and waste management and materials pollution control. The Project Applicant shall implement siteappropriate measures from these guidelines.
- 4. <u>Significant Effect G-4</u>: The EIR evaluates the hazard impacts of the Marina Center project on the public and the environment due to the project's location on a site which is included on a list of hazardous materials sites. Phase 1 of the Marina Center project would be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 because its cleanup is required by the Regional Water Quality Control Board. As a result, it would create a significant hazard to the public or the environment. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact G-4 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- The site is under a Clean Up and Abatement Order of the Regional Water Quality Control Board (RWQCB). A Supplemental Remedial Action Plan has been prepared and is included as Appendix S in the Final EIR. Following is a summary the steps to be implemented in Phase 1:
  - General site clearing and removal of debris consisting of concrete foundations, wooden rail road ties, remnants of rail yard maintenance equipment and fuel storage tanks, and other abandoned industrial materials which shall be

dismantled, tested, recycled, and disposed of, as appropriate;

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

Hazardous Materials Mitigation Measures G-1a, above, is hereby incorporated by reference. This measure requires the preparation and implementation of a remediation plan and health and safety, which, combined with implementation of the SIRAP, would reduce the impact to a less-than-significant level.

Significant Effect G-9: The EIR evaluates the impact of the Marina Center project, in combination with other projects, to contribute to significant cumulative hazards impacts in the project site vicinity. Phase 1 of the Marina Center project, which includes the excavation of contaminated soils, would contribute to significant cumulative hazards impacts in the project site vicinity. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact G-9 would be necessary.

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<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. One of the key components of Phase 1 of the proposed project is the implementation of the SIRAP, which has been approved by the Regional Water Quality Control Board.
- 2. Hazardous Materials Mitigation Measures G-1a, G-2a, and G-2b, above, are hereby incorporated by reference and described in the applicable section. Measure G-1a requires the implementation of a health and safety plan. Measures G-2a and G-2b require

preparation and adherence to a Stormwater Pollution Prevention Plan and all applicable regulations regarding the handling of hazardous materials. Combined, these measures would reduce the proposed project's impact to hazards to a less-than-cumulativelyconsiderable level.

# H. Hydrology and Water Quality

1. <u>Significant Effect H-1</u>: The EIR evaluates the impact of the Marina Center project related to violation of water quality standards. Phase 1 of the Marina Center project could violate water quality standards. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-1 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Stormwater runoff from the site during site remediation and wetland restoration of Phase 1 of the proposed project could result in pollutants entering the stormwater system and ultimately Humboldt Bay.
- 2. Hazardous Materials Mitigation Measures H-3a and H-3b, below, are hereby incorporated by reference and described in the applicable section. Measure H-3a requires the implementation of erosion and sediment control measures to reduce the sedimentation of nearby water. Measure H-3b requires the Project Applicant to obtain a Grading Permit and an Erosion Control Permit from the City of Eureka prior to any clearing, grading, excavating or fill within 50 feet from the edge of a delineated wetland, stream, or stream channel or disturbing more than 2,500 square feet. The Grading Permit and an Erosion Control Permit would require specific erosion reduction measures. Combined, these measures would reduce impacts relating to violation of water quality standards to a less-than-significant level.
- 3. <u>Significant Effect H-3</u>: The EIR evaluates the impact of the Marina Center project related to substantial alteration of drainage patterns in a manner which could result in erosion or siltation on- or off-site. Phase 1 of the Marina Center project would include removal of riprap from the Clark Slough drainage channel and replacement with gentle sloped banks, thereby altering the existing drainage pattern of the site or area in a

manner which would result in potentially significant erosion of siltation onor off-site. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-3 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

 Existing vegetation and gravel, which acts to stabilize the soil, would be removed from the project site as part of the remediation process, potentially resulting in construction-related erosion. During site remediation and associated vegetation removal, potential pollutant sources may include petroleum or heavy metal impacted sediments, and construction materials that may be left exposed to rainfall and/or stormwater runoff.

2. Hydrology and Water Quality Mitigation Measures H-3a and H-3b set forth in Table 6-1 of the Final EIR are hereby incorporated by reference and described below:

H-3a: In addition to the required SWPPP, the following BMPs shall be implemented to protect water quality.

1. Erosion/Sediment Control. During the Phase 1, prior to site grading, combinations of silt fencing, straw wattles, and/or straw bale sediment transport barriers shall be constructed at specific site locations with the intent of containing all site runoff on the project site. This barrier shall be maintained during the rainy season and until completion of remediation and wetland restoration and shall prevent transport of pollutants, such as excessive sediment, away from the construction area. The barrier shall be constructed so that concentrated surface water flows during heavy rains cannot penetrate it without being dissipated in flow energy, and without the water being filtered through the sediment transport barriers.

Scheduling. The north coast's dry season is typically between April 15 and October 15. Proper timing of grading and site remediation during the dry season would minimize soil and construction material exposure during the rainy season. Following October

42

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15, areas of disturbed or fill soils more than 6 inches in depth and greater than 100 square feet (10-foot-by-10-foot area) shall be specifically protected from erosion by 1) shaping the ground surface so that concentrated surface flows do not encounter or cross them, or 2) providing localized straw wattles, straw bales and/or silt fencing. During the rainy season, construction materials and equipment shall be stored under cover or in secondary containment areas.

- 3. Protection of Water Courses and Drainage Inlets. Site drainage under existing conditions is toward the bay. General guidelines for water course and drainage inlet protection during the rainy season shall include providing downgradient sediment traps or other BMPs that allow soil particles to settle out before flows are released to receiving waters, storm drains, streets, or adjacent property. Drainage inlet protection BMPs, if required, shall be installed in a manner that does not cause additional erosion or flooding of a roadway.
- 4. Soil Stockpiles. Should it be necessary to stockpile excess soil on-site, the soil shall be placed within a sediment-protected area that is not likely to result in off-site sedimentation. If likely to be subjected to rain or high winds, stockpiles shall be covered with plastic sheeting (Visqueen®, for example) at least 6- to 10mils thick. Plastic sheeting shall be well-anchored to resist high winds. If stockpiles are to be present through the rainy season, they shall be surrounded with silt or straw bale fencing about 5 feet from the toe of the pile.
- 5. Dust Control. All site remediation and wetland restoration areas shall be treated and maintained as necessary to minimize the generation of dust that may blow off-site. The most common method of dust control during site remediation and wetland restoration is through periodic application of water. However, the application of water for dust control purposes shall be managed to ensure there is no offsite runoff.
- 6. Material Delivery, Storage and Use. Materials used during site remediation and wetland restoration, where appropriate, shall be delivered and stored in appropriate containers and in designated areas, to

prevent the discharge of pollutants to nearby watercourses or storm drain systems. During the rainy season, materials shall be stored in covered areas. Chemicals, paints or bagged materials shall not be stored directly on the ground, but instead shall placed on a pallet or in a secondary containment system. Materials shall be used according to the manufacturer's instructions and all materials shall be disposed of properly. Any spills shall be cleaned up immediately and an ample supply of spill clean-up materials shall be kept on-site during site remediation and wetland restoration. There shall be no fueling or equipment washing activities conducted on-site.

Monitoring. During site remediation and wetland restoration, all erosion and pollution control measures shall be periodically inspected throughout the duration of the project by a qualified professional to ensure that the control measures are properly implemented. If the erosion and pollution control measures are not functioning properly, the owner shall immediately make appropriate modifications to ensure that water quality is protected.

H-3b: Prior to any clearing, grading, excavating or fill within 50 feet from the edge of a delineated wetland, stream, or stream channel or disturbing more than 2,500 square feet, the Project Applicant shall obtain a Grading Permit and an Erosion Control Permit from the City of Eureka. The ECP shall require specific erosion/sediment control devices. which shall be maintained in proper working condition for as long as work is being conducted on the property or for as long as an active permit of any nature is issued for the project. Erosion/sediment control devices required by the ECP may include, but are not limited to, silt fences, straw bales, retention ponds, mulch, sod, rip-rap, vegetation barriers, hydro-seeding, erosion blankets and any other measures that would adequately prevent soil from being eroded and transported onto adjoining property. The ECP shall require a stabilized construction site access for any sites where sediment can be tracked onto public roads by construction vehicles. The responsibility of the property owner and its agents shall be joint and severable with the entity performing the work for the maintenance of all erosion control devices. The erosion control devices shall be maintained in a condition so as to prevent soil erosion on the property and transport of sediment off the property.

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- 4. Less-than-Significant Effect H-4: The EIR evaluates the impact of the Marina Center project related to alternation of the existing drainage pattern of the site, resulting in flooding on- or off-site. Phase 1 of the Marina Center project would result in an increase in pervious surfaces, allowing further water filtration. In addition, Phase 1 would include a stormwater pollution prevention plan, retaining water on-site during storm events. Phase 1 of the proposed project would thus have a less-than-significant impact related to on- or off-site flooding. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-4 would be necessary.
- 5. Less-than-Significant Effect H-5: The EIR evaluates the impact of the Marina Center project related to contribution of runoff water that would exceed the capacity of existing or planning stormwater drainage systems. Phase 1 of the Marina Center project would result in an increase in pervious surfaces, allowing further water filtration. Phase 1 of the proposed project would thus have a less-than-significant impact on runoff water. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-5 would be necessary.
- 6. <u>Significant Effect H-6</u>: The EIR evaluates the impact of the Marina Center project related to other degradation of water quality. Phase 1 of the Marina Center project would otherwise substantially degrade water quality through the excavation and stockpiling of potentially contaminated soils on the project site. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-6 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Site remediation and wetland restoration of Phase 1 of the proposed project would result in excavation of site soils, destabilizing potential pollutants in the soil.
- 2. Hydrology and Water Quality Mitigation Measures H-3a and H-3b, described above, are hereby incorporated by reference. These measures require the implementation of erosion and sediment control measures and Best Management Practices to the satisfaction of the City of Eureka, which would reduce the impact to a less-than-significant level.

- 7. <u>No Impact H-7</u>: The EIR evaluates the impact of the Marina Center project related to placement of housing within the 100-year flood hazard areas. Phase 1 of the Marina Center project includes no housing. Therefore, Phase 1 of the proposed project would have no significant impact related to housing placement within the 100-year flood hazard area. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-7 would be necessary.
- 10. <u>No Impact H-10</u>: The EIR evaluates the impact of the Marina Center project related to exposure of people or structures to inundation of seiche, tsunami, or mudflow. Phase 1 of the Marina Center project would not result in an increase in the residential, worker, or visitor population on the project site, nor any new structures. Therefore, Phase 1 of the proposed project would have no significant impact related seiche or tsunami. The project site is not located in an area that would be susceptible to mudflow. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-10 would be necessary.
- 11. <u>Significant Effect H-11</u>: The EIR evaluates the impact of the Marina Center project, together with other developments in the vicinity, to contribute to potential adverse cumulative impacts to hydrology and water quality. Phase 1 of the Marina Center project, together with other developments in the area, would contribute to potential adverse cumulative impacts on hydrology and water quality. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact H-11 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Existing vegetation and gravel, which acts to stabilize the soil, would be removed from the project site as part of the remediation process, potentially resulting in construction-related erosion. During site remediation and wetland restoration, potential pollutant sources may include petroleum or heavy metal impacted sediments, and construction materials that may be left exposed to rainfall and/or stormwater runoff.
- 2. Hydrology and Water Quality Mitigation Measures H-3a and H-3b, described above, are hereby incorporated by reference. These measures require the implementation of erosion and sediment

control measures and Best Management Practices to the satisfaction of the City of Eureka, which would reduce the project impact to a less-than-significant level and its cumulative contribution to less than considerable.

### K. Noise

- 1. Less-than-Significant Effect K-1: The EIR evaluates the impact of the Marina Center project related to exposure of persons to, or generation of, noise levels in excess of standards established in the noise ordinance or other land use plan. Site remediation and wetland restoration of Phase 1 of the Marina Center project would not include the types of construction equipment that would generate excessive noise. Therefore, Phase 1 of the proposed project would have a less-than-significant impact related to exposure of people to, or generation of, excessive noise. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact K-1 would be necessary.
- 2. <u>No Impact K-2</u>: The EIR evaluates the impact of the Marina Center project related to generation of excessive ground-borne vibration or ground-borne noise levels. Site remediation and wetland restoration of Phase 1 of the Marina Center project would not include the types of construction equipment that would generate such vibration. Therefore, Phase 1 of the proposed project would have no significant impact related to ground-borne vibration or ground-borne noise levels. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact K-2 would be necessary.
- 3. <u>No Impact K-3</u>: The EIR evaluates the impact of the Marina Center project related to permanent increase in ambient noise levels of 5 dBA or more. Phase 1 of the Marina Center project is a temporary construction period. Therefore, Phase 1 of the proposed project would have no significant impact on permanent increases in noise levels. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact K-3 would be necessary.
- 4. <u>Significant Effect K-4</u>: The EIR evaluates the impact of the Marina Center project related to a substantial temporary increase in noise levels. Excavation, grading, and truck movements of Phase 1 of the Marina Center project would result in a potentially significant temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact K-4 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- Site remediation and wetland restoration of Phase 1 of the proposed project could generate significant amounts of noise at the project site. In addition, construction-related material haul trips would raise the ambient noise levels along haul routes, depending on the number of haul trips made and the types of vehicles used.
- Noise Mitigation Measures K-4a and K-4b set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below.
  - K-4a: The Project Applicant shall require construction contractors to limit standard site remediation and wetland restoration to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise-generating activities (greater than 90 dBA) limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise-generating activity permitted between 12:30 p.m. and 1:30 p.m. No site remediation and wetland restoration shall be allowed on weekends. No extreme noise-generating activities shall be allowed on weekends and holidays. Site remediation and wetland restoration outside of these hours and days may be allowed by prior approval from the City.
  - K-4b: To reduce daytime noise impacts due to site remediation and wetland restoration activities, the Project Applicant shall require construction contractors to implement the following measures:
    - 1. Equipment and trucks used for site remediation and wetland restoration shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, wherever feasible).
    - 2. Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for site remediation and wetland restoration shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically

powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible; this could achieve a reduction of 5 dBA. Quieter procedures, such as use of drills rather than impact tools, shall be used whenever feasible.

- 3. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- 7. <u>No Impact K-7</u>: The EIR evaluates the impact of the Marina Center project, in combination with other planned of future development, to result in adverse cumulative noise increases to expose site workers to excessive noise levels generated by nearby airports. Phase 1 of the Marina Center project would not result in a permanent noise increases at the project site, and thus would have no significant impact related to cumulative noise increases. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact K-7 would be necessary.

## M. Public Services

- 1. <u>No Impact M-1</u>: The EIR evaluates the impact of the Marina Center project related to result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for fire protection. Phase 1 of the Marina Center project would result in no new structures or population on the project site. Thus, Phase 1 of the project would have no significant impact related to physical impacts from new fire facilities. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact M-1 would be necessary.
- 2. <u>Significant Effect M-2</u>: The EIR evaluates the impact of the Marina Center project related to result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance

objectives for police protection. Phase 1 of the Marina Center project would involve use of construction equipment that would have to stay on site overnight and during other periods when not in use, resulting in substantial adverse physically impacts associated with the provision of police protection. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact M-2 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

<u>Facts in Support of Finding</u>: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Site remediation and wetland restoration of Phase 1 of the proposed project could require security for on-site construction equipment storage, which could require additional police services.
- 2. Public Services Mitigation Measure M-2a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below.
  - M-2a: Phase 1 of the Marina Center development shall have an onsite security patrol to handle routine situations that do not require emergency response from the Eureka Police Department.

#### O. Transportation

 <u>Significant Effect O-1</u>: The EIR evaluates the traffic impacts of the Marina Center project through causing an increase in traffic, which would be substantial in relation to the existing traffic load and capacity of the street system. Phase 1 of the Marina Center project would cause an increase in construction-related traffic, which is substantial in relation to the existing traffic load and capacity of the street system. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact O-1 would be necessary.

<u>Finding</u>: Changes or alterations have been required in or incorporated into Phase 1 of the project that would avoid or substantially lessen the significant environmental effect as identified in the Final EIR.

Facts in Support of Finding: The following facts and mitigation measures indicate that the impact will be reduced to less than significant.

- 1. Although the impact would be temporary, truck movements could have an adverse effect on traffic flow in the project site vicinity.
- 2. Transportation Mitigation Measure O-1a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below.
  - O-1a: The Project Applicant and construction contractor(s) shall develop a construction management plan for review and approval by the City's Engineering Department and Caltrans. The plan shall include at least the following items and requirements to reduce traffic congestion during site remediation and wetland restoration:

A set of comprehensive traffic control measures shall be developed, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. Prior to approving plans for mitigation on U.S. 101, Caltrans requires that all site remediation and wetland restoration include an assessment of the potential for traffic congestion. This is accomplished through lane closure analysis showing the times of day and days of the week that lanes can be closed to traffic. Excepting extraordinary circumstances, lane closures are authorized at times of the day and on days of the week where the interruptions, closures, and activity is least likely to cause unacceptable congestion using the same level of service criteria as used for assessing project traffic impacts.

- If site remediation and wetland restoration result in unacceptable traffic congestion, flaggers shall supplement approved traffic control plans to ensure that traffic moves through the construction zone with minimal delays.
- 2. The Construction Management Plan shall identify haul routes for movement of construction vehicles that would minimize impacts on motor vehicle, bicycle, and pedestrian traffic, circulation, and safety, and specifically to minimize impacts to the greatest extent possible on streets in the project area. The haul routes shall be approved by the City and Caltrans
- 3. The Construction Management Plan shall provide for notification procedures for adjacent property owners

and public safety personnel regarding when major deliveries, detours, and lane closures would occur.

4. The Construction Management Plan shall provide for accommodation of bicycle flow, particularly along First Street and Waterfront Drive.

> The Construction Management Plan shall provide for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the Project Applicant.

- 4. No Impact O-4: The EIR evaluates the traffic impacts of the Marina Center project related to increased hazards due to changes in design features or incorporation of incompatible uses. The site remediation and wetland restoration of Phase 1 of the Marina Center project would not result in any changes in design patterns, and the site would remain vacant. Therefore, Phase 1 would have no significant impact related to increased traffic hazards. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact O-4 would be necessary.
- 6. No Impact O-6: The EIR evaluates the impacts of the Marina Center project on parking capacity. The site remediation and wetland restoration of Phase 1 of the Marina Center project would not result in any increase in permanent worker population or residential population on the project site that would require parking. Therefore, Phase 1 would have no significant impact related to parking capacity. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact O-6 would be necessary.
- 7: No Impact O-7: The EIR evaluates the impacts of the Marina Center project related to conflict with adopted plans and policies supporting alternative transportation. The site remediation and wetland restoration of Phase 1 of the Marina Center project would not result in permanent worker population or residential population on the project site that would require parking. Therefore, Phase 1 would have no significant impact related to provision of alternative transportation facilities, and it would have no significant impact related to conflict with adopted plans and policies supporting alternative transportation. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact O-7 would be necessary.

8. <u>No Impact O-6</u>: The EIR evaluates the impacts of the Marina Center project, in combination with foreseeable development, of cumulative increases in traffic at local intersections in the project area. The site remediation and wetland restoration of Phase 1 of the Marina Center project would not result in any increase in permanent worker population, and construction-related trips would be temporary. Therefore, Phase 1 would have no significant impact related to cumulative traffic increases at project area intersections. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact O-8 would be necessary.

## **Q. Utilities and Service Systems**

- 7. Less-than-Significant Effect Q-7: The EIR evaluates the operational impacts of the Marina Center project related to violated of any federal, state, or local statutes and regulations related to operational solid waste. The site remediation and wetland restoration of Phase 1 of the proposed project would not result in operational solid waste. Thus, Phase 1 of the project would have a less-than-significant impact related to violation of statutes related to disposal of operational solid waste. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact Q-7 would be necessary.
- 8. <u>No Impact Q-8</u>: The EIR evaluates the cumulative adverse effects of the Marina Center project, together with other projects, on availability of utilities and service systems. Phase 1 of the Marina Center project would have no impact on utilities and service systems availability. Thus, Phase 1 of the project, in combination with other development, would not have a significant cumulative impact on utilities and service systems. If and when the Project Applicant seeks entitlements and regulatory approvals for subsequent phases of the project, further findings associated with Impact Q-8 would be necessary.

# Section 4

### Significant Effects that Cannot be Mitigated to a Less than Significant Level

The City finds for each of the significant or potentially significant impacts identified in this section, Section 4.0, that changes or alterations have been required or incorporated into the proposed project that substantially lessen the significant effects as identified in the Final EIR.

As described above, *CEQA Guidelines* Section 15091 states that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environment effect as identified in the Final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final environmental impact report.

#### Finding

The City hereby finds that changes or alterations have been required in, or incorporated into, Phase 1 of the proposed project which avoid or substantially lessen all significant environment effects as identified in the Final EIR. Consequently, there are no significant environmental effects for the Phase 1 project that cannot be mitigated to a less-than-significant level

# Section 5

# <u>Alternatives</u>

Where a lead agency has determined that, even after the adoption of all feasible mitigation measures, a project as proposed will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the agency, prior to approving the project as mitigated, must first determine whether, with respect to such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of CEQA. Although an EIR must evaluate this range of potentially feasible alternatives, an alternative may ultimately be deemed by the lead agency to be "infeasible" if it fails to fully promote the lead agency's underlying goals and objectives with respect to the project. For phase 1 of the proposed project, there would be no significant adverse environmental effects that would not be mitigated to a less-than-significant level.

Under CEQA Guidelines section 15126.6, the alternatives to be discussed in detail in an EIR should be able to "feasibly attain most of the basic objectives of the project[.]" For this reason, the Objectives described above provided the framework for defining possible alternatives. Alternatives were chosen to encompass a range of urban development schemes for the project site that would meet the objectives set out both in the EIR. Based on these objectives, the City developed four alternatives that it addressed in detail and another 20 alternatives that were not addressed in detail or were rejected outright as part of the City's early screening. Per CEQA Guidelines section 15126.6 and the Project's Objectives, the following alternatives to the Project were identified:

- No Project Alternative;
- Reduced Project Alternative
- Limited Industrial Zoning Alternative
- Off-Site Shoreline Property Alternative
- Coastal Dependent Industrial Zoning
- Ocean View Cemetery
- Coastal Agriculture Land Between Harper Motors and Indianola
- Schneider Industrial Land
- Sierra Pacific Industrial Property
- Oid Flea Market Property
- Schmidbauer Lumber Co Property

- Lieber Coastal Agricultural Property
- Ridgewood Village Property
- Palco Property, Fortuna
- Convention Center
- Tourism Use
- Covered Swimming Pool
- Horticultural Gardens
- No Retail Option
- Public Facilities Option
- Intermodal Bus Terminal
- Wetland Restoration and Public Park
- No Fossil Fuel
- College of the Redwoods

Of these 24 alternatives, the following four alternatives were carried forward for analysis.

#### No Project Alternative

Under the No Project Alternative, the property would remain zoned and planned predominantly for Public uses. Only those uses consistent with the Public zoning and general plan designation could be put forward (on those portions of the property zoned Public). Although the property is privately owned, the Public zoning would not preclude the owner from developing a use consistent with the Public zoning, and, for example, leasing the completed development to a governmental agency. The smaller portion of the project site zoned Limited Industrial could be developed with uses consistent with the Limited Industrial zoning. Because the property is located in the coastal zone, any development of the property would be subject to the provisions and regulations of the City's adopted Local Coastal Program.

A small portion of the project site is zoned Limited Industrial and would remain so. The RWQCB has stated that, if the Marina Center project is not approved, the RWQCB would likely revise the Clean Up & Abatement Order for the property to require clean-up on a fixed time line. To the extent that the required clean-up impacts existing wetlands on the project site, wetland mitigation would be required as conditions of approval by regulatory agencies (e.g., U.S. Army Corps of Engineers). However, the nature and detail of such mitigation is unknown and could include replacement of the wetlands in-

kind and at their existing locations. Therefore, while the No Project Alternative could be similar to the site remediation and wetland restoration of Phase 1 of the proposed project, the specifics of the wetlands mitigation are unknown and may be less beneficial than that proposed as part of Phase 1 of the proposed Marina Center project.

# **Objectives**

The No Project Alternative would not meet the basic objectives of the project. Presuming the RWQCB issued a revised Clean Up & Abatement Order for the site, the No Project Alternative would result in brownfield remediation, but it would not result in infill development.

## **Impacts**

Presuming under the No Project Alternative that the RWQCB issued a revised Clean Up & Abatement Order and that the site is remediated in accordance with the order, it is probable that the site would be graded to eliminate the remnant drainage ditches and debris piles, and that the on-site wetlands would be substantially reduced or eliminated. However, it is possible that some wetlands would be left to remain in their current state rather than be remediated. It is also possible that any wetlands impacted by remediation activities would be replaced in-kind and at their existing locations, which would be less beneficial than the consolidated wetlands restoration approach under Phase 1 of the proposed project. Therefore, under the No Project Alternative, there would likely be significant biological impacts due to the loss of on-site wetlands, although perhaps to a less degree than for the project. The loss of wetlands could be mitigated through payment into a mitigation bank or restoration offsite.

## Marina Center Reduced Footprint Alternative

The Marina Center Reduced Footprint Alternative would provide approximately three quarters of the building space (in square feet) proposed by the Marina Center project. However, the reduction would not be across the board for each use type. The Marina Center Reduced Footprint Alternative would increase office space by about 150 percent and increase industrial space by about 140 percent, but it would reduce restaurant and retail space and eliminate the residential and museum space proposed by the project.

Depending on the site plan of this alternative, the smaller footprint could make it possible to avoid some wetland fill depending on specific site remediation requirements set for them by the RWQCB. Therefore, Phase 1 of the Marina Center Reduced Footprint Alternative could be similar to the site remediation and wetland restoration of Phase 1 of the proposed project.

## **Objectives**

The Reduced Footprint Alternative would meet most of the basic objectives of the project and is feasible.

## Impacts

This Alternative would generate approximately 40 percent fewer daily trips on area roadways and would likely substantially lessen significant impacts at one or more study area intersections as compared to the proposed project. As stated above, because of the significantly reduced daily traffic trips, noise levels would be decreased relative to the proposed project. Although the lesser size footprint could be expected to make it possible to avoid some wetland fill, the specific site remediation requirements set by the RWQCB requires clean-up of the entire site, thus having similar impacts to wetlands as the proposed project. Otherwise this Alternative would not avoid or substantially lessen any of the other significant or potentially significant impacts identified.

### Limited Industrial Zoning Alternative

The Limited Industrial Zoning Alternative would create a continuous area of Limited Industrial-zoned lands by connecting the existing Limited Industrial-zoned lands south of the project site to the existing Limited Industrial-zoned lands east of the site. The alternative would provide for the extension of Second and Fourth Streets through the project site, along with development of 407,000 square feet of industrial buildings, 626 parking spaces, and loading docks for the larger industrial buildings.

Depending on the site plan of this alternative, a different footprint could make it possible to avoid some wetland fill depending on specific site remediation requirements set for them by the RWQCB. Therefore, Phase 1 of the Limited Industrial Zoning Alternative could be similar to the site remediation and wetland restoration of Phase 1 of the proposed project.

#### **Objectives**

The Limited Industrial Zoning Alternative would meet all of the basic project objectives and is feasible.

#### Impacts

This Alternative would generate approximately 33 percent fewer daily trips on area roadways and would therefore likely substantially lessen significant impacts at one or more study area intersections as compared to the project. Also, because of the significantly reduced daily traffic trips, noise levels would be decreased relative to the proposed project. Although the site design would make it feasible to avoid a greater percentage of wetlands on the property, specific site remediation requirements set by the RWQCB requires clean-up of the entire site, thus having similar impacts to wetlands as the proposed project.

#### **Off-site Shoreline Property Alternative**

The site of the Off-Site Shoreline Property Alternative is owned by the Project Applicant. It is approximately 30 acres in size and is, for the most part, zoned and planned for Commercial Waterfront uses with some Natural Resources zoning. The property is located adjacent to Humboldt Bay in the coastal zone and has about 16.5 acres of wetlands primarily around the outside edges of the property. The Off-Site Shoreline Property Alternative assumes that the same uses proposed by the project would be developed on the Shoreline property.

Phase 1 of the Limited Industrial Zoning Alternative would be similar to the site remediation and wetland restoration of Phase 1 of the proposed project.

### **Objectives**

This Alternative would also meet most of the basic project objectives and is considered feasible. In addition, this Alternative would likely be capable of substantially lessening impacts to wetlands since most of them exist along the site property perimeter and therefore would be easier to avoid and protect.

### Impacts

The Off-Site Shoreline Property Alternative would not avoid or substantially lessen any of the significant or potentially significant impacts that would result from the Marina Center project. Many of the environmental issues associated with the project site – including biological resources, cultural resources, and hazards and hazardous materials impacts – would also arise with development on the Shoreline property. The property is located in the coastal zone and would require a local coastal program amendment to change the zoning and general plan designation for at least part of the property. In general, the same, or practically the same, significant impacts that would result from development of the Marina Center project on the project site would result from development of the same project on the Shoreline property.

## Environmentally Superior Alternative

For the project as a whole, the environmentally superior alternative is the No Project Alternative. When the No Project Alternative is the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. The environmentally superior alternative among the other alternatives is the Marina Center Reduced Footprint Alternative. Because this alternative would provide 76 percent of the building area proposed by the Marina Center project, it could result in some reduced impacts associated with site remediation and wetland restoration

# Finding

The City finds that that a good faith effort was made to evaluate all feasible alternatives in the EIR that are reasonable alternatives to the Marina Center Project and could feasibly obtain the basic objectives of the project, even when the alternatives might impede the attainment of the project's objectives and might be more costly. As a result, the scope of alternatives analyzed in the EIR is not unduly limited or narrow. The City also finds that all reasonable alternatives were reviewed, analyzed, and discussed in the review process of the EIR, Phase 1, and the ultimate decision on the Marina Center Project. The City hereby finds that changes or alterations have been required in, or incorporated into Phase 1 of the proposed project which avoid or substantially lessen all significant environment effects as identified in the Final EIR. This Statement of Findings only applies to Phase 1 of the proposed project, which would include brownfield remediation and wetland restoration. Separate Findings will be prepared for other future phases of the proposed project when they are subject to decision by the City Council.

# Section 6

## General Findings

- 1. The plans for the project have been prepared and analyzed so as to provide for public involvement in the planning and CEQA processes.
- 2. Comments regarding the Draft EIR received during the public review period have been adequately responded to in written Responses to Comments attached to the Final EIR and Errata.
- 3. To the degree that any impacts described in the Final EIR are perceived to have a Less-than-Significant Effect on the environment or that such impacts appear ambiguous as to their effect on the environment as discussed in the Draft EIR, the City has responded to key environmental issues and has incorporated mitigation measures to reduce or minimize potential environmental effects of the proposed project to the maximum extent feasible.
- 4. 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.

## EXHIBIT "B"

### CONDITIONS OF APPROVAL AND

### **MITIGATION MONITORING AND REPORTING PROGRAM**

Approval of the coastal development permit is conditioned upon the following terms and requirements. The violation of any term or requirement of this conditional approval may result in the revocation of the permit. The Conditions of Approval and Mitigation Measures shall be completed to the satisfaction of the City of Eureka or as listed in the Mitigation Monitoring and Reporting Program (MMRP). Compliance shall be determined by the City, and the elimination or replacement of conditions or mitigation measures shall be at the discretion of the City, provided the elimination or replacement of conditions or mitigation measures accomplish the intended purpose of the original condition.

The applicant is solely responsible for complying with any conditions, mitigations or regulations required by any agency other than the City of Eureka.

## CONDITIONS OF APPROVAL

- 1. The applicant shall comply with all mitigation measures listed in the MMRP.
- 2. A Grading Permit and an Erosion Control Permit shall be obtained from the City of Eureka Building Official for grading performed on the site.
- 3. Prior to issuance of the grading permit, the applicant shall reimburse the city for all expenses incurred in the preparation and certification of the EIR.

## MITIGATION MONITORING AND REPORTING PROGRAM

### A. Introduction

When approving projects with Environmental Impact Reports (EIRs) that identify significant impacts, the California Environmental Quality Act (CEQA) requires public agencies to adopt monitoring and reporting programs or conditions of project approval to mitigate or avoid the identified significant effects (Public Resources Code Section 21081.6(a)(1)). A public agency adopting measures to mitigate or avoid the significant impacts of a proposed project is required to ensure that the measures are fully enforceable, through permit conditions, agreements, or other means (Public Resources Code Section 21081.6(b)). The mitigation measures required by a public agency to reduce or avoid significant project impacts not incorporated into the design or program for the project, may be made conditions of project approval as set forth in a Mitigation

Monitoring and Reporting Program (MMRP). The program must be designed to ensure project compliance with mitigation measures during project implementation.

The MMRP includes the mitigation measures identified in the EIR required to address only the significant impacts associated with the project being approved. The required mitigation measures are summarized in this program.

# B. Format

The MMRP is organized in a table format (see Attachment 1), keyed to each significant impact and each EIR mitigation measure. Only mitigation measures adopted to address significant impacts for Phase 1 are included in this program. Each mitigation measure is set out in full, followed by a tabular summary of monitoring requirements. The column headings in the tables are defined as follows:

- **Mitigation Measures adopted as Conditions of Approval:** This column presents the mitigation measure identified in the EIR.
- **Phase:** The proposed project would be constructed in phases, and the Project Applicant is only seeking approvals and entitlements for the Phase 1 of the proposed project under these Findings.
- **Implementation Procedures:** This column identifies the procedures associated with implementation of the migration measure.
- **Monitoring Responsibility:** This column contains an assignment of responsibility for the monitoring and reporting tasks.
- **Monitoring and Reporting Action:** This column refers the outcome from implementing the mitigation measure.
- **Mitigation Schedule:** The general schedule for conducting each mitigation task, identifying where appropriate both the timing and the frequency of the action.
- Verification of Compliance: This column will be used by the lead agency to document the person who verified the implementation of the mitigation measure and the date on which this verification occurred.

# C. Enforcement

If the project is approved, the MMRP would be incorporated as a condition of such approval. Therefore, all mitigation measures for significant impacts must be carried out in order to fulfill the requirements of approval. A number of the mitigation measures would be implemented during the course of the development review process. These measures would be checked on plans, in reports, and in the field prior to construction. Most of the remaining mitigation measures would be implemented during the construction, or project implementation phase.

EXHIBIT "B"

Verification of Future Phases Future Phases Compliance Phase 1 Verified by: Verified by: Verified by: Verified by: Venfied by: Phase 1 Dete: Dete: Dete: Dete: Date: Prior to issuance of grading permit Prior to issuance Prior to approval building permits; Ongoing monitoring for 5 <sup>c</sup>uture Phases: Monitoring Both Phase 1 Schedule Both Phase 1 of grading or of grading or construction and Future and Future building permit(s) MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL AND MITIGATION MONITORING PROGRAM- PHASE 1 Phases: Phases: prior to ensure the installation of replaced or restored at a and final report(s) on the Review the construction plan(s) for the project to minimum 1:1 ratio; if not Review and approval of status of the restoration Review of construction met payment of in-lieu prior to any grading or the restoration plan by contribution has been Monitoring and Reporting Action Receipt of the annual a fence would occur applicable agencies includes wetland plan to ensure it construction received plan California Department Department; City of Eureka Building Monitoring Responsibility Department; City of Eureka Building Department; City of Eureka Building Department; Amy Corp of Engineers; Corp of Engineers; Department; Army of Fish and Game; California Coastal City of Eureka City of Eureka City of Eureka Development Development Development Commission Department Community Community Community RWQCB Project Applicant and its Project Applicant and its Project Applicant and its report from the qualified biologist addressing the status of the restoration plan, a final report from the mitigation measure incorporates mitigation Submittal of an annual exclusionary fence to meet requirements of incorporate mitigation Restoration Plan that Implementation Procedures prepare a detailed contractor(s) shall contractor(s) shall construction plans contractor(s) shall the biologist upon requirements into completion of the requirements construct an Phase 1 and Future Phases Phase 1 and Future Phase Phase 1 Phases functions and values of the wetlands affected by the project according California Coastal Commission's Procedural Guidance for the Review ratio as necessary to ensure that the wettand functions and values preservation of off-site wetlands, subject to approval by the Corps and RWOCB. Corps and RWQCB, which shail, at a minimum, ensure that functions Replace or restore the affected wetlands onsite at a minimum 1:1 excavation, grading, and rip-rap removal; establishment of hydrological function, planting materials and methods; establishment and values of replacement wetlands are equal to or greater than the D-1a: Installation of exclusionary fencing material or other barrier to contain dust and grading materials from construction activities and avoid any discharges to Clark Slough and surrounding waters. D-3a: Obtain the requisite 404 permit and 401 certification from the D-3b: Prior to site grading, prepare a detailed Restoration Plan in accordance with the U.S. Amy Corps of Engineers (Corps) Habitat Protection Agency 40 CFR Part 230. April 10, 2008; as well as the watershed as the affected wetlands at a minimum 1:1 ratio at a shall be equal to or greater than the affected wetlands; and/or Compensatory Mitigation for Losses of Aquatic Resources: Finel Rule. Department of Defense, Department of the Army, Corps of The plan shall include, at a minimum: details of methods for site Engineers 33 CFR Parts 325 and 332; and U.S. Environmental Mitigation and Monitoring Proposal Guidelines and Regulatory selection, preparation, and remediation; exotic plant removal; to one or a combination of the following approaches deemed acceptable to the applicable regulatory agencies (e.g., Corps. Provide wetlands replacement off-site but within the same location and of a wetland type approved by the Corps and Contribute in-lieu funds for restoration, enhancement, or Guidance letters 02-02 and 06-03; Federal Register, 2008. Mitigation Measures Adopted as Conditions of Approval of Wetland Projects in California's Coastal Zone RWCQB, and Coastal Commission): RWQCB; and/or D. Biology ÷., N еj

Mitigation Measures Adopted as Conditions of Approvat	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
of native species: creation of an effective buffer, maintenance and trash removal; monitoring; contingency plans; and plans for long-term funding for wettland monitoring and maintenance. For 5 years following completion of the restoration project, a qualified biologist shall monitor the site biannually on the first and last month of the growing season to ensure ongoing success. Upon completion of the restoration, a qualified biologist shall confirm the success of the Restoration Plan and recommend contingency measures, if necessary, to meet the no-net-loss performance requirement.		restoration plan			years after project completion	
D-3c: Create a buffer zone surrounding the restored wetland area. The buffer shall be adequate to avoid or minimize effects on wetland and slough resources from direct and indirect disturbances such as entry of sediment, oil, or grease into the reserve, trampling of vegetation: and movement, light, or noise impacts that might interfere with habitat values or wildlife use of the slough and marsh. The buffer shall consist of earthen berms sloped toward any road or other source of runoff pollution, fencing, symbolic fencing (split rails), native warning against intrusion.	Phase 1 Maintained in Future Phases	Project Applicant and its contractor(s) shall incorporate a buffer zone into the construction plan(s)	City of Eureka Community Development Department: City of Eureka Building Department	Approval of buffer zone size and design	Prior to issuance of grading and building permit(s)	Verified by: Date:
D-3d: An open space wetland reserve consisting of the restored estuarine wetland and the upland protective buffer area shall be established and protected by a conservation easement in accordance with California Civil Code Sections 815-816, deed restriction, or other means of preservation approved by the City of Eureka, RWQCB, and the Corps. In the event of a conservation easement, the easement holder shall be a public agency or non-profit organization (i) approved by the City of Eureka, RWQCB, and the Corps; and (ii) qualified and authorized to administer conservation lands within the State of California. The conservation easement, deed restriction, or other means of preservation shall protect against land use changes for other than conservation surposes in perpetuity and shall include an endowment for long-term management and protection of the wetland reserve.	Phase 1 Maintained in Future Phases	Project Applicant and its contractor(s) shalf incorporate a wetland reserve into design plans and property agreements prior to design	City of Eureka Community Development Department: City of Eureka Building Department: Army Corp of Engineers; RWQCB	Approval of the conservation easement, deed restriction, or other means of preservation and recording of that control	Prior to issuance of grading permit	Verified by: Date:
D-3e: To minimize the potentially adverse effect of night lighting on habitat use in the restored remnant of Clark Slough, within 300 feet of the reserve, use low-intensity street lamps. Iow elevation lighting poles, and internal silvering of the globe or external opaque reflectors to direct light away from the slough and buffer area. See also Mitigation Measure A-4a.	Phase 1 Maintained in Future Phases	Project Applicant and its contractor(s) shall incorporate mitigation measure requirements into construction plans	City of Eureka Community Development Department, City of Eureka Building Department	Review of construction plan to ensure it includes lighting requirements	Prior to approval of the grading or building permit(s)	Verified by: Date:
D-3f: Implementation of a non-native invasive species control program for areas disturbed as a result of construction and landscaping activities. Prior to construction, plants considered by the State of California to be exotic pest plants shall be destroyed using environmentally suitable methods, which may include the application of an herbicide approved by the United States Environmental Protection Agency for use near and within aquatic environments.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall incorporate a non-native invasive species control program into landscape plan and building permit(s) application(s)	City of Eureka Community Development Department; City of Eureka Building Department	Receive and review plans for non-native invasive species control program Receipt of report on the status of the program's implementation after	Phase 1 Prior to issuance of grading permit Future Phases Prior to issuance	Phase 1 Venified by: Date: Future Phases

	Phase	Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
During construction: 1. Educate construction workers about invasive species and control				each construction phase	of building permit(s)	Verified by:
measures: 2. Ensure construction-related equipment arrives onsite free of mud		-*			-	Date:
or seed-bearing material by, for example, requiring wheel washing upon entry;		-				
3. Use native seeds and straw material to the extent feasible;						
					-	
<ol><li>Prohibit the use of the following non-native invasive plants for landscaping or other planting purposes:</li></ol>		-		-		
Pampas grass (Cortedenia jubata, C. selloana)				-	-	
Tree-of-heaven (Ailanthus altissima)	-					
Giant reed (Arundo donax)			-			
Bamboo (Bembusa spp., et al)		-	-			
Cotoneaster (Cotoneaster pannosa)	-	-	-			
French broom (Genista monspessulana = Cytisus	-		-	-		
Ronspessularus)	-			-		
Blue oum ( <i>Eucalvotus</i> okobutus)						
English ivy (Hedere helix)		•	-			
Fig-marigold family members (Conicosia, Carpobrotus and Mesembryanthemum)				-	-	
Tall fescue (Festuca arundinacea)			-		-	
Mattress vine (Muelenbeckia complexa)			-			
Tree tobacco (Nicotiana glauca)			_			
Fountain grass (Pennisetum setaceu Pyracantha (Pyracantha angustifolie)				-		
Castor bean (Ricinus communis)		-	-			
Black locust (Robinia pseudoacacia)						
German ivy (Delairia odorata =Senecio mikianoides)						
Spanish broom (Sparteum junceum)						
Tamarisk (Tamarix spp.)			-	-		
Gorse (Ulex europaeus)				-		
Periwinkle (Vince major)						
Purple fountain grass (Pennisetum setaceum)m)				-		
D-7a: Phasing of project construction shall minimize the amount of time that both the existing degraded wetlands and the wetlands in the	Phase 1	Project Applicant and its contractor(s) shall	City of Eur <del>a</del> ka Community	Review and approval of the remediation plan	Prior to Issuance of grading permit	Vertfied by:

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Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
southwest corner of the site (slated for restoration) are non-functional. Wetlands restoration work shall begin and shall continue concurrently with the remediation work. Timely completion of the restoration shall be the highest priority and shall be performed, to the extent possible, during the dry season. See also recommended Mitigation Measures D-3a through D-3f and H-3a.		concurrently restore wetland during remediation	Development Department; City of Eureka Building Department; RWCQB; Army Corp of Engineers	that includes wetland restoration		Date:
<ul> <li>D-8a: Implement one of the following mitigation measures to reduce the potential impact on breeding birds or their nests or eggs.</li> <li>1. Refrain from performing vegetation clearing/initial grading activities during the avian breeding season (February 1 to August 31); or 2. Perform pre-construction surveys to locate nesting birds in the area and establish 100 to 250-fool-wide exclusion zones around any identified active nest, depending on site conditions and nature of the work being performed.</li> </ul>	Phase 1 Maintained in Future Phases	Project Applicant and its contractor(s) shall identify measures in the identify measures in the construction plan(s) to reduce impacts to birds and their nests/eggs	City of Eureka Community Development Department	Review and approval of the construction plan that includes bird avoidance	Prior to issuance of grading or building permit	Verified by: Date:
E. Cultural Resources						
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 report entitled A <i>Cultural Resources Investigation of the Proposed Balloon Tract Development</i> (May, 2006) prepared by Roscoe & Associates. () Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface 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 the archaeological consultant, which shall prescribe the trenching and/or boing 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 extent soil boring logs and other data from the project area by a qualified acrhaeological resources in proved area by a qualified archaeological resources in Prase of a subsurface strategy in turn, should rely on an examination of extent soil boring logs and other data from the project area by a qualified on an examination of extention and where archaeological resources in function and experiment to the discovery of significant archaeological resources in Phase 1 of the project (remediation and where archaeological stalled) archaeological stalled) archaeological stalled) archaeological stalled) archaeological stalled) archaeological tore on the tare subsurface investigation. The subsurface investigation with the soils excavation conducted for the remediation archaeologic	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall retain archaeologist shall (a) Archaeologist shall (a) conduct subsurface archaeological investigation and (b) determine components of treatment and monitoring plan, if required	City of Eureka Community Development Department	Both Phase 1 and Future Phases: Review and approve extent and methodology of subsurface archaeological investigation If resources are encountered, verify work is suspended and the treatment and monitoring plan if archaeological materials are discovered	Both Phase 1 and Future Phases: Review extent and methodology of subsurface investigations prior to approval of grading permit(s) If resources encountered, review of treatment and monitoring plan prior to construction of construction	Phase 1 Venified by: Date: Future Phases Venified by: Date:

Phase In	Phase 1 and Future contra Phases worke their a Proje contra archa archa archa review treath treath review
Implementation Procedures	Project Applicant and its contractor(s) shall train workers and monitor their activities Project Applicant and its contractor(s) shall halt work and notify archaeologist if materials are discovered Archaeologist shall conduct independent review and prepare treatment plan, if necessary
Monitoring Responsibility	City of Eureka Community Development Department
Monitoring and Reporting Action	Both Phase 1 and Future Phases: Review and approve worker training program If resources are encountered, verify work is suspended and review and approve of review and approve of the treatment and monitoring plan if archaeological materials are discovered
Monitoring Schedule	Both Phase 1 and Future Phases: Review and approve worker training program prior to issuance of building permits ff resources encountered, review of treatment and monitoring plan prior to prior to
Verification of Compliance	Phase 1 Verified by: Date: Verified by: Date:

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Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
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 archaeologist 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, planning the construction around the object or feature. An order of the following: removing 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 written determination from the field portion adequalely completed.		Project Applicant or its contractor(s) shall implement treatment plan			construction	
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 descendent shall be consulted and provided the opportunity to make recommendations to the landowner concerning the mass 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 Heatth & Safety Code section 7050.5, CEQA Guidelines section 15064.5(e), and Public Resources Code section 5097.98. If the human remains and associated to be of Native American origin, a qualified arceologist 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	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall halt work and notify coroner and Community Development Department if remains are discovered NAHC shall assign most likely descendant Project Applicant and its contractor(s) shall hire archaeologist and cease work if site is a Native American Cemetery Project Applicant and	City of Eureka Community Development Department, NAHC; County Coroner	Contact City. NAHC, or County Coroner if human remains are encountered	Ongoing	Phase 1 Verified by: Date: Future Phases Verified by: Date:

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
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.		contractor(s) shall negotiate recovery or reburial arrangements				
G. Hazards and Hazardous Materials						
G-1a: Prepare a site-specific remediation plan and health and safety plan that meets the requirements of the Regional Water Quality Control Board (RWQCB) or other overseeing agency and shall	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall prepare Health and	RWQCB; City of Eureka Building Department	RWOCB to review and approve HASP; Building Department to confirm	Approval of HASP by RWQCB	Phase 1 Verified by:
ional rker		Safety Plan (HASP)		RWQCB approval	Confirm prior to permit(s) issuance	Date: Future Phases Verified by:
			•			Date:
G-1b: Prior to commencement of any construction activities, complete any further characterization and/or remediation, as directed, of any remaining contaminated soil to the satisfaction of the RWOCB or other	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall complete	RWQCB; City of Eureka Building Department	RWOCB to confirm requirements are met: Building Department to	Approval by RWQCB Confirm prior to	Phase 1 Verified by:
applicable oversight agency, undertaking soil excavation or other appropriate remedial measures as required.		characterization and remediation, as well as		confirm RWQCB approval	permit(s) issuance	Date:
If required, soil may be excavated using a backhoe or excavator. The excavated soil shall be loaded into a dump truck and transported as		directed by RWQCB				Future Phases
required to a secured stockple area where it shall be protected from contract with stormwater. The excavation contractor shall employ dust						Acimen of
control measures during excavation and stockplining activities. Soli samples shall be collected from each excavation area, as required by the RWQCB, to confirm that remaining soil meets site clean-up goals.						Date:
Following site excavation, the excavation pits shall be left open pending receipt of satisfactory confirmation soil sampling analytical						
period that it is left open. Once the excavation work is complete, the excavation pits in areas intended for development shall be backfilled						
with clean, river-run gravel or other clean fill material and compacted. At least one sample for every 500 yards of the backfill material shall be cleaned of the contraction of the backfill material shall						
be contected ouring me backing process, submitted to the anarytical laboratory and tested to ensure that it, also, meets the site clean-up standards. The excavation pits located in areas intended for wetlands			 -			
restoration shall be restored in accordance with an approved wetland restoration plan.						
Soil Stockpile Characterization. Soil samples shall be collected from various locations and depths of the stockpile for characterization. The soil stockpile characterization shall be conducted in accordance with, and at the frequency required by the applicable disposal or						
recycling facility.						

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Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
Based on the results of the soil characterization, the material shall be properly managed as required by the RWQCB, depending on the concentration of contaminants in the stockpiled material. All excavated material that requires removal shall be removed from the site within 90 days and placed in a permitted disposal facility by a licensed waste hauler.						
G-1c: During site preparation, construction, or restoration of the wetland, suspected residual contarnination could be detected by a hydrocarbon odor, photo-ionizing detector (PID), or visually (hydrocarbon sheen or discoloration) despite initial remediation efforts. If suspected contamination is encountered, work shall stop and the site supervisor shall be notified. The site supervisor shall then ersure that site workers have adequate training and proper protective quipment to continue working in the area. Work shall not resume until properly trained and equipped workers are present. Suspect soil shall be excavated using a backhoe or excavator. The excavated soil shall be excavated using a backhoe or excavator. The excavated soil shall be loaded into a dump truck and transported to a secured shall shall be loaded into a dump truck and transported to a secured sing shall be excavated visit ponding water and stomwater. The excavated soil shall be loaded into a dump truck and transported to a secured sing stockpile area that is away from routine traffic and protected from contact with ponding water and stomwater. The excavated soil shall be organic compounds (VOCs), as appropriate or required by the RWOCB. The analytical results of the soil stockpile area that is away from routine traffic and protected from contact with ponding water and stomwater. The excavated soil that requires the proper heading and disposal method for the used to transport the contaminated soil that requires oft-site disposal a contractor forming stockpile stander soil that requires oft-site disposal a stormated soil that requires that the soil to a facility that is licensed to accept such soil, the evention.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall stop work if suspected residual contamination is encountered Site supervisor shall ensure protective equipment and adequate training are provided to all present adequate training work again Project Applicant and its contractor(s) shall test contractor(s) shall test econtaminated soils offsite	City of Eureka Building Department; RWQCB	Building Department shall perform inspections of job site to ensure proper procedures are followed RWQCB shall ensure proper analysis and disposal of contaminated materials	Building Department shall perform inspections during excavation and grading RVQCB shall review analysis and disposal procedures. if contaminated materials are found	Phase 1 Venified by: Date: Verified by: Date:
G-1d: Possible reuse of excavated soils as subgrade fill material shall require approval from the local environmental oversight agency (Humboldt County Department of Health), Integrated Waste	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall receive approval of local	Applicable environmental oversight agency (see	Review proposed reuse of excavated soil as subgrade fill material	Upon receipt of information regarding future	Verified by:

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
Management Board, or successor agency, and/or the RWQCB.		environmental oversight agency prior to reuse of excavated materials as subgrade fill material	mitigation measure)	and determine appropriateness	reuse of excavated soils	Date:
<ul> <li>G-1e: The following measures shall be undertaken to the satisfaction of the RWQCB to ensure that human and environmental health is protected:</li> <li>1. Upon completion of site remediation activities, a post-remediation groundwater-monitoring program shall be implemented as required by the RWQCB,</li> <li>2. The RWQCB, will outline the monitoring schedule, including what constituents will require testing and at what frequency the monitoring will occur; and</li> <li>3. A groundwater monitoring report of findings shall be prepared for submittal to the RWQCB upon completion of each monitoring event. If required by the RWQCB upon completion of each monitoring event if required by the RWQCB.</li> </ul>	Phase 1 and Future Phases	Project Applicant and its contractor(s) must receive approval from RWQCB after site remediation activities Project Applicant or its contractor(s) are responsible for ongoing reporting and monitoring	RWQCB	RWQCB shall confirm that monitoring schedule is prepared and acceptable RWQCB shall confirm receipt and completeness of findings	Confirm schedule before completion of remediation activities Confirm receipt and completeness of findings after each monitoring event	Phase 1 Verified by: Date: Future Phases Verified by: Date:
G-2a: The following measures shall be undertaken to the satisfaction of the RWQCB and the County Department of Environmental Health. HazMat Division. All potentially hazardous or regulated materials that are used at the project site during construction activities shall be appropriately covered. handled, stored, and secured in accordance with local and state laws. No hazardous wastes shall be maintained at locations where hazardous materials shall be maintained at coations where hazardous materials are used or stored, in order to capture spilled materials in the event of an accidental release. An emergency response plan shall be developed and implemented for the project site. All jobsite employees shall be trained to respond to any accidental releases.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall appropriately handle all hazardous materials, develop an emergency response plan, and train all jobsite employees	RWQCB; Humboldt County Department of Health HazMat Division	Approval of Iraining program and emergency response plan	Prior to commencement of grading, excavation, and construction	Phase 1 Verified by: Date: Future Phases Verified by: Date:
G-2b: Prepare a Storm Water Pollution Prevention Plan (SWPPP) and implement construction site best management practices in accordance with the guidelines for erosion control and pollution prevention during construction that can be found in the California Stormwater Best Management Practices Handbooks. The guidelines recommend techniques for erosion and sediment control, non- recomment management, and waste management and materials pollution control. Implement site-appropriate measures from these guidelines. SWPPP implementation is described in more detail in Section IV.H, Hydrology and Water Quality of the Draft EIR.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall prepare and implement a SWPPP any implement	RWCOB: City of Eureka Building Department	RWOCB to review and approve SWPPP Building Department to inspect site during construction to verify compliance with SWPPP	Verify approval of SWPPP prior to issuance of grading or building Permit(s) Onsite verification during construction	Phase 1 Verified by: Date: Future Phases Verified by: Date:
H. Hydrology and Water Quality						
H-3a: In addition to the required SWPPP, implement the following BMPs to protect water quality.	Phase 1 and Future	Project Applicant and its contractor(s) shall	RWCQB; City of Eureka Public Works	RWQCB to review and	Approval of BMPs prior to	Phase 1 Verified by:

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<ol> <li>Erosion/Sediment Control. During the construction phase, prior to site grading, construct combinations of silt fencing, straw wattles, and/or straw bale sediment transport barriers at specific site locations with the intent of containing all site month on the project</li> </ol>	Phases	prepare and implement a plan that uses all BMPs listed to project water quality	Department	approve BMPs plan Building Department to inspect site during	issuance of grading or building nermit(s)	Date:
site. This barrier shall be maintained during the rainy season and until completion of construction and shall prevent transport of pollutants such as excessive sediment away from the construction				construction to verity compliance	Onsite verification	Future Phases Verified by:
area. The barrier shall be constructed so that concentrated surface water flows during heavy rains cannot penetrate it without being dissipated in flow energy, and without the water being filtered through the sediment transport barriers.					auring construction	Date:
<ol> <li>Scheduling. The north coast's dry season is typically between April 15 and October 15. Proper timing of grading and construction during the dry season would minimize soil and construction material exposure during the rainy season. Following October 15. areas of</li> </ol>						
disturbed or fill soils more than 6 inches in depth and greater than 100 square feet (10-foot-by-10-foot area) shall be specifically protected from erosion by 1) shaping the ground surface so that						
concentrated surface flows do not encounter or cross them, or 2) providing localized straw wattles, straw bales and/or sit fencing. During the rainy season, construction materials and equipment shall be stored under cover or in secondary containment areas.						
<ol> <li>Protection of Water Courses and Drainage Inlets. Site drainage under existing conditions is toward the bay. General guidelines for water course and drainage inlet protection during the rainy season</li> </ol>						
snail include providing dowingradient sediment traps or other bMPs that allow soil particles to settle out before flows are released to receiving waters, storm drains, streets, or adjacent property. Drainage inlet protection BMPs, if required, shall be installed in a						
4. Soil Stockpiles. Should it be necessary to stockpile excess soil onsite, the soil shall be placed within a sediment-protected area that is not likely to result in off-site sedimentation. If likely to be subjected to rain or high winds, stockpiles shall be covered with plastic sheeting (Visqueen@ for for example) at least 6- to 10-mils thick thick thick thick thick the stand control which the stockpile sheeting the subjected to sheeting the subject of the stockpile stockpile sheeting the stockpile stockpil				- <u></u>		
If stockpiles are to be present through the rainy season, they shall be surrounded with silt or straw bale fencing about 5 feet from the toe of the pile.						
5. Dust Control. Treat and maintain all construction areas as necessary to minimize the generation of dust that may blow off-site.						
The most common method of dust control during construction activities is through periodic application of water. However, the application of water for dust control purposes shall be managed to						

Mitigation Measures Adopted as Conditions of Approval PI	<ol> <li>Material Delivery. Storage and Use. Materials used during construction, where appropriate, shall be delivered and stored in appropriate containers and in designated areas, to prevent the discharge of pollutants to nearby watercourses or storm drain systems. During the rainy season, materials shall be stored in covered directly on the ground, but instead shall placed in covered directly on the ground, but instead shall placed on a pallet or in a secondary containment system. Materials shall be used according to the manufacturer's instructions and all materials shall be disposed of properly. Any spills shall be clean-up materials shall be disposed of properly. Any spills shall be cleaned up inmediately and an ample supply of spill clean-up materials shall be kept onsite during construction activities. There shall be no fueling or equipment washing activities conducted onsite.</li> <li>Monitoring. During construction, all ensuen that the control measures are properly inplemented. If the erosion and pollution control measures are not functioning properly, the owner shall immediately made appropriate modifications to ensure that water quality is protected.</li> </ol>	H-3b: Prior to any clearing, grading, excavating or fill within 50 feet from Phase 1 the edge of a defineated wetland, strearn, or strearn channel or and Futu disturbing more than 2,500 square feet, obtain an Erosion Control Permit (ECP) from the City of Eureka. The ECP shall require specific erosion/sediment control devices, which shall be maintained in proper working condition for as long as work is being conducted on the property or for as long as work is being conducted on the property or for as long as work is being conducted on the property or for as long as an active permit of any nature is issued for the project. Erosion/sediment control devices straw bales, retention ponds, include, but are not limited to, silt fences, straw bales, retention ponds, much, yead in-rap, vegetation barriers, hydro-seeding, erosion blankets and any other measures that would adequately prevent coal from being eroded and transported onto adjoining property. The ECP shall always require a stabilized construction site access for any sites where severable with the entity performing the work for the maintenance of all erosion control devices. The erosion on the property and transport of sediment off the property.	H-4a: Prepare a drainage plan indicating the specifics of the project drainage system. The drainage plan shall demonstrate that the culverts and Futh are adequately sized and configured to address peak runoff and protect against a 10-year storm event. The drainage plan shall ensure that any increase in stormwater drainage runoff in a 10-year storm event
Phase Implementation Procedures		Phase 1 Project Applicant and its and Future contractor(s) shall phases for Erosion control for Erosion control Permit and implement the permit during all construction activities	Phase 1 Project Applicant and its and Future contractor(s) shall Phases prepare drainage plan, submit it to the City, and implement plan during
Monitoring Responsibility		<ul> <li>City of Eureka Public</li> <li>Works Department</li> </ul>	<ul> <li>City of Eureka</li> <li>Engineering</li> <li>Department; City of</li> <li>Eureka Building</li> <li>Department; City of</li> </ul>
Monitoring and Reporting Action		Review and approve erosion control plan Perform building site inspections to confirm adherence to permit requirements	Public Works Department approve Drainage Plan Confirm adherence to
Monitoring Schedule		Review and approve plans prior to issuance of building or grading permit(s) Inspect site during construction	Prior to issuance of building or grading permit(s) Inspect site during
Verification of Compliance		Phase 1 Verified by: Date: Verified by: Date:	Phase 1 Verified by: Date:

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
remains below 1 cfs. Alternatively, if the 1 cfs threshold cannot be maintained in a projected 10-year storm event, the drainage plan shall provide a retention/stittation basin that limits stormwater runoff to pre- project flows. The plan shall be submitted to and approved by the City of Eureka, and recommendations from the City shall be adopted by the Project Applicant prior to issuance of a building permit.		construction	Eureka Public Works Department	plan by site inspection	construction	Future Phases Verified by: Date:
H-5c: Use only USEPA-approved herbicides and pesticides on the site in any area that might drain to aquatic environments.	Phase 1 and Future Phases	Project Applicant and its contractors shall incorporate into landscape plan; implement during construction and maintain after construction	RWQCB	Review vegetation removal plans as part of wetland restoration	Prior to issuance of grading or building permits; ongoing	Phase 1 Verified by: Date: Future Phases Verified by: Date:
K. Noise						
K-4s: Limit standard construction activities to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise-generating activities (greater than 90 dBA) limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise-neurating activity permitted through extreme and a monday through friday and and a monday a mo	Phase 1 and Future Phases	Project Applicent and its contractor(s) to limit construction activities as described	City of Eureka Building Department	Review construction plans to ensure conformance: inspection to ensure conformance	Prior to issuance of grading or building permit(s);	Phese 1 Verified by: Date:
1:30 p.m. to construction activity permission detection 1.20 p.m. and except that interior construction shall be allowed on weekends, except that interior construction shall be permitted after buildings are enclosed. No extreme noise-generating activities shall be allowed on weekends and holidays. Construction activities outside of these hours and days may be allowed by prior approval from the City.					during construction	Future Phases Verified by: Date:
K4b: To reduce daytime noise impacts due to construction: 1. Equipment and trucks used for project construction shall use the	Phase 1 and Future	Project Applicant and its contractor(s) shall use	City of Eureka Building Department	Require use of noise- control techniques in	Prior to issuance of grading	Phase 1 Verified by:
best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, whener feasile)	ruases	best available noise- control techniques described and locate stationary noise sources		building permit; inspect construction site to confirm adherence to those requirements	building permit(s); inspect during construction	Date:
<ol> <li>Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically nonzerod wherever proscible to avoid noise associated</li> </ol>		as far from adjacent receptors as possible				Future Phases Verified by:
with compressed air exhaust from pneumatrally powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can						Date:
lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible; this could achieve a reduction of 5 dBA. Quieter procedures, such as use of drills rather than impact tools, shall be						

	Phase	Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
used whenever feasible. 3. Locate stationary noise sources as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.						
<ul> <li>K-4c: To mitigate pile driving and/or other extreme noise-generating construction impacts, a qualified accustical professional shall prepare a set of site-specific noise attenuation measures. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City of Euretra to ensure that noise attenuation and accustical standards will be achieved. These attenuation measures may include, as necessary, the following control strategies:</li> <li>1. Erect temporary phywood noise barriers around the construction site.</li> <li>2. Use noise control blankets on building structures as buildings are erected to reduce noise attenuation measures of noise attenuation measures by taking noise ensurements at locations and frequencies necessary to ensure that structure set of the erection actives are buildings are evented to reduce noise emission from the site.</li> </ul>	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall hire qualified accustical professional to prepare plan Acoustical professional prepares plan and submits to City: implement during construction	City of Eureka Building Department	Review noise- attenuation plan and incorporate plan into building permit; inspect site during construction to confirm adherence to plan	Prior to issuance of grading or building permit(s); inspect site during construction	Phase 1 Venified by: Date: Future Phases Venified by: Date:
M. Public Services						
M-2a: The Marina Center development shall have an onaite security patrol to handle routine situations that do not require emergency response from the Eureka Police Department.	Ongoing	Project Applicant and its contractor(s) and tenants shall hire security to patrol the site	City of Eureka Police Department	City of Eureka Police Department shall monitor calls to ensure routine situations are handled by onsite security	Ongoing	Venified by: Date:
O. Transportation						
<ul> <li>O-1a: Develop a construction management plan for review and approval by the City's Engineering Department and Caltrans. The plan shall include at least the following items and requirements to reduce traffic congestion during construction.</li> <li>A set of comprehensive traffic control measures shall be developed, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes traffic congestion on U.S. 101, Caltrans requires that all construction activities include an assessment of the potential for traffic congestion. This is accomplished through lane closure analysis showing the times of day and days of the week that alloce consumptions closure to avoin days of the potential for traffic congestion. This is accomplished through lane closure analysis showing the times of day and days of the week that alloces tane closure analysis showing the times of the potential for traffic congestion.</li> </ul>	Phase 1 and Future Phases	Project Applicant and its contractor(s) obtain approval of construction management plan and implement the plan during construction during construction	City Engineering Department: City of Eureka Building Department; Caltrans	Engineering Department and Caltrans must review and approve Construction Management Plan; Management Plan; must receive the approvals	Prior to issuance of building or grading permit(s); inspect during construction	Phase 1 Verified by: Date: Future Phases Verified by: Date:

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Approvation Messarines Adouted as Conditions of Approvat	Phase	Implementation Procedures	Monitoring Responsibility	Reporting Action	Schedule	Compliance
authorized at times of the day and on days of the week where the						
interruptions, closures, and activity is recommended interruptions, closures, and activity is recommended of service criteria unacceptable congestion using the same level of service criteria						
<ol> <li>If construction activities result in unacceptable traffic congestion.</li> <li>If construction activities result in unacceptable traffic congestion.</li> </ol>						
flaggers shall supplement approved using comparison processing that traffic moves through the construction zone with minimal						
delays.						
3. The Construction Management Plan shall identify haul routes for						
on motor vehicle, bicycle, and pedestrian traffic, circulation, and	-					
safety, and specifically to minimize impacts to the greatest owner accepted and specifically to minimize impacts to the baul routes shall be						
approved by the City and Catrans						
4. The Construction Management Plan shall provide for notification						
procedures for adjacent property owners and procedures, and lane						
closures would occur.						
5. The Construction Management Plan shall provide for						
accommodation of bicycle now, particularly arong the work						
6. The Construction Management Plan shall provide for monitoring						
debris attributable to the haul trucks can be become and						
corrected by the Project Approxit.						



**CITY MANAGER** 

531 K Street • Eureka, California 95501-1146

• (707) 441-4144 fax (707) 441-4138

November 12, 2009

Randy Gans CUE VI LLC 325 Fifth Street Eureka, CA 95501

#### RE: Balloon Track – Notice of Abatement

Dear Mr Gans

The purpose of this letter is to follow up on the City Council's action of November 3, 2009, to adopt Resolution No 2009-51, and to provide you with notice that the conditions at the Balloon Track have been declared a public nuisance under the City of Eureka Municipal Code and that CUE VI is ordered to abate the public nuisance

As outlined in the City Council Resolution, soil samples taken from the project site revealed that there is petroleum and other contaminants in the shallow soils on the site, which are a detriment to the public welfare. In addition, overgrown vegetation, which creates a health and fire threat to neighboring properties, continues to be a problem on the site. Vegetation overgrowth on the site has been exacerbated by the trash and rubbish that is scattered throughout the site which make regular mowing and weed abatement difficult if not impossible. These conditions on the site are a threat to the public welfare and have created and continue to threaten to create a public nuisance under the Eureka Municipal Code sections 94 17, 150 163(B), 150 163(E), 150 163(J), and 150 163(K).

The North Coast Regional Water Quality Control Board has approved a Supplemental Interim Remediation Action Plan (SIRAP) in keeping with the Regional Board's Cleanup and Abatement Order for the Balloon Track (CAO No R1-2001-26) The SIRAP includes a plan for general site clearing and debris removal, focused soil remediation of areas with contaminated soil, restoration of the wetlands area, and grading and placement of cover material over much of the site

Implementation of the measures described in the SIRAP will serve to address the public nuisances identified in this letter and City Council Resolution No<sup>-</sup> 2009-51

# RE: Balloon Track – Notice of Abatement Page 2

Therefore, in accordance with City Council direction and Eureka Municipal Code sections 94 18(B) and 150 164(A) and (B), CUE VI is ordered to abate the public nuisance in a manner consistent with the measures described in the SIRAP within 180 days of the date of this notice. In complying with this order CUE VI is expected conform to state and local regulations governing the abatement of the public nuisance. If you believe it is not possible to abate the public nuisances described within this letter within 180 days, you must provide a schedule, including an estimated completion date, to the City Council for approval.

Sincerely,

David W TVSD City Manager

ony manager

CC Mayor and City Council City Attorney

Ralph Faust P. O. Box 135 Bayside, CA 95524 December 3, 2009

Hon. Bonnie Neely, Chair California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA, 94105

# RECEIVED

DEC 03 2009

CALIFORNIA COASTAL COMMISSION

Re: Appeal No. A-1-EUR-09-49 (CUE VI LLC)

Dear Ms. Neely:

This letter is written in support of the Commission staff recommendation that the Commission find that the appeal of the above permit raises a substantial issue.

The permit was issued by the City of Eureka on November 3, 2009. It authorizes the applicant, CUE VI LLC, to dredge and fill wetlands, and to fill and cover ESHA, contrary to the City's certified LCP (Eureka City Code section 156.602) and contrary to Coastal Act sections 30233 and 30240, which are effectively incorporated into the City's certified LCP. The City has conceded that this permit is inconsistent with its certified LCP, but has attempted to rationalize its approval under the "balancing" provisions of sections 30200 and 30007.5 of the Coastal Act. This admitted inconsistency in itself demonstrates that a substantial issue exists and requires that the Commission take this appeal and conduct a full review of the substantial coastal policy issues raised by this permit. Because the Commission staff report fully analyzes the presence of substantial issues in this appeal, this letter will attempt to provide context for the Commission regarding the background and development scheme related to this proposed project.

The applicant characterizes this permit both as Phase I of its Marina Center development proposal and as an interim remediation plan for the so-called Balloon Track site in Eureka. This site is an old railroad yard, and is now substantially polluted. Historically, it was a tidal slough with adjoining coastal marsh and wetlands that was filled in order to enable industrial development. It still contains remnants of the tidal slough as well as small remnant wetlands scattered on the site. Under the terms of the City's certified LCP the slough and all of the wetlands are declared to be Environmentally Sensitive Habitat Area (ESHA). Further, the State Lands Commission has indicated that a present controversy exists regarding the extent of the public trust at this location because much of the site was subject to tidal action before it was altered by man. Hydrocarbon pollutants have been identified at numerous locations throughout the site, and dioxins have been found at every one of the limited number of locations which the applicant has chosen or allowed to be sampled.

There is no dispute regarding whether the site requires a cleanup. Many in the community have sought a full cleanup of this site since the railroad abandoned its operation on the North Coast, and to the best of my knowledge and understanding of the law, the Union Pacific

# **ATTACHMENT 4**

Bonnie Neely, Chair California Coastal Commission December 3, 2009 RE: Appeal No. A-1-EUR-09-049

Railroad, the oldest and largest operating railroad company in the United States remains fully liable under state and federal law for a complete cleanup of this site. Instead, this dispute concerns whether this particular proposal is a genuine effort to remediate and restore the site, or rather a preliminary effort to prepare the site for the particular Marina Center development that the applicant proposes for ultimate use of the site, masquerading as a cleanup.

The proposed Marina Center development is a large commercial and business park characterized as a "mixed-use" development that would cover most of the site, including a number of areas that are now wetlands and ESHA. If it were submitted to the Coastal Commission now in its present complete form, it could not be approved consistent with the Coastal Act because it would require the complete destruction of wetlands and ESHA for a development consisting of uses that are contrary both to the specific provisions of the Coastal Act pertaining to ESHA and wetlands and to the prioritization of uses in the Coastal Act. Both the developer and the City have consistently refused to analyze the prospects for development of the site with uses consistent with the priorities established by the Legislature in the Act.

To solve this problem of project approvability, the developer has proposed what it calls an interim remediation plan (the "SIRAP"). The SIRAP would remove some contaminants and dredge an area of the property to create wetlands and a slough. The area to be dredged includes sites which, when tested, have shown dioxin to be present in 100% of the samples tested. The SIRAP would not further characterize the presence or severity of contamination on any portion of the site. Instead, it would take the material dredged from the created slough and spread it over the entire site, obliterating all of the wetlands and ESHA on the site and leaving only the newly created wetland and slough, which it characterizes as appropriate mitigation for the destroyed wetlands and ESHA. The applicant admits that this purported cleanup would leave an unknown amount of contaminants buried under this new fill. The SIRAP would also spread soil throughout the site from the dredged material that is likely contaminated with dioxin. This proposal has two significant benefits for the developer: first, it allows the developer and the City to claim that the site is being cleaned up; second, it completely eliminates the wetlands and ESHA on the site that, if they remained, would make the subsequent phases of its development proposal not approvable under the Coastal Act. The SIRAP has no apparent benefit to those of the public who would like to see a genuine cleanup and restoration of the site. This proposal is not a cleanup; it is simply a cover-up, of the wetland and ESHA resources on the site.

At the City of Eureka hearing on this CDP, the principle arguments in favor of the SIRAP were "jobs", and "let's finally get this site cleaned up". Neither of these is persuasive. Job creation is not a basis for approval of a CDP that is otherwise inconsistent with the certified LCP and the Act. Further, although this proposal will provide some jobs for workers at the site, a real cleanup and restoration would create many more job opportunities because of the greater scope of the work. As for cleaning up the site, the opponents of this permit want a cleanup; but unlike the developer, they want a real cleanup and restoration. The developer may attempt to wrap itself in the flag of the North Coast Regional Water Board, and assert that it is

Bonnie Neely, Chair California Coastal Commission December 3, 2009 RE: Appeal No. A-1-EUR-09-049

required by that Board to remediate the site. The Regional Board has ordered the site owner to clean up the contaminants on the site; that order has existed and been largely ignored for many years. But there is no order requiring this particular plan; the Regional Board did not and could not legally concoct this SIRAP. Water Code section 13360 clearly specifies that the Board may not specify the design, location, type of construction or particular manner in which a responsible party must comply with a Board remediation order. There are and remain many alternatives for compliance with the Board order, including, for interim containment, Best Management Practices that would not harm existing wetland and ESHA resources. The Commission has seen such proposals from e.g. Caltrans or oil companies, both of which periodically face the issue of confining contaminants without harming resources.

The CDP for the SIRAP issued by the City raises substantial issues with respect to the standards of City of Eureka Code section 156.602, and of sections 30233 and 30240 of the Coastal Act. The Commission staff report fully analyzes these issues and provides a clear basis for the Commission to find substantial issue. The Commission should find substantial issue and conduct a full hearing on this permit.

Thank you for your consideration of this matter.

Sincerely,	-
Signature on File	/
Ralph Faust	*

Cc: City of Eureka Security National Properties

From: Miller, Gina [GMiller@snsc.com]

Sent: Thursday, December 03, 2009 12:28 PM

To: bonnie.neely@co.humboldt.ca.us; Bob Merrill

I am confused, why would the California Coastal Commission delay or stop the clean up of the Balloon Track in Eureka?

Thank You Gina Miller 800-603-0836 ext 2688 fax 916-231-2630 email <u>gmiller@snsc.com</u>

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# **ATTACHMENT 5**

From: Clark, Cindy [CClark@snsc.com]

Sent: Thursday, December 03, 2009 12:30 PM

To: Bob Merrill

Subject: Ballon Track cleanup

Dear Bob.

My name is Cindy Clark, and I am a life-long resident of Eureka.

I wanted to let you know that I am in support of the clean-up of the Balloon Track. Please do what you can to be sure the Coastal Commission doesn't stand in the way of the clean-up.

We, as a community, have put up with this eye-sore for much too long, and there is nothing we'd like better than to see this cleaned up as soon as possible. If the majority of the citizens of the City of Eureka and the North Coast Regional Water Quality Control Board have given their approvals, then I don't believe the Coastal Commission should have any right to deny us. They don't have to live here - we do!

Thank you for your time and support.

Cindy Clark 3118 S Street Eureka, CA 95503

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From: Barnick, Gretchen [GBarnick@snsc.com]

Sent: Thursday, December 03, 2009 12:32 PM

To: Bob Merrill

I can not believe that we as a city and the water Quality Control Board can approve to CLEAN up our city and restore the wetlands and some one in SF can put yet another hold on this project! We need to get this project done and the sooner the better. It is ridiculous that it has even taken this long. PLEASE do what ever you can to move this forward.

Thank You,

Gretchen Barnick 6200 Beechwood, Eureka, CA

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From: Pilgrim, Sherry [SPilgram@snsc.com]

Sent: Thursday, December 03, 2009 12:44 PM

To: Bob Merrill

Subject: Balloon Tract

#### Dear Bob Merrill

Enough is enough! We the citizens of Eureka fully & totally support the clean-up of the Balloon tract & the forward movement of this project. The California Costal Commission for some ridiculous reason is set on putting up stumbling blocks all the way. The clean-up would help beautify the city, restore wetlands & bring in revenue. What is the problem?

Please encourage the California Costal Commission to move forward & let the project continue in the best interest of all of us

Thank you Sherry Pilgrim

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From: mommynanc325@att.net Sent: Thursday, December 03, 2009 8:12 PM To: Bob Merrill

We encourage your support for the Marina Center project at the upcoming Coastal Commission meeting. The project owners have and will continue to upgrade the Balloon Tract to make it a space we can all be proud of. Both the Eureka City Council and North Coast Regional Water Quality Control Board have approved and shown support of the project, we hope you will also.

Nanc & Ted Frazel Eureka, CA

From:jeffandbecca@juno.comSent:Thursday, December 03, 2009 11:43 PMTo:bonnie.neely@co.humboldt.ca.us; Bob MerrillSubject:Marina Center

Hello,

As a concerned citizen in Humboldt County I would like to express my support for the Marina Center project and ask for your support to help make it happen. I would like to see the balloon track cleaned up. Thanks

Jeff Harrison

From:Michael Retzloff [reelmen55@gmail.com]Sent:Friday, December 04, 2009 9:45 AMTo:Bob MerrillSubject:[Possible Spam] Balloon TractImportance:Low

Dear Mr. Merrill,

Please read my letter to you regarding this issue and carefully contemplate your actions.

Respectfully,

Jack Retzloff

Mr. Bob Merrill North Coast District Manager California Coastal Commission 710 E Street, Suite 200 Eureka CA 95501 RECEIVED DEC 0 4 2009 CALIFORNIA COASTAL COMMISSION

Dear Mr. Merrill,

As shown by the growing support of citizens at the Eureka city council meetings, almost all of the citizens of Eureka believe that the Balloon Tract clean up is a good thing and believe that the interim cleanup work should begin immediately so that the determination of what additional cleanup work that needs to be done can be completed.

Environmental concerns are important to all but when the means to protect the environment include unusual delay and obstruction of projects deemed economically important to a community something is wrong.

Without obstruction of worthwhile economic projects around the bay and elsewhere in Humboldt County, the people engaged in the extremist environmental activist movement could not survive. These "environmentally conscious" people need those developer and donor dollars to provide for their own jobs and don't care about creating jobs for others. This type of environmental activism is really nothing more than greed in disguise. It helps a very few financially and leaves the great majority without economic options. Baykeeper appears to use obstruction via the justice system to strain the financial ability of, or even bankrupt, well intentioned and hardworking people attempting to develop the bay front. If the people attending the city council meetings in favor of the interim cleanup plan for the Balloon Tract are a gauge of thought, then these members of our community have drawn a line in the sand. The Baykeeper side offers no alternatives to the cleanup effort at hand other than to say more studies need to be done. I noticed no one crossed over to the Baykeeper side.

The Arkleys have given back to the community with many worthwhile projects from which they can never economically benefit but are nevertheless aesthetically pleasing and functional to the community. Everything they have done has been a first class effort. No corners have ever been cut in any of these projects. All criticism of the past projects has proven to be baseless over time. I suspect the criticism of the Balloon Tract cleanup will eventually prove to be a non-issue as well.

The Arkleys have focused on cleaning up Eureka and giving back to the community. They don't have to do it here but they have chosen to. They have created a multitude of jobs and supported multiple local businesses as well. On the opposite extreme, by employing subterfuge and arrogance, Baykeeper and its ilk have focused on taking away from the community they claim to be helping. It is clear that Baykeeper and any supporters of Baykeeper are not really interested in cleaning up the environment. If they were, they would not be opposed to the initial cleanup and fact finding planned for the Balloon Tract.

Most reasonable people can see the damage that has been done to our local economy as a result of extremist environmental activism. Humboldt County no longer has abundant, good paying jobs that can support families as a result of past environmental extremism. It is generally agreed by most reasonable people that Baykeeper and other environmental extremist groups have been a part of the disruption process to prevent logging, revival of rail, green port shipping, and any kind of development along the Humboldt Bay harbor. Almost everyone in our community cares about the environment these days. All development projects are required to and make every attempt to provide for mitigation in the event that the environment in some way becomes damaged as a result of the development. Is this money well spent or is it overkill?

There are no alternative solutions to the cleanup or how it should be done, only compromise. The entire community should be working together to get the Balloon Tract cleaned up, not arguing about HOW it should be done. The Arkleys have paid real experts to make sure that the cleanup is carried out with the best effort man can make with the financial resources at hand. This is more than anyone else in our community can do and more than anyone else is willing to do.

Why does Baykeeper insist on making this effort harder than it needs to be? Another lawsuit to stall the project? Does anyone wonder why the Baykeeper folks have no experts to refute the current Balloon Tract cleanup plans? Is it because all of the experts actually agree with the current plan? Why doesn't Baykeeper provide some financial assistance to the cleanup effort if they feel so strongly that more needs to be done before anything gets started? Now that would really be helping the community move forward and joining hands to get this job done. Lawsuits are not financial assistance; there is no real motive other than delay, intimidation, obstruction, and financial harm to the targeted party. Very few individuals have the financial means or determination to stand up to these lawsuits and all communities suffer from them.

This has never been a perfect world and it never will be. We can only make it as good as we can. No matter how much planning goes into a project, some kind of change usually needs to be made as a project moves along and unforeseen things get discovered. That's the way it is.

Our community is busy cleaning up at home. Everyone should work with together to get it done. Unless you are receiving funds from these "environmental" groups, you have no compelling reason not to listen to what the public is demanding.

I strongly urge you to view the efforts of Baykeeper and their ilk with extreme skepticism. It is highly unlikely that these groups actually paid any engineers or chemists to analyze the soils or data provided by the property owner's engineers. I believe that any data they have was assembled from previous cleanup efforts at other properties that were significantly more polluted than the Balloon Tract.

Who do you really represent?

Respectfully,

Jack Retzloff 2439 "S" Street Eureka, CA

707-601-8488

From:katie kubala [katie\_kubala@hotmail.com]Sent:Friday, December 04, 2009 9:54 AMTo:bonnie.neely@co.humboldt.ca.us; Bob MerrillSubject:Balloon Track

Hello,

I am emailing you to express my support with the clean up of the Balloon Track, and I feel the Coastal Commission should not stand in the way. Please assist us in supporting the clean up and preservation of Eureka and our Bay. This can only be done with your leadership. I appreciate your consideration.

Thank you, Katie Kubala Humboldt County Resident

Chat with Messenger straight from your Hotmail inbox. Check it out

From:Gregg Gardiner [gregg@101things.com]Sent:Friday, December 04, 2009 10:15 AMTo:Bob MerrillSubject:Marina Center - Balloon Track

Dear Bob Merrill,

Here is my letter of support for the cleanup of the balloon track.

Sincerely,

Gregg Gardiner **101 Things to Do** 2383 Myrtle Ave. Eureka, CA. 95501 Office 707-443-1234 Fax 707-443-5308 Cell 707-834-9595 www.101things.com gregg@101things.com

# Gregg Gardiner

4351 Cedar St. Eureka, CA. 95503 Gregg@101things.com

December 4, 2009

North Coast District Manager California Coastal Commission Attn: Bob Merrill 710 E Street, Suite 200 Eureka, CA 95501 RECEIVED

DEC 0 4 2009

CALIFORNIA COASTAL COMMISSION

RE: Remedial Action Plan and Wetlands Restoration of the Former Southern Pacific rail yard in Eureka, Case # 1NHU064

Dear Mr. Merrill,

Thank you for the opportunity to comment on this very important project.

Like many residents in Eureka I have followed the developments of this specific site for some time. I thought it would be worthwhile to start off my comments with a bit of history about this specific site.

The railroad began operations at this site in 1888 and for most of its life the site was owned by Northwestern Pacific Railroad Co. In the mid-1980s the site was acquired by Southern Pacific and operations were discontinued at Eureka rail yard. But for over 100 years this site was used as a rail yard and one would expect to find many environmental issues for a high-use industrial site of this type.

Since 1988 this site has not only been vacant but it has been a huge blight on our community. It has served as a place for homeless people to find haphazard shelter, a place for rodents to congregate and trash to accumulate.

There has been much talk about what to do with this site... things like a proposed jail, a Wal-Mart, affordable housing – but nothing ever happened. It has remained a blight for more than 20 years.

In 2006 the site was purchased by a division of Security National called CUE – Clean Up Eureka – and renamed the Marina Center Project.

So what kind of steward of the land has CUE been?

After acquiring the property, they immediately began hauling out significant amounts of rubble that had been placed there over the previous two decades. Next, they installed a temporary fence around the property to keep out not only vagrants but also stray animals. They cut down all of the weeds and have kept the property mowed so that it looks somewhat presentable. And from everything I've read, they spent a significant amount of money analyzing just what needed to be done to have a complete environmental cleanup completed.

Finally our community has a responsible landowner who is willing and has the resources to take on a project that virtually no one else would. They have done significant work already and it appears that they are willing to spend close to \$2 million to restore this property.

When done they will be leaving our community with a 10-acre wetland site. They will have removed all the toxic soil and old rusted rails cars and locomotives – restoring this land area for a productive use in the near future. In the long-term this will bring new job opportunities which are badly needed in our community.

I support this remedial action plan and wetland restoration project and I'm very grateful that we finally have a responsible landowner who is and has been willing to take on the difficult challenges associated with this property and finally remove this blight from our community.

This matter has been extensively reviewed by the Eureka City Planning Department, the City of Eureka, Administration and Council as well as the Water Quality Control Board from the community prospects we hope that your decision will be favorable so we can finally get this horrific blight removed from our community.

Sincerely,

Gregg Gardiner

From: Munson, Michael [michael.munson@wellsfargoadvisors.com]

Sent: Friday, December 04, 2009 10:28 AM

To: 'bonnie.neely@co.humboldt.ca.us'; Bob Merrill

Cc: 'Ryan, Jennifer'

Subject: Balloon Tract

Dear Ms Neely and Mr. Merrill,

I am writing you in support of the Balloon Tract clean up and in general the support of the Marina project. I fully support letting the owner of the balloon tract start the clean up procedure I feel it is a huge step in the right direction for our community and that the owners have gone above and beyond in their efforts to address all concerns. This project is good for our community and a much better alternative to letting the land just sit which is pretty much the alternative if the owners were not to follow through with their vision, as I do not see anyone else stepping up to the plate with the backing to make anything else work there. The "due process" has been followed and the approvals and permits have been issued, where does this stop? I urge you not to allow anymore delay in the clean up of the balloon tract. Stop delaying and let our community thrive!

Sincerely,

Michael Munson First Vice President of Investments, Officer Financial Advisor Munson Bowen Financial Strategies Group 318 Fifth St. Eureka, CA 95501

Phone: (707) 442-2225 Toll Free (800) 925-2422 Fax: (707) 442-2576 michael.munson@wfadvisors.com

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From:Jennifer Miller [loveethan2003@yahoo.com]Sent:Friday, December 04, 2009 9:56 PMTo:Bob MerrillSubject:Marina Center/Ballon Track Clean Up

Bob,

My family and I support the clean up of the Balloon track and the Marina center. We have lived here in Humboldt County for 4 generations and we support this project because it supports the families of Humboldt County and the City of Eureka. This property needs to be cleaned up-it is in a horrible state and has been neglected for too long. The City of Eureka deserves this project to be completed and especially to have the property cleaned up so it is not the eye sore it is now. We thank you for your support of this project.

Thank you,

Chris and Jennifer Miller

From:	nick robinson [swissforestryrobinson@yahoo.com]
Sent:	Saturday, December 05, 2009 9:51 AM
То:	Bob Merrill
Subject:	Ballon Track

Bob

I am a home owner in Eureka, CA and have lived in Humboldt county for most of my life. Me and my family are completely in support of the Balloon Track clean up, and are also shocked at the prospect of it being slowed down further by this recent appeal. My whole life areas like this in this county have done nothing but sit - and it seems completely ridiculous that this area is under so much protest. The improvement to this area of Eureka would not only make our waterfront more attractive for all - but I expect a direct impact to the values of our homes, and quality of life - assuming a larger marina and board walk.

I have not met one person who does not want to see this happen. It seems we only read of these people who want to stop it from happening. Nothing is more frustrating than people who are not from your community preventing quality projects from occurring. Our elected officials have approved this proposal.

Please have the insight to not let politics prevent our community from moving froward.

Thanks

#### STATE OF CALIFORNIA -- NATURAL RESOURCES AGENCY

ARNOLDR SCHWARZENEGGER, GOVERNOR



CALIFORNIA COASTAL COMMISSION NORTH COAST DISTRICT OFFICE 710 E STREET • SUITE 200 EUREKA, CA 95501 VOICE (707) 445-7833 FACSIMILE (707) 445-7877

#### TRANSCRIPTION OF VOICE-MAILED PUBLIC COMMENT

To:CCC North Coast District Office 707-445-7833 VoicemailFrom:"An Intellectual Citizen"Subject:A-1-EUR-09-049 (CUE VI, LLC), Item Th14cRecordedDecember 5, 2009Received:December 7, 2009 08:22 PST

Yeah, I just want to say you guys should stop trying to, uh, prohibit people from, um, working on the Balloon Track. You guys are just a bunch of lames that have nothing better to do. You guys should, um, be more concerned about with people's, ah, well-being, you know, uh, prosperity, cleaning up Eureka, bringing business here. You guys are trying to hold us back. You know what? You guys should go get a life, dude, you know, and stop saving mud puddles. Lame.

From:marilyn colson [momm371@yahoo.com]Sent:Sunday, December 06, 2009 4:33 PMTo:Bob MerrillSubject:Balloon Tract

Dear Mr. Merrill

I am writing you to address my desire for you to use whatever influence you have with the California Coastal Commission to complete this, hopefully final step, to finally cleaning up the blight that is the Balloon Tract.

What possible objection could the Coastal Commission have to removing the cause of contamination to our water and wildlife?

I can not think of any plausible reason the Commission would want to prevent this from happening.

Marilyn F. Colson

3335 Albee Street

Eureka CA 95503

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# Page 1 of 1

# **Bob Merrill**

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lage:

From:thomas long [longarm1942@att.net]Sent:Monday, December 07, 2009 7:09 AMTo:Bob MerrillSubject:Balloon Track Clean Up

Dear Mr. Merrill...... This email is to voice our support for cleaning up the area known as the Balloon Track. It has been approved and we have someone who has the money and is willing to do this. Please let the project go forward. Thank you, Tom and Tahni Long, Eureka, CA 95503

From:Marshall, Richard [RMarshall@oe3.org]Sent:Monday, December 07, 2009 9:05 AMTo:Bob MerrillSubject:Balloon Tract

It is imperative that all agencies involved in moving the Balloon Tract project foward take a stand and do the right thing. The right thing is making sure they approve all aspects of the project. so that we can finally clean up an eye sore and environmental nightmarrish area, aptly named the" Balloon Tract" for on any given day you can find broken drug balloons with hypodermic needles not far behind. There have been many studies and reviews which show all the right steps have been taken to address all the valid concerns reguarding the clean up process.

The publics rating of the project is outstandingly for the clean up of the Balloon Tract. To let a handful of special intrest groups hold hostage a much needed venture is ABSURD RIDICULOUS AND VERY SELFISH. the City Council and the North Coast Regional Water Board have approved the inteim environmental clean up.

I URGE YOU TO MOVE FOWARD WITH THIS PROJECT. IT IS TIME DEMOCRACY IS HEARD.

Thank You

Richard Marshall District Reprensentive Operating Engineers local # 3 707-443-7328

# Humboldt Builders' Exchange, Inc.

#### December 4, 2009

Bob Merrill North Coast District Manager California Coastal Commission 710 E Street, Suite 200 Eureka, CA 95501

Re: Support of Balloon Track Clean Up

Dear Mr. Merrill:

The balloon track clean up recently approved by the NC Regional Water Quality Board and the Eureka City Council is being challenged. The Humboldt Baykeeper, The North Coast Environmental Protection Information Center, Ralph Faust (former Costal Commission lawyer), and two out of town Costal Commissioners are appealing the al ready long fought for approval of clean-up. Their claim is that the proposed clean up would damage so called "environmentally sensitive habitat areas". Also they claim that the approved plan for cleanup is inadequate, even though approved by the North Coast Region Water Quality Board Staff.

These claims seem contradictory. How could a Regional Water Quality Board approved interim clean up plan, which would include removal of contaminated soils, elimination of storm water runoff, further testing for contaminants, and restoring 11 acres of wetland be considered bad for the environment?

Please keep in mind while considering this important issue that the clean up of this now "useless land" is " widely supported in the community. Please do not let this clean-up be delayed by special interest groups. This clean up has been discussed far too long. Let's get busy and clean up the contaminated land and water before the contamination gets worse. The longer the industrial debris, contaminated soils, and storm water run-off remain unabated, the more complex and expensive it will become to clean up this area in the future;

The Water Quality Board experts have thoroughly analyzed the interim cleanup plan after public comment, and have reaffirmed their support for the plan.

The 4 to 1 approval by the Eureka City Council should carry considerable weight on this issue. It would seem more appropriate to follow the direction of local elected officials (who must weigh these actions and their effect on the local citizenry and businesses) rather than the suggestions of out of town appointed officials and lawyers;

This potentially productive and valuable land has been anchored to short-sighted policy for 20 years which has lead to blight, drug use, and further contamination of this property. This counter-productive policy can come to an end this spring, but only with your support and leadership. Please stand up for the productive future of this land, the future of our business community, and the future of our children's children and stand firm in support of this important step forward for our community.

Signature on File

Charlene McCombs Executive Director

624 C Street, Eureka, CA 95501-0341 • 707-442-3708 • fax: 442-6051 • www.humbx.com

# Tripodi, Kyla

From: DennisC57@aol.com

Sent: Wednesday, December 02, 2009 10:58 PM

To: bonnie.neely@co.humboldt.ca.us

Subject: coastal commission meeting

#### Dear Bonnie,

My name is Dennis Costa and I live in Eureka and have been a life time resident of Humboldt County. I am a retired school teacher of 34 years from the Fortuna High School District and have been a business owner in Eureka for 20 years. In fact my warehouse is on Broadway and Fairfield St in Eureka. I have owned the building for over 4 years now.

I know that the Costal Commission has a very important meeting coming up in San Francisco next Thursday. A decision will be made as to have wetlands and wildlife habitat on a neglected property in Eureka and make this a vital place in the county or leave it as it is, a blank neglected and very likely contaminated property. For too many years this property has been an eye sore to this county. I have my warehouse for sale at this time as I would like to fully retire. In the last 3 weeks the building has been shown to people from Fort Bragg, Florida and Oregon. The comment has been the same, "I like the location, it has great visibility, but as I drive down Broadway I see other empty buildings for sale and an open field surrounded by a fence with nothing in it. Is anything happening anywhere around here to entice business of the future or am I just looking at nothing for the future." My realtor and I say the same thing, "we don't know its up in the air." As a result no sale. People coming in to open a business want to see something happening and know their investment will be right. Two of the three people looking wanted to open a restaurant and the other a possible furniture/kitchen type of business.

The clean up of the Balloon Track would be of great help to us business people on Broadway and to the whole county. I remember this county as exciting with things happening -our family trucking business-was always looking ahead with excitement. Now its kind of bland and will we make it another year type of attitude. The excitement is gone.

We do not need any more delays as we have years of them. We can't look at the past but must look to the future. The people of this area deserve to have something positive happen for a change and seeing the Balloon Track gets the approval to go forward would be a tremendous uplifting. There is much work and cleanup etc to be done but if it never has a change to get started what next will happened? Please allow the clean up to start. Findings etc will most likely lead itself to other dealings but at least lets get it started.

Thank you for your time and for being a County Supervisor and Coastal Commission Chairperson.

Sincerely,

Dennis Costa Costa Distributors

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## Tripodi, Kyla

From: Ralph [ralph@matsen.com]

Sent: Wednesday, December 02, 2009 7:05 PM

bonnie.neely@co.humboldt.ca.us To:

Dear Supervisor Neely:

I am writing you to urge you to support the "Balloon Track" application and to insure that this clean up process goes forward without delay. If the applicant backs away from the problem and lets the property go to the City of Eureka or the County of Humboldt, then may I ask who then will be willing to pickup the cost to clean this "Balloon Track"?

If you are unsure of taking the correct action to move forward with the project, then I suggest that you put the matter on the ballot and let the people decide. You will then learn that the majority of the people of Humboldt County want to see this project to proceed post haste.

Your action will be monitored by myself and many friends.

Thanking you in advance for your favorable action. Ralph Matsen

RECEIVED DEC 0 7 2009 CALIFORNIA COASTAL COMMISSION

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## Tripodi, Kyla

From: Sent: To: Subject: halonet@suddenlink.net Thursday, December 03, 2009 10:28 AM bonnie.neely@co.humboldt.ca.us Wetlands Cleanup

Good Morning Ms. Neely,

I am in favor of cleaning up the balloon track and the wetlands. Currently, they are a public safety hazard for local residents and wildlife.

I would love to take a walk on the harbor after a busy day at work. Or, enjoy the sunset, watch the boats, and toast a glass of wine while overlooking the bay with friends discussing the commerce of the day. But there are no cuisine businesses on the Eureka side where you can do this.

Eureka enjoys a beautiful bay and mild climate. I don't do it because I do not feel safe and it sickens my stomach to see the way the detrides of homeless people and the deterioration due to neglect. I believe it is time to clean up that whole corridor. Give the homeless work so they can have decent housing and recover their lives. Those who want to remain transient should be encouraged to go elsewhere.

I think a prime example of this is the murder incident that happened at Ray's on Broadway this summer. I used to shop at that store regularly until then. Now, I look around fearfully at doing any business in the mall. The mall is a gathering place for people to shop and meet friends. Just beyond its borders are scores of drug havens and transient encampments. I think is underwriting disease, destruction and indigence by encouraging this lifestyle with sleeping bags, tents, showers and public assistance.

Why work when you can stay stoned so you are not even in touch with your environment or health, steal what you want, and if you go to jail you get three squares a day and a cot?

I pay taxes and give to charities and these services are provided. I object. Let's clean up the balloon track and Eureka for the working people who support the community, want it to thrive, and do not want to burn it to the ground with indifference.

We need your support and leadership to make our dreams come true.

Thank you for considering my opinion. If you care to discuss it, please fell free to contact me anytime.

Megan McKenzie 707-826-4774

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## Tripodi, Kyla

From: margaret gordon [pma3022@sbcglobal.net]

Sent: Thursday, December 03, 2009 2:15 PM

To: bonnie.neely@co.humboldt.ca us

Cc: info@marinacenter.org

Subject: Marina Center

Bonnie Neely 825 5th Street Eureka, CA 95501

Dear Supervisor Neely,

For 3 consecutive Tuesday evenings last November, local citizens from all walks of life came forward to the Eureka City Hall to overwhelmingly support the Marina Center project. Of course there were the usual fault finders who always appear when any positive program is involved. They have highly developed their skills of objecting but appear unable to provide any desirable alternate solutions. Such is the present case.

Consider this. Suppose the Marina Center finally became disgusted with the obstacles and delays and decided to abandon the project. Where in this world of 7 billion people could just one person be found to assume the exorbitant expense of cleaning up the Balloon Tract? Such a hypothetical person simply does not exist.

Thus the ensuing result would be that the crippling clean up expenses would have to be paid b the governing bodies. This is realism.

It is respectfully requested that you give your support to allow the project to expediently proceed to fruition.

Paul Augustine JR. 12.03.2009 pma3022@sbcglobal.net

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## Tripodi, Kyla

From: leppek@suddenlink.net

Sent: Thursday, December 03, 2009 7:16 AM

To: info@marinacenter.org

Subject: Balloon Track-Neely

Copy of e-mail sent

Dear Ms. Neely:

I am a native Eurekan, and am quite familiar with the Balloon Track area. At one time, I even had relatives working the railroad roundhouse that was in that area. I know what that area was, and, I know what it has turned into.

As part of the current issues surrounding the Balloon Track, I must convey my thoughts that the work, in my opinion, being done to upgrade this area is phenomenal. The cleanup proposed is, I believe, is beyond adequate. The projects proposed have gone through many, many reviews with extensive input from the public through many advertised and communicated sessions.

I am struggling with the opposition to this extensively researched project. As I've reviewed the issues, I've not seen any logical reasons for oposition other than "no". I see the cleanup as extensive......I see the establishment of a large wetland area available for wildlife and areas for the public to enjoy....none of this that is available now. Currently, this is, and has been for many years, a blight on the community and a negative area for the birds to nest in...I just don't see why anyone would feel that this should not be changed.

Thank you for allowing me to express my opinions through this e-mail. I know that you are involved in the final decisions for this project and I hope that my comments are contributory.

Dan Leppek 50 Barscape Lane Eureka, CA., 95503

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## Tripodi, Kyla

From:Royal Mccarthy [royalent2@yahoo.com]Sent:Friday, December 04, 2009 9:14 AMTo:bonnie.neely@co.humboldt.ca.us

Subject: Balloon Tract Cleanup

Supervisor Neely,

I urge you to not allow the appeal to the permt for the cleanup of the Balloon Tract to go forward. It is time to get rid of the eyesore and proceed with the cleanup. Thank you in advance for your efforts in moving this cleanup to continue.

Royal McCarthy, P.E. Eureka, CA

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RECEIVED DEC 0 7 2009

CALIFORNIA COASTAL COMMISSION December 4, 2009

Heather & Darren Toland 3850 Pennsylvania Ave. Eureka, CA 95501 (707) 443-8510 Toland@suddenlink.net

Dear Bonnie,

My name is Heather Toland and I wanted to express to you that my husband Darren Toland and I SUPPORT the clean-up of the Balloon Track and the Coastal Commission shouldn't stand in the way of the clean-up. This issue has been drug out far too long we hope to see results of this sooner then later.

Sincerely,

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Signature on File

Heather Toland

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CALIFORNIA COASTAL COMMISSION

I am writing you to express my support with the clean up of the Balloon Track, and I feel the Coastal Commission should not stand in the way. Please help us clean up the eyesore in Eureka and preserve our Bay. I appreciate your time and consideration.

Cordially, & Signature on File

Donna Poliak 3132 William St Eureka, CA 95501

RECEIVED DEC 0 7 2009 CALIFORNIA COASTAL COMMISSION

I am writing you to express my support, and overall opinion of necessity, that the clean up of the Balloon Track occur, and the Coastal Commission should not stand in the way. It's time we get rid of the eyesore in Eureka and help preserve our Bay. This can only be done through your leadership. Thank you for your consideration.

Kindest Regards, 🦳 4 Signature on File Katie Kubala 1306 Leslie Rd Eureka, CA 95503

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DEC 0 7 2009

CALIFORNIA COASTAL COMMISSION

I am writing you to express my support with the clean up of the Balloon Track, and I feel the Coastal Commission should not stand in the way. This is past due and is only going to contribute to this community. This can only be done through your leadership. I appreciate your consideration.

Sincerely,

RECEIVED CALIFORNIA COASTAL COMMISSION

Signature on File

Robin Bostwick McKinleyville CA 95519

( )

I am writing you to express my support with the clean up of the Balloon Track, and I feel the Coastal Commission should not stand in the way. Please assist us in supporting the clean up and preservation of Eureka and our Bay. I appreciate your consideration.

Sincerely,

Signature on File

CYNTHIA BURGER 2749 CALIFORNIA ST. EUREKA, CA 9550]

RECEIVED CALIFORNIA COASTAL COMMISSION

I am writing you to express my support with the clean up of the Balloon Track, and I feel the Coastal Commission should not stand in the way. This is going to preserve our bay and is long past due. This can only be done through your leadership. Thank you for your time and consideration.

Sincerely,

Sarah Chapman 2735 Pleasant Ave Eureka CA 95503

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## RECEIVED FACSIMILE TRANSMITTAL COVER SHEET

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CALIFORNIA

COASTAL COMMISSION

PLF's fax number is

916 419-7747

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December 7, 2009 Date:

To: Bob Merrill Fax No.: (707) 445-7877

North Coast District Manager Company

From: Paul J. Beard II, Principal Attorney

Subject: Appeal No. A-1-EUR-09-049 (CUE VI, LLC, Eureka) If you did not receive page(s) including cover sheet, please call at (916) 419-7111.

> $\underline{X}$  Original will follow. Original will not follow.

#### **COMMENTS:**

Headquarters: 3900 Lennane Drive, Suite 200, Sacramento, CA 95834 (916) 419-7111 Fax: (916) 419-7747 Alaska: 121 West Fireweed Lane, Suite 250. Anchorage, AK 99503 (907) 278-1731 Fax: (907) 276-3887 • Oregon: (503) 241-8179 Atlantic; 1002 SE Monterey Commons Blvd., Suite 102, Stuart, FL 34996 (772) 781-7787 Fax: (772) 781-7785 Hawaii: P.O. Box 235856, Honolulu, HI 96823-3514 (808) 733-3373 Fax: (808) 733-3374 Washington: 10940 NE 33rd Place, Suite 210, Bellevue, WA 98004 (425) 576-0484 Fax: (425) 576-9565 E-mail: plf@pacificlegal.org • Web Site: http://www.pacificlegal.org



# PACIFIC LEGAL FOUNDATION RECEIVED

December 7, 2009

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CALIFORNIA COASTAL COMMISSION

California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 94105 VIA FACSIMILE: (415) 904-5400

Mr. Bob Merrill North Coast District Manager 710 E Street, Suite 200 Eureka, CA 95501 VIA FACSIMILE: (707) 445-7877

## Re: Appeal No. A-1-EUR-09-049 (CUE VI, LLC, Eureka)

Dear Commissioners and Mr. Merrill:

Pacific Legal Foundation (PLF) presents this comment letter on the above-referenced appeals, set for a substantial issue hearing at the Commission's December, 2009, meeting. PLF urges the Commission to decline to hear these appeals on the grounds that the Commission lacks statutory jurisdiction over the coastal development permit (CDP) issued to CUE VI by the City of Eureka.

The Commission is without jurisdiction for at least two reasons. First, the CDP was issued by the City to remediate a public nuisance. Second, the CDP was issued to authorize CUE VI to remediate its Balloon Track brownfield property pursuant to a Supplemental Interim Remediation Action Plan (SIRAP) adopted by the pertinent Regional Water Quality Control Board.

#### The Commission lacks jurisdiction under Public Resources Code Section 30005(b)

The Commission is precluded from hearing the CDP appeals because of Coastal Act Section 30005(b)'s jurisdictional bar. Section 30005(b) provides that no provision of the Coastal Act "is a limitation . . . [o]n the power of any city or county . . . to declare, prohibit, and abate nuisances." Section 30005(b) implies a two-step jurisdictional analysis. The first step is to determine whether a local government has excercised its nuisance abatement power. The second step is to determine whether the Commission's proposed action, pursuant to any Coastal Act provision, would operate as a "limitation" on the local government's nuisance abatement power.

Headquarters: 3900 Lennane Drive, Suite 200 · Sacramento, CA 95834 · (916) 419-7111 · Fax: (916) 419-7747 Alatka: 121 West Fireweed Lane, Suite 250 · Anchorage, AK 99503 · (907) 278-1731 · Fax: (907) 276-3887 Atlantic: 1002 SE Monterey Commons Blvd., Suite 102 · Stuart, FL 34996 · (772) 781-7787 · Fax: (772) 781-7785 Hawaii: P.O. Box 3619 · Honolulu, HI 96811 · (808) 733-3373 · Fax: (808) 733-3374 · Oregon: (503) 241-8179 Washington: 10940 NE 33rd Place, Suite 210 · Bellevue, WA 98004 · (425) 576-0484 · Fax: (425) 576-9565 E-mail: plf@pacificlegal.org · Web Site: www.pacificlegal.org California Coastal Commission Mr. Bob Merrill December 7, 2009 Page 2

Here, in issuing the CDP pursuant to its Local Coastal Program (part of the City's municipal code), the City of Eureka determined that the Balloon Track property, because of its brownfield conditions, constitutes a public nuisance that must be remediated as soon as possible. See City of Eureka Resolution No. 2009-51 ¶ 4 ("The conditions on the site, including the soils contaminated with metals, debris, and other refuse, are a threat to the public welfare and have created and continue to threaten to create a public nuisance under the Eureka Municipal Code . . . ."). The City exercised its nuisance abatement power, so the first step of Section 30005(b)'s jurisdictional analysis is met.

As for the second step of the Section 30005(b) analysis, *any* CDP appeal process, regardless of its outcome, would necessarily constitute a forbidden "limitation" on the City's nuisance abatement power. Should the Commission hear the appeals and overturn the CDP, thereby preventing CUE VI from abiding by the City's nuisance abatement order, the Commission's action would clearly operate as a limitation on the City's power. But even if the Commission were ultimately to affirm the CDP, the appellate process would still constitute an impermissible limitation, because *any* delay in nuisance abatement attendant upon the CDP appeal process would necessarily and unavoidably conflict with the City's determination that the Balloon Track site constitutes a present threat to the public welfare, thereby constituting a limitation on the City's nuisance abatement power.

#### The Commission lacks jurisdiction under Public Resources Code Section 30412(b)

The Coastal Act similarly forbids the Commission from taking any action "in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality." Pub. Res. Code § 30412(b). Like Section 30005(b), the jurisdiction-stripping effect of Section 30412(b) implies a two-step analysis. The first step is to determine whether a Board has made a determination pertaining to water quality. The second step is to determine whether the Commission's proposed action would conflict with the Board's determination.

Here, the Regional Water Quality Control Board has directed CUE VI to implement the SIRAP to clean up and abate ongoing and future discharges that may threaten the region's water quality. That determination clearly pertains to water quality, so the first half of Section 30412(b)'s jurisdictional analysis is met.

As for the second half, any CDP appeal process, regardless of its outcome, would necessarily constitute a forbidden "conflict" with the Board's determination. If the Commission hears the appeals, it will be because it has found "substantial issues" with the CDP-issues that the Commission can only resolve by changing or conditioning in some way the Board's order to implement the SIRAP. But any such change or conditioning of the Board's determination would violate Section 30412(b). Indeed, the mere delay caused by the hearing of the appeals itself arguably

California Coastal Commission Mr. Bob Merrill December 7, 2009 Page 3

conflicts with the Board's determination that the Balloon Track site constitutes a present threat to the public welfare that must be remedied as soon as possible.

## Conclusion

CC:

For the foregoing reasons, PLF urges the Commission to deny the appeals of CUE VI's CDP on the grounds that it lacks jurisdiction to hear them.

Yours sincerely,

Signature on File

Paul J. Beard II Principal Attorney

cc: Mr. Michael Casey Vice President, Real Estate Development Security National Properties 3665 Bleckely Street Mather, CA 95655

Mr. David M. Ivester Mr. Christian L. Marsh Briscoe Ivester & Bazel LLP 155 Sansome Street Seventh Floor San Francisco, CA 94104



Agenda item: 14 - C December 10, 2009 Eureka Chamber of Commerce

#### SENT VIA FAX, EMAIL AND U.S. POSTAL SERVICE

December 4, 2009

Ms. Bonnie Neely, Chair Members of the Commission California Coastal Commission North Coast District Office 710 E Street, Suite 200 Eureka, CA 95501

## RECEIVED

DEC 0 7 2009

Attn: Bob Merrill, District Manager FAX (707) 445-7877

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CALIFORNIA COASTAL COMMISSION

RE: Appeal No. A-1-EUR-09-049 (CUE VI, LLC, Eureka) Appeal No. A-1-EUR-09-49 (CUE VI, LLC, Eureka)

Dear Ms. Neely:

Please include this letter as public comment submitted in response to the above referenced Appeal.

Following review and discussion, the Board of Directors of the Greater Eureka Chamber of Commerce submits for your consideration that the applicant has consistently demonstrated a commitment to provide complete mitigation and abatement of the contaminated site and to comply with all applicable provisions of law and regulatory authority. As you know, this interim clean up plan has already met with the approval of NCRWQC Board and the Eureka City Council.

The Chamber Board strongly supports the proposed actions of the applicant, CUE VI, to implement its Supplemental Interim Remedial Action Plan. The Board believes that the good faith effort of the applicant in its effort to clean up and restore the Balloon Track property should be allowed to move forward. This contaminated, vacant property has existed in an abandoned condition at the heart of the City of Eureka Waterfront for decades. In its current condition the property remains a blight on the waterfront, a haven for crime and drug use, and a toxic hazard for visitors and citizens of the community. The site represents a significant threat to the public enjoyment of recreational activities as well as the environmental health and integrity of Humboldt Bay and adjacent wetlands.

Ms. Bonnie Neely- December 4, 2009 - Page Two

CUE VI, as a local landowner has consistently worked with the Regional Board and staff to fulfill its public commitment to not only remove the contamination and restore environment quality to this property, but to also to create needed economic opportunity for this community. The implementation of the proposed clean up of the property and wetland restoration achieves both of CUE VI's commitments to the City of Eureka and its citizens. Accordingly the Greater Eureka Chamber of Commerce urges the Commission to deny the appeal and allow this project to move forward.

Please feel free to contact me should you or members of the Commission staff have any questions or wish to discuss this recommendation in greater detail.

Sincerely

Signature on File

J Warren Hockaday President/CEO

CC:

Chris Crawford, Chairman Randy Gans, Security National

Dec 7 2009 Robert Mervill RECEIVED North coost Distric Manager Culiforinia Castal Commission DEC 0 8-2009 710 E st Guite 200 CALIFORNIA COASTAL COMMISSION Eureka, CA. 95501 Tax 707 4458775 R& Bullon Track Property, Everlee Dear Bob, As a concerned litizen and local businessman for over 35 years, I strongly support the poposed environmental clean up plun fer the Balloon track moperty A four fifth's majority of the Fiereku City Councel has approved of the proposed clean up process moving forward as well as 98% of those polled in a vecent phone survey [Kins radio Oct. 20, 2009] As a Zoologist (Humboldt state 76, 78) with an extensive background in Organic Chemistry as well as Bitschemistry I have personally reviewed the documents and find them to be the most complete and comprehensive set of environmental clean up plans I have ever virilided.

× forer apprend to more this process forward will result in a cleaner environment, the de velopment of over yours of wetlands and pessibly the beginning of some form of eco re-utelization for our community thank you for your time and consideration to this very important mether. Recfards 1 Signature on File 318 W. HARRIS Bureker, cA 9503 P.S. Please see copies of names submitted sept 10, 2009

September 10, 2009

California Regional Water Quality Control Board VIA FACISIMILE 707-523-0135 Attin Caryn Woodhouse North Coast Region 5550 Skylane Blvd, Suite A Santa Rosa, CA 95403 Ph 707-576-2701

#### RE The Balloon Track Property, Eureka, CA

Dear Caryn,

As a concerned citizen, and local businessman, I strongly support the proposed environmental clean up plan for the Balloon Track property in Eureka, California.

Beginning with the day that the Arkley Family purchased this long neglected, decrepit property, they have worked diligently to turn it into a positive asset for the community and for our environment. It has been an embarrassment to the City of Eureka for the past 30 to 40 years. It is time for that to change.

Given that the majority of people in our community feel the same way I do, I am proud to submit the attached lists of well over 300 names that was gotten with very little effort. All who have signed the attached letter support the Arkley family's continued efforts to clean up and revitalize the Balloon Track property. On the list are community members from all walks of life; professionals in environmental engineering, prominent business men and woman, and the every day hard working community members who face the daily challenges of supporting themselves and their families. These are people who are often too busy with their daily lives to attend meetings or write letters voicing their opinions, but jumped at the chance to sign this letter to show their support for cleaning up the Balloon Track.

Please do not delay cleaning up of this property and making Eureka a better community because of it

Sincerely Signature on File

#### To Regional Water Quality Control Board

We, the undersigned, strongly support the proposed actions in the June 2009 Supplemental Interim Remedial Action Plan, to start the long awaited clean up and restoration of the Balloon Track. This degraded property has sat abandoned for decades, an eyesore to the community, a magnet for crime and drugs, and an environmental waste land. We are pleased that the new landowner is following through on their commitment to improve the property for the betterment of the environment and community. Please continue your efforts to expedite these important clean up activities. Sincerely,

 $\wedge$ 2618 15+ Eurelia (4 91501 Address 2030 Holly Endern CA 95503 Address W. EURERA 95503 <u>Address</u> Signature on File CA 95501 EUROKA <u>1404 EAST</u> Address 2500 ERIE STREEF, EUREKL, CA 95501 Address Broadway Eur 95501 A 95503 [OD MAN ST 3253 mitchell Hts Dr. Eureku 95503 Name

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7351 Thompkins Hill Rd, Eurk, 95501 Address ١  $\cdot \land \land$ 1802 5th St Eurck 95501 ZIW 444 EKA 95501 Signature on File BIS28 9th St. FURTUNA, CA 95540 Address P.O. Box FOG Eureka Ca 916 School Rd Mekinleyville CA 95519 Address 3118 5' St Eurelia, CA 95503 Address 1902 CAVE. MCKINLERVILLE, Address CIA 95519 Name

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Address 440 Francesco Place Fortuna CA 95340 Address 102 Dunaway CT Ca. 95540 OFTUNN Address Lant Portune (495530 102 dunan , CR 9554 5 9 Address 3550 TAMi Dr EDITURA, Ca. 95540 rtuna ca 95540 Address ami. Dr. Address 3850 Pennsylvania Ave Eveka, CM Address

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Name O	Address
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	- 5565-Myen and Sky, CA. 9500
	2115 Irving Dr. FKA 95703 Address
onfile	Address Address
Signature on File	Address 17 th 20 European
	2 305 Seynago St. Address
	2 2084 Fern St Address
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Name	Address

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3147 Dollager St Eureka, Address CA 25503 121 Anderson In Traited 95570 Address 4351 CEDAR ST EK. 95503 Address 735 5th St., Eurelia 2543 B Street, Eureka CA 95601 Address 2112 Brosoany, ERERCA 7550, Address 1313 5th STREET ENRICH CA 95501 も Address

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CONDO - Address J147 DOLBEERST. #18 EUREKA SSTOP <u>PoBox 536 Joleta Ca.</u> 95551 Address 3354 William St. Europa, CA 75503 Address R 1748 Babler Rd McKinleyorle CA 95519 Signature on File Address <u>Address</u> <u>949 West cechtor St EKA</u>, CA 95503 Address <u>1168 Josephin Till Pottesting Ca</u> Name Address Name Address Name Address Name Address Name Address

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Address	
Address 1/08 West Ave Apt. A Euvicka, CA 95501	
Address 2013 Second Ave Fortuna, CA 95540	
Address 2013 Second Ave Fartuna, CA 95540	
Address 510 W. WASHINGTON - GUNNERA CA 95501	
 Address, 1036 St St, S.t. A Eurcka, CA 95501	
Address 2797 ONal Lu. Euseka Ca 96501	
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al Osborne Eurika, CM 95503

Address Ivian Ct. Mckniquille, CA 95519

N BERGENORE 26 WAGON JACK LANE Address

95519 Address

Signature on File

206 STONE LN. TRINIDAD. CA 95570 Address

25 CAMPTON ROMP, EULERA, CA 95503 Address

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5/6 Marty Mc/c CA 95579 Address

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Name Signature on File 195 20.

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Sincerely,

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Sincerely,

Name	Signature	Address
1. Kyle Tripodi	NO. A. madi	1516 7th St Eureka 95301
2. Katrina Sigler		18th st apt D Eurekach 9501
3. Kimberry Dowellen		2013 21 Ave., Fortuna, CA: 95540
4. Sherry Lisby		140 Tyde St #A, Eurcha, CA 95501
5- Lachelle Kycher		115 McFarlen St Cui KA CA 95501
6. Yer Thir		35 p Street Euroka (A 9550)
7. Sydney Hayne		135 pst. aptal
8. Kyler Steele		6305 Pryor St Eka, Ca 95503
9. Enika Robinson		3978 Diene Ave, Evela, 10003
10 JEERY ROBINSON		3978 VIALE AVE ENDERA CA 95503
11. Richard Hoorshy		t 6866 London Dr Surcha (A95303
12. Rex Urbani	Life Andrews	612 VAILEY View DR EVICE
13. TY Herster	5	2333 buder valley Rd
14.15500KS Head		333 bottler really Rd.
15. CAHON HARDOLA	Signature on File	261 Soule Dr. EUREHA,
16. NANCY RADOZ	ŝ	261 Boyle DR. EURCKA
17. Land Jone		277 Back Farm
18. Kobernte me		wit 401 Brayle Dr Eurlis
19. 71 Orec Oru		401 Boyl-
20. De Daniel		1 4824 Potricia, Eureka
21. FOID / 10		245 BOYLE, EUROCA
23. Jeast Loren		444 3397
24. Ann Fue		Dn 444 - 3397
25. Tarbard		268-0852
26. RITA C. O'LONA		1 268-0852
27. Por Riego DAU		13 445-4259
28. GANY Garbauic		268-1279
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30. Sanára Cos		223 Byle Dr 223 Byle Dr
31. Susan Rydz		
32. Thomas Ryd.	<u>ار</u>	same

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Name	Signature	Address
1. Cole Machado	C.A. n. C.A. n. M.	POBOK 8 Euroka PSSO2
2. John masm		POBE 858 Willow Geek 95573
3. Allos Charman		POTRAC 573 Loleta, (A 95551
4. Leonardo Donyoly		P.O. Box 513 Loleta, Ca. 95551
5. JEREMY LOWE		- 1034 CSt, Evocka, 95501
6. Lauren Smith		P.D. Box (002 Trindad, Ca
7. Alisha Noe		4280 D Street Sureka 13
8. Boh Wingtadov		1721 Buhne Street 95-6
9. Gerry Spueth		por Bas / miranca un 4 5553
10. August Santa (		3987 INTERNAL SI CKG C
11. Jacob Caller		4134 E St. Europa Colo (DE33
12. DD Hokst		2227 Ralphi ct Ert 95503 1.
13. Shan Stoltuc	. ile	P.O. Lox GOFF EUNKA (A 95562
14. inayne P. Rice	. S	- P.O. Box 16 Contron CA 95574
15. Heidi Parone	Signature on File	1855 Freedom Ct Fortune CtA 95540
16. William Day		599 Tanglewood. Dr. Epreta 9503
17. Ancon Robinson	- 5 <sup>10</sup>	3978 Viale Ave Euretra 9350
18. Pana apageo	3	2 1999 Brands La. Fortuna, CAPSES
19. Mike Moorehead	-	6866 LONDON DR EURARA 95503
20. MATT THRONE	-	1516 7TH APT A EUREKAR
21. Mark Moore	•	-SIG APTATUREDA
22. Ecion Tait.	-	1514 7th Street Europe
23. Justin Jelannech	-	· SIG The street
24. TYTER SCOT	-	1516 TH STREET
25. (Arolyn Dritton	-	<u>736 Pst. HCl Ewretia CA</u>
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Name		Address
1. JON KIRBY		Address 1332 Belliop PA MCKinleybille 1332 Belliop PA MCKinleybille
2. Don's Mendezy		2 1891 Reserve RONCKO
3. Mike Willer	andra, i de súr	20 2415 KSt. Eveta, 12 15501
4. BRANDON BATLEY		2783 JOSEPH ST. FORTUNA CH 95540
5. TRACT DEBRUKER		The 155 Lime McKalph C 995519
6. Lori Hill		BOX 1106 EKA, CA 95502
7. Allen Hog -		2260 Forest Late (+ Eucling Cof ISO)
8. Freen Compbell		PO 300 21de Scotic CA 95565
9. SCOTT ERWIN		2400 HEWITT RO MAKINGTINUE, CITY
10. JORDAN KAHOALi		- 2360 REDWOOD ST. EURENA, CA 95503
11. Noncy ( ringite	File	Lind, 228 Onio St Ekgos
12. Kathy ingtoost	L L	1492 Mornell Au melontapolite CA 95519
13. Donall VulanT.	10 é	LAWT 440+MANISCOPI torbur 95540
14. Kayly CIOMMAN	Signature ,	man 1809 Cecil Ave, Foetune, CA 95540
15. Gina Miller	Ina	2904 Johnson 12d Hydesville, 0495547
16.h Onhale Jawas	Sig	5 1538 meadow Prove PL MCK Ca955r
17. TOKIE Mather		ITISIVERADO AVE. LICKCA 95519
18. YOT NIELSEN.		POBOK YER FORTUSA, CA 95540
19. CHNTHIA BURGER		2749 CALIFORNIA ST EIRERA, CA95501
20.1-EATHER TOLANT		AND 3850 ADVINISYLVANIA AVE, EUKAKA 95501
21. Sarah Chapman		H. 3BPighy Ave Pu Dell CA93262
22. Katie Kubala		Ul 10521 Ave Af the Branks Miranda CA
235 Donna Poliak	•	flial 3130 Uilliam H. Eureka 45503
24. Kath Leen Butler		the 3344 Alber St Eureta 95503
25 Spronbirgh S		55 GATARDAR FOTUNA CA 955- (1)
26. Sherry Pilgrim D		41 1/2 Wedgeted, Eka 95503
27. Mike Fadur		un 1453 Floatier 45 Kinhapville,
28. Kathy Miller		2333 Fieldbrook Rd, Mginly ville, cf 2579
29. Erin Jones		3322 Summer St. Eureka, CA 9553
30. Aaron Newman		2388 Honnah Ct., Fortune, CA 95540
31. Marle Hodgsa		1250 Haven Line, H2, Mdc, CA 95519
32. Kari Shoborg 1		1411 Bay St, Apt K, Eucha CA 950/
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Name	Address
1. VICKIE (Hildress Y) 2. Michael Childress Y) 3. Wyatt Whitlow WV 4. Chr.s Miller 5. Kerin Raimey 6. Jessica Lahilahi for 7. Dustin Miller 8. DON MURRISH	<u>PAN 79 SUNNY ALTES Fieldbrook</u> <u>79 Sermin Ackes</u> Fieldbrook <u>PO BOX 253 Blue Lake</u> <u>79 CUMAY Acker</u> Fieldbrook <u>GOO SEASCAPE ID, Tring dad</u> <u>P.O BOX 2712 MCKINKUNK, CA9559</u> <u>546 Gratt: F. EKA. Ca.</u> <u>925 Let L. T. K. EKA.</u>
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Name		Address	
1. Pamela R No. 2by 1 2. Michael Landry 3. KRISTI LANDET 4. Frica Kuhn 5. BAALA, SHATONEL 6. UNDER Millar 7. Jundi Biagi 8. RODERT HOUTES 9. ROOME BOORD 10. Chy Jung 1	olonallure on File	Hu 2636 Union St#B, Europhy CA 5001 2400 Hillside D 95501 Piscol 1461 Gill Ct Euroka, CA 1461 Gill Ct Euroka, CA 1500 Bunshine May EKA 14 RIDERSIDE FARK RD CACOMMANNE CH 14 RIDERSIDE FARK RD CACOMMANNE CH 14 Co SO Gummere on Ris Duel	
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Name	Signatu		Address	
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Name	Signature	Address
1. Jeyce Isherwoo 2. Ouro Dinomark. 3. Jacob Mark. 4. Steven Tsherwoo 5. Valence Scherwoo 5. Valence Scherwoo 7. Down Land 8. Bron Stomass 9. DANIEL J PRU 10. THOMHS M. Shiret 11. CINON Shiret 12. Cameron Shuely	Giologiane of the	1.3405 Pine St EXA PASSOS 3140 CONTRO AU ETA, CO 4503 4504 CA 9503 2503 2504 Europhie CA 9503 2504 Control AU ETA, CO 1503 POBLICIOS MCKGOD 1427 Russ Lunka Ca. 1034 2809 MK 95579 1.6335 Lee Ann Dr 100, CA. 103 W Ganton Evel 5503 1.203 W. Comt St. Evel 1.203 W. Comt St. MA
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Name	Address
1. Angela Stazano 2. Wendy Donnelly 3. Under Donnelly 3. Under Donnelly 4. Radrel Hop 5. Orien Hope 6. Zel Vleming 7. Carmer Sangert 8. Heidi Museph 9. MIKA CADELO 16. Zel TIHLO 16. Zel TIHLO 16. Zel TIHLO 16. Zel TIHLO 16. Jany DOUILORC 12. Anthony Lively	5126 <u>A Inchart Dr. Enseler</u> Ca <u>4184</u> D. St. EWEKA 955B <u>4184</u> D. St. EWEKA 955B <u>4184</u> D. St. EWEKA 9550 <u>2451</u> Wood St. Eweler (A 9550) <u>4(51 0004 st. Ewrek</u> (A 9550) <u>1(11-3 Marche Che</u> <u>w. 1111-3 Marche Che</u> <u>w. 114 Lowell St. Ewreka CA</u> <u>359</u> CBDXP 5T. <u>40897CHOQX</u> ST. <u>LUXOKA</u> <u>1111 Marche Ave #111 Sta 9551</u> <u>2C-A Walnut DR. Ewreka Ct.</u>
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Name	Signature		Address
1. Zoe Rubinson	_		In 3978 Vial Ave Eurela C
2. Melissa Richard	-		hand 1998 Edith Arcata CA
3. Dustin M. VIllaman			Agran 1901 Columbus Are, Melking
4. Mary Freistas	1		1360 Flamay off
5. Ida Lowe C			3211 Alace Ave Aver
6. Jim Lowe gu			3211 A lice Ave Arcos
7. Jason Lowe Ha			3211 Alice Ave Avert
8.Ashley Lowe Pla		SU .	3211 Alice Ave Apach
2. Vernardo Avelar-1		Fill	- 3144 Alie Ave Avek
10. Olivia Avelar our		ð	3144 Aby Ave Arcita
11. Fernando Silva	L. L		1045 12th st Arrite
12. Alice Silva	gna	on File	1045 124 57 Arcon
13. Maria Furtado	Ś		211 Villa Why Arch
14. Alyssa Newson			1999 Edith IF, Arcuta, CA
15. Manuel Milland			3110 James Rd Arcata
16. Prozeriz Migderia			100 3110 Janes Rd Arch
17.11 DAUPI Maderia			We 3110 Janes Rd Arah
18. America Smith Among			1998 Editte Dr Areck
19. David Newton ' and MU			Edilly Dr. Arcala, CA
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Name	Signature	Address
1. hontres Almel	12	422 IST ST Eureka Ca 95501
2. Kristin Flack	Signature on File	926 Ist Eireka CA95SD/
3. Carly Robbins C	<sup>o</sup> r	1205 I St Apt 1 Furka, CA 9550/
4. Terry A. Curtis	AUTE	3321 Antomette Of Anata, CA 25521
5. Parciel Lurdes	CIDIO	321 Arrbindle (J. Arcash CP 9552)
6. Kenfellen	9	335 Atanthe FlArch, 2019 521
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### To: Regional Water Quality Control Board

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Name	Signature	Address	
1. Marianne Larkin	<b>^</b>	in 3480 Tonity St	EKA
2. MATT Simmons		- 3404 Elizabeth St,	Eureka
3. Julie Johnson		906 Park Heights Ct. For	tune 95540
4. MARILYN COLSON		n 3335 ALBEE ST. EUR	EKA 95303
5. Leota Day	e	1574 Stewart Crt Arcoto	, CA 93521
6. ROBIN BOSTWICK	A.	2 1689 ANDERSON	J, MCK.
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4. Charlotte Jackson 5. L. 2 Muy Res	le le	5238 Cepper Ct	Rucha
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1. NANEY Li LEWIS 2. GLENAR d'USSLAU 3. Tim Osborne 4. Nick dUsseau 5. FIARY ASBORNE 6. Carlee Wallace 7. TUSTIN Wallace 8. 9.		4321 PERCHERON AIRCATH 95521 201 P.O. BOK LOS KONDEL CH 9555D 2 1121 BOSS Rd. H. KINLEY VIDIL, CH 9555D 1121 BOSS Rd. MCKINERIULE, CH 9555D 1121 BOSS Rd. MCKINERIULE, CH 9555 - 1121 BOSS Rd. MCKINERIULE, CH 95519 2 1121 BOSS Rd. MCKINERIULE, CH 95519
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1. Patrick Coner	17 1	3420 0' St. EKa
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3. Steven Streetere		3396 Lowell St. Eka
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Sincerely,

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1. Mandy Lephardt 2. 10 MMy Visser 3. Cell Stenhardt 4. Manc Lephardt 5. Mile Jan	signature on File	<u>PO Box 2951, MOLINAU VILLE, CA</u> <u>339 E Street Europa</u> , CA 95501 <u>1736 Fischer, MCK OA</u> 95519 <u>1736 Fischer, MCK OA</u> 95519 <u>1765 Dablia McK</u> , (A 95319
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1. Michele Dodrick		1 3342 KSt E	urellea
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Signature on File

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3460 Pine St. Eurelica, CA 95503 120 Variels SF. Address Address Address Hodeson Address Address 814 7th Street Euroka LA Address

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J 2486 Manzanita, Eureta, Cot 95503 5002 Lundblade Dr Eurska (495503 Address Signature on File 1317 H Street Eurelia, CA 95503 Address 3620 Cambo & Areaka, CA 5521 16 814 7th Strat Europa, CA 5501 Address 2544 HUBBARD LANE APTC Address Name Address

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## Petition to Clean up the Balloon Track

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al ... 1824 PD Eureta, Ca Address 1707-Butthe St Guret Address 7E E 2140 TYDD EURERA CA 95501 Address Signature on File 320 ARE, LAR CP. RD. EKA. CA. 95303 Address 1414 William Sh Eker CA 9555 Address POB130 LOLEM (A. 95551 Address EUREKA 1820 HEAH)ERLN. Address 1837 057 Eveka CA 9550-

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Address <u>4331 Lenfell Rd Everke Ca</u> Address 2441 7H St Enreka Address 5900 ERICKSON ARCATA Address 5901 Ericson Was Address VIALE AF 3855 EUREL Address

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# St. Joseph Hospital Redwood Memorial Hospital

HEALTH SYSTEM

St. Joseph Hospital 2700 Dolbeer Street Eureka, California 95501

3300 Renner Drive Fortune, California 95540 707.725.3361

**Redwood Memorial Hospital** 

707.445.8121

December 7' 2009

Bonnie Neely 825 Fifth Street, Room 111 Eureka, CA 95501

Bob Merrill North Coast District Manager California Coastal Commission 710 E Street, Suite 200 Eureka, CA 95501

Dear Ms. Neely and Mr. Merrill:

As CEO of St. Joseph Hospital in Eureka and Redwood Memorial Hospital in Fortuna, I understand the need to consider all sides of this issue before moving forward. However, I feel it is absolutely ridiculous that the clean up of the Balloon Tract in Eureka, a contaminated site on what would otherwise be beautiful waterfront property, is being stalled by special interest groups like Humboldt Baykeeper and the Environmental Protection Information Center.

At the hospital, our number one priority is always the people who come to us in need of medical services – our patients. Everything we do – all policies that are created and all decisions that are made – centers on what is right for our patients. We ask ourselves every day, several times a day, "Is this in our patients' best interest?"

It is obvious to me that the groups and individuals who have appealed the interim environmental clean-up of the Balloon Tract property have lost sight of their priorities – the people living in Humboldt County. These groups are not working in the best interest of the community, and despite names like "Environmental" Protection Information Center and North Coast "Environmental" Center, they clearly do not have the best interest of the waterfront land in mind either.

Regardless of how you personally feel about the Marina Center project as a whole, I encourage you to consider the community's need for an attractive, uncontaminated waterfront. The clean-up proposal is supported by a wide range of community members, including myself, as well as the Eureka City Council.

Please do what's right for the community and support the clean-up proposal. It's in the community's best interest.

Sincerely,

Signature on File

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CALIFORNIA COASTAL COMMISSION

A Ministry of the Sisters of St. Joseph of Orange