



November 4, 2009

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

**EXHIBIT NO. 8**

**APPEAL NO.**

**A-1-EUR-09-049**

**CUE, VI, LLC**

**NOTICE OF FINAL LOCAL  
ACTION, COASTAL DEVELOP-  
MENT PERMIT NO. CDP-09-004**

## CITY OF EUREKA

COMMUNITY DEVELOPMENT DEPARTMENT

Kevin R. Hamblin, AICP, Director

531 K Street • Eureka, California 95501-1146

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NOV 04 2009

CALIFORNIA  
COASTAL COMMISSION

**HAND DELIVERED - 710 E STREET, STE 200, EUREKA, CA**

**Subject: NOTICE OF FINAL CITY OF EUREKA ACTION ON COASTAL PERMIT, COASTAL PERMIT AMENDMENT, OR COASTAL PERMIT EXTENSION APPLICATION**

Dear Mr. Merrill:

Please note the following **Final City of Eureka Action** on a coastal permit, coastal permit amendment, or coastal permit extension application (all local appeals have been exhausted for this matter):

### PROJECT INFORMATION

**Project Title: Marina Center Mixed Use Development, Phase 1**

**Project Applicant: CUE VI, LLC**

**Case No: CDP-09-0004**

**Project Location: Assessor Parcel Numbers: 001-014-002; 003-021-009; 003-031-008; 003-041-005; 003-041-006; 003-041-007; and 003-051-001. [Phase 1 does not include APN's 003-031-003; 003-031-012; 003-031-013 which are part of the full build-out of the Marina Center Mixed Use project.]**

**General Plan & Zoning Designation: Limited Industrial (LI/ML); Service Commercial (HSC/CS); Public (PQP/P)**

**Project Description: See attached staff report for full description. *Summary:* Implementation of the SIRAP, (Appendix S of the EIR) including site remediation and creation of the wetland reserve.**

**Date of Project Application: March 7, 2006**

**Staff Contact: Sidnie L. Olson, AICP, Principal Planner; City of Eureka, Community Development Department; 531 "K" Street, Eureka, CA 95501-1165; phone: (707) 441-4265, fax: (707) 441-4202, email: [solson@ci.eureka.ca.gov](mailto:solson@ci.eureka.ca.gov)**

**Environmental:** The coastal development permit is a discretionary action subject to environmental review in accordance with the California Environmental Quality Act (CEQA). On October 27, 2009, pursuant to the provisions of CEQA, the City Council of the City of Eureka adopted Resolution 2009-50 certifying the Environmental Impact Report as adequate and complete.

**Applicant/Agent Contact Information:**

Randy Gans,  
Security National Properties  
323 Fifth Street  
Eureka, CA 95501  
(707) 476-2702  
[rgans@snsr.com](mailto:rgans@snsr.com)

**FINAL ACTION INFORMATION**

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**Final Action was Taken on:** November 3, 2009

**Final Action Body:**       Zoning Administrator       City Council

**Final Action Taken:**       Approved       Approved with Conditions       Denied

**Final Appeal Status:**       The action was not appealed/appealable at the local level.

The action of the City of Eureka is **not appealable** to the Coastal Commission; the City of Eureka's Final Action is now effective.

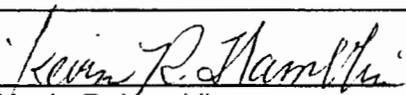
The action of the City of Eureka is **appealable** to the Coastal Commission pursuant to Public Resources Code, Section 3063. The Coastal Commission's 10-working day appeal period begins the first working day after the Coastal Commission receives adequate notice of this Final Action. The Final Action is not effective until after the Coastal Commission's appeal period has expired and no appeal has been filed. Any such appeal must be made directly to the California Coastal Commission North Coast District Office in Eureka, CA; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact the North Coast Office at 710 "E" Street, Suite 200, Eureka, CA; (707) 445-7833

  
Sidnie L. Olson, AICP  
Principal Planner  
City of Eureka

Attachments:      Staff Report including Findings of Fact and Conditions of Approval  
Draft & Final EIR (electronic)

cc w/o attachments:      City Manager  
Engineering Department  
Agent  
All other persons requesting such notice

## AGENDA SUMMARY

RE:	MARINA CENTER Phase 1 Coastal Development Permit	For Agenda Date: November 3, 2009  Agenda Item No.:
<b>RECOMMENDATION:</b>		
<ol style="list-style-type: none"> <li>1. Hold a Public Hearing;</li> <li>2. Approve the Coastal Development Permit by adopting the "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."</li> </ol>		
<b>SUMMARY OF THE ISSUE:</b>		
<p>On March 7, 2006, CUE VI, LLC made application to the city for entitlements for the Marina Center project which consists of a mixed use development on a 43 acre brownfield. The City determined that pursuant to the California Environmental Quality Act (CEQA) an Environmental Impact Report (EIR) was required. On March 16, 2006, the City executed a third party contract with CUE VI, LLC for the preparation of the EIR by an independent consultant Environmental Science Associates (ESA) of San Francisco. On October 27, 2009, the City Council, in accordance with CEQA, certified the EIR as complete and accurate.</p> <p>Staff recommends the City Council approve the coastal development permit for Phase 1 of the Marina Center project by adopting the attached "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." Phase 1 includes site soils remediation and creation of a wetland reserve. Approval of the coastal development permit for Phase 1 would not authorize the future phase(s) of the Marina Center project, nor would approval of the coastal development permit for Phase 1 vest any rights or entitlements to the property owner for construction of the Marina Center project that are not otherwise due the property owner under law.</p> <p style="text-align: center;">(continued on next page...)</p>		
<b>FISCAL IMPACT:</b> No impacts to the City General Fund have been identified as a result of this action.		
DH SIGN:	 Kevin R. Hamblin Director of Community Development	CM SIGN: _____ David W. Tyson City Manager
REVIEWED BY:	DATE:	INITIALS:
City Attorney	10/29/09	SS
<b>COUNCIL ACTION:</b>		
Ordinance No. _____		Resolution No. _____

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**PROJECT DESCRIPTION**

The coastal development permit under consideration by the City Council is only for Phase 1 of the Marina Center project; Phase 1 is described in more detail below.

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

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

The future phase(s) would include pedestrian and roadway improvements, including a proposed extension of Fourth Street into the site, connecting to and terminating at Waterfront Drive; and the proposed extension of Second Street into the site, connecting to and terminating at the Fourth Street extension. Additional access would be provided via driveway access from the

Sixth Street and Broadway intersection. The future phase(s) would also include the construction of a landscaped pedestrian and bicycle path parallel to Waterfront Drive, as well as landscaping throughout the site. On-site landscaping would incorporate native plants, ranging from restored slough and wetland aquatic plants to upland trees, shrubs, and grasses indigenous to the region.

The four parcels which roughly make up the tract of land know as the Balloon Track have an existing general plan land use designation of Public/Quasi Public (PQP) with a corresponding zoning designation of Public (P). Five of the existing remaining parcels have an existing land use designation of Light Industrial (LI) with a corresponding zoning designation of Limited Industrial (ML). The last two parcels have an existing land use designation of Highway Service Commercial (HSC) with a corresponding zoning designation of Service Commercial (CS).

The future phase(s) of the project include amendment of the certified Local Coastal Program (LCP) to a combination of designations that include General Service Commercial (GSC), Professional Office (PO), Waterfront Commercial (WFC), Limited Industrial (LI), and Water Conservation (WC). The LCP amendments would include amendments to both the Land Use Plan, which is the relevant portion of the local general plan, and the Implementation Plan, which includes the zoning ordinance and zoning district maps.

The proposed project design would draw from the site's maritime and industrial heritage, as well as from the contemporary influences of the Eureka waterfront, Old Town and downtown areas. Development of the site would seek to maximize views of Clark Slough, as well as Humboldt Bay, the small-boat marina, and the developing waterfront west of the site.

### **Phase 1**

Phase 1 of the Marina Center project would include 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; the SIRAP is Attachment 'S' of the certified EIR.

Phase 1 would include 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 would remediate soils in five focused areas by excavating the contaminated soils and then back-filling with clean material. The focused areas for excavation and back-fill are highlighted in the Figure 1.

Phase 1 includes the restoration of wetlands surrounding Clark Slough. The restoration would 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. The wetland restoration area is highlighted in Figure 2.

Phase 1 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 of 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. The approximate area proposed for grading and cover is highlighted in Figure 3.

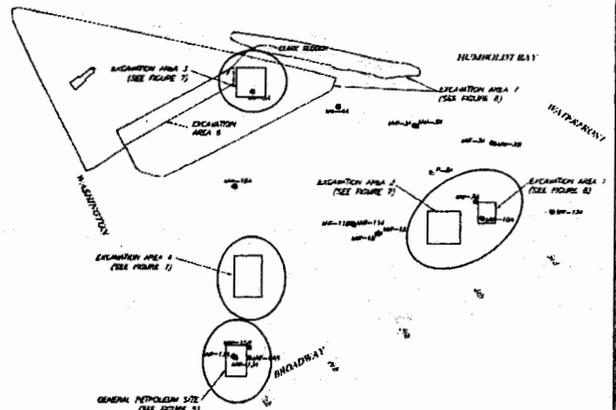


Figure 1  
Location of Excavation Areas

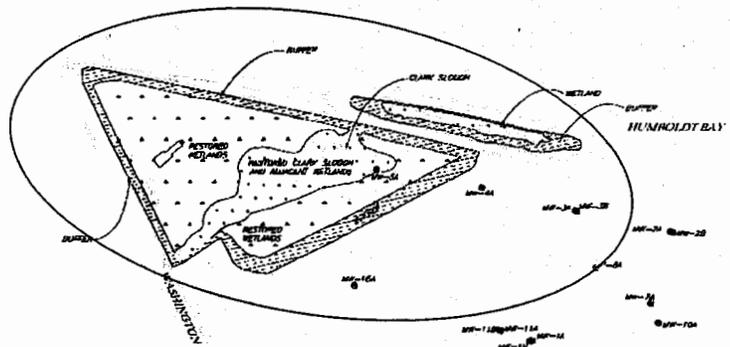


Figure 2  
Location of Wetland Remediation and Restoration Area

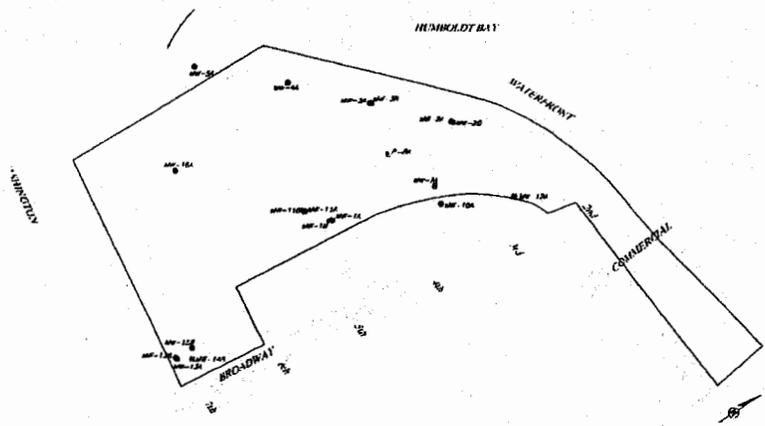


Figure 3  
Approximate Area of Grading and Cover

## ANALYSIS

Eureka Municipal Code, Section 10-5.29310.1 (section 156.107), specifies that the City Council may approve the coastal development permit for Phase 1 upon making the finding that Phase 1 conforms to the policies of the adopted and certified Local Coastal Program.

The Local Coastal Program is the foundational policy document for areas of the City located in the coastal zone. It establishes farsighted policy that forms the basis for and defines the framework by which the City's physical and economic resources in the coastal zone are to be developed, managed and utilized. The Local Coastal Program is divided into two components: the first component is the *Land Use Plan*, which is the General Plan specific to land in the coastal zone. It outlines the existing conditions, permitted uses, and policies needed to achieve the goals of the Coastal Act and includes the general plan map. The second component of the Local Coastal Program is the *Implementation Plan*, which includes zoning regulations and the zoning map for land in the coastal zone, and specific coastal zone ordinances necessary to implement the policies of the Land Use Plan.

The general plan land use designations affecting the property include: Light Industrial (LI), Highway Service Commercial (HSC), and Public/Quasi-Public (PQP). The corresponding zoning designations include: Limited Industrial (ML), Service Commercial (CS) and Public (P). The table below shows the existing general plan and zoning designations by Assessor Parcel Number (APN; the project site is comprised of eleven assessor parcels). Although future phase(s) of the Marina Center project will require a Local Coastal Program amendment to change the existing general plan and zoning designations, Phase 1 does not require an amendment to the Local Coastal Program.

APN	Existing General Plan Designations	Existing Zoning Designations
001-014-002	Light Industrial (LI)	Limited Industrial (ML)
003-021-009	Light Industrial (LI), Public/Quasi-Public (PQP)	Limited Industrial (ML), Public (P)
003-031-003	Light Industrial (LI)	Limited Industrial (ML)
003-031-007	Light Industrial (LI)	Limited Industrial (ML)
003-031-008	Light Industrial (LI), Public/Quasi-Public (PQP)	Limited Industrial (ML), Public (P)
003-031-012	Light Industrial (LI)	Limited Industrial (ML)
003-031-013	Light Industrial (LI)	Limited Industrial (ML)
003-041-005	Highway Service Commercial (HSC)	Service Commercial (CS)
003-041-006	Highway Service Commercial (HSC)	Service Commercial (CS)
003-041-007	Public/Quasi-Public (PQP)	Public (P)
003-051-001	Public/Quasi-Public (PQP)	Public (P)

### **Land Use Plan**

According to *The General Plan Guidelines* published by the State Office of Planning and Research (OPR) a general rule for general plan consistency determinations can be stated as follows:

"An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."

The Eureka General Plan Policy Document states:

"In interpreting and thoroughly understanding the City's overall land use and development philosophy, users of this Policy Document should understand that the goals, policies, and programs contained in Part II are as important, if not more so, than the Land Use Diagram itself. Accordingly, any review of individual development proposals must consider this Policy Document as a whole, rather than focusing solely on the Land Use Diagram or on particular policies and programs."

Based on the discussion below, Phase 1 is consistent with the Land Use Designations applicable to the project site, and the Policy Document of the Land Use Plan.

The City Council, as the legislative body of the City of Eureka, is ultimately responsible for determining whether an activity is consistent with the General Plan. 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. The City Council's finding of a project's consistency (or inconsistency) with the General 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. Courts have held that 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.

#### **Land Use Designations**

Under the adopted Land Use Plan, the general plan portion of the Local Coastal Program, the project site has three different general plan Land Use designations: Light Industrial (LI), Highway Service Commercial (HSC), and Public/Quasi-Public (PQP).

The portion of the site designated LI is located along the west line of Broadway to a depth of about 165 feet from approximately Fourth Street north to Waterfront Drive and then eastward to A Street between Waterfront Drive and Second Street. The portion of the site designated HSC is located west of Broadway to a depth of about 165 feet roughly between Sixth and Seventh Streets. The remainder of the property is designated PQP.

Phase 1 is necessary to remediate pre-existing contaminated soils resulting from past railroad and industrial activities on the property. The Phase 1 remediation activities would remove existing debris piles, old foundations and other structures, and remnants that remain on the property. Contaminated soils in five focused areas would be excavated then back-filled with clean material, and the site would be graded to prevent 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.

The Phase 1 site remediation activities would occur on lands with general plan land use designations of LI, HSC and PQP. The purpose of the LI land use designation is to provide sites for industries that can operate in close proximity to commercial uses with minimum adverse impact. The purpose of the HSC land use designation is to provide appropriately located areas for retail and wholesale commercial establishments that offer commodities and services required by residents of the city and its surrounding market area. The purpose of the PQP land use designation is to protect sites appropriate for the development of public and private sector civic service facilities.

The Phase 1 site remediation activities are not end uses of the site for which compliance with the LI, HSC and PQP general plan land use designations is strictly required. Rather the remediation actions are necessary to facilitate development of the type and intensity contemplated in the LI, HSC and PQP general plan land use designations. Because the remediation would not preclude development that would be consistent with the LI, HSC and PQP general plan land use designations, and in fact would support such development, the remediation is consistent with the LI, HSC and PQP general plan land use designations.

The proposed wetland reserve surrounding Clark Slough would be located in the southwest corner of the property on lands designated PQP. The Phase 1 Clark Slough restoration includes excavating and re-contouring a portion of the area surrounding Clark Slough to create new seasonal and muted tidal wetlands. Debris that has accumulated in and along Clark Slough and concrete rip-rap that has been placed along the banks of Clark Slough would be removed.

Because the proposed wetland reserve would be permanent, it is an end use for which a general plan consistency finding must be made. As stated above, the purpose of the PQP land use designation is to protect sites appropriate for the development of public and private sector civic service facilities. 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. As discussed in the certified EIR for the Marina Center project, 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 would improve stormwater flow and reduce flooding, the wetland reserve is a public civic service facility consistent with the purposes of the PQP land use designation.

#### **Policy Document**

The Marina Center Draft EIR includes in Table IV.I-2 a policy consistency analysis for the full build-out of the Marina Center project. To the extent that the goals and policies are relevant to Phase 1, they are repeated below.

PHASE 1 - POLICY CONSISTENCY ANALYSIS

LCP Policies <sup>1</sup>	General Plan Policy	Project Compliance Discussion
	Policy 1.A.1 [sic] To promote the public safety, health, and welfare, and to protect private and public property, to assure the long-term productivity and economic vitality of coastal resources, and to conserve and restore the natural environment, the City shall protect the ecological balance of the coastal zone and prevent its deterioration and destruction. (Appendix B lists as Policy 1.A.4)	CONSISTENT The project promotes and enhances the natural environment by remediating a contaminated brownfield site and by improving the quality and quantity of wetlands on the site and establishing a nature preserve area.
	Policy 4.D.2 The City shall encourage the use of natural stormwater drainage systems in a manner that preserves and enhances natural features.	CONSISTENT Phase 1 would include re-grading the site so that stormwater remains on the property to naturally perk into the ground. Phase 1 also includes the restoration and enhancement of Clark Slough which is a natural feature that has been altered over time.
	Goal 5.A To provide for park and recreational systems which include sufficient diversity of areas and facilities to effectively serve a population with varied characteristics, densities, needs and interests, consistent with protecting environmentally sensitive habitats.	CONSISTENT The project also would include the development of a wetland reserve that would indirectly provide some recreational facilities through construction of seating areas, interpretive signage and trails around the buffer area of the wetland preserve.
	Policy 5.F.2 The City shall solicit the views of the Native American Heritage Commission and/or the local Native American community in cases where development may result in disturbance to sites containing evidence of Native American activity and/or to sites of cultural importance.	CONSISTENT Ground-disturbing activities that would occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as "Highly sensitive" will require a subsurface archaeological investigation conducted in consultation with Native American groups.
	Policy 5.F.5 The City shall require that discretionary development projects identify and protect from damage, destruction, and abuse, important historical, archaeological, and cultural sites and their contributing environment. Such assessments shall be incorporated into a citywide cultural resource data base.	CONSISTENT Ground-disturbing activities that would occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as "Highly sensitive" will require a subsurface archaeological investigation conducted in consultation with Native American groups.
	Policy 5.F.6 The City shall require that discretionary development projects are designed to avoid potential impacts to significant cultural resources whenever feasible. Unavoidable impacts, whenever feasible, shall be reduced to a less-than-significant level and/or shall be mitigated by extracting maximum recoverable data. Determinations of impacts, significance, and mitigation shall be made by qualified archaeological or historical consultants, depending on the type of resource in question.	CONSISTENT Ground-disturbing activities that would occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as "Highly sensitive" will require a subsurface archaeological investigation conducted in consultation with Native American groups. If resources are located, measures to protect or relocate will be development, also in consultation with Native American groups.
	Goal 6.A To protect and enhance the natural qualities of the Eureka area's aquatic resources and to preserve the area's valuable marine, wetland, and riparian habitat.	CONSISTENT The project would restore the quantity of wetlands on the site and would enhance the quality of Clark Slough and associated wetlands. See Section IV.D, Biological Resources, Impact D-3, and Table IV.D-2, Wetland Functions and Values to Result From Implementing the Wetlands Restoration /Mitigation Plan.
	Policy 6.A.1 The City shall maintain, enhance, and, where feasible, restore valuable aquatic resources, with special protection given to areas and species of special biological	CONSISTENT The project would restore the quantity of wetlands on the site and would enhance the quality of Clark Slough and

1. General Plan Policies designed to meet Eureka's Coastal Land Use Plan requirements are noted with the wave symbol 

LCP Policies <sup>1</sup>	General Plan Policy	Project Compliance Discussion
	<p>or economic significance. The City shall require that uses of the marine environment are carried out in the manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.</p>	<p>associated wetlands. See Section IV.D, Biological Resources, Impact D-3, and Table IV.D-2, Wetland Functions and Values to Result From Implementing the Wetlands Restoration /Mitigation Plan.</p>
	<p>Policy 6.A.3 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.</p>	<p>CONSISTENT The project would maintain the quantity of wetlands on the site and would enhance the quality of Clark Slough and associated wetlands. See Section IV.D, Biological Resources, Impact discussion D-3, and Table IV.D-2, Wetland Functions and Values to Result From Implementing the Wetlands Restoration /Mitigation Plan. See also Mitigation Measures D-1a-D-1b. Phase 1 would include re-grading the site to prevent potentially contaminated storm water from leaving the site.</p>
	<p>Policy 6.A.4 The City shall require that channelizations or other substantial alterations that could significantly disrupt the habitat values of rivers and streams incorporate the best mitigation measures feasible. Such channelizations and alterations shall be limited to the following: Flood control projects where no other method for protecting existing structure in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development; Developments where the primary function is the improvement of fish and wildlife habitat.</p>	<p>CONSISTENT The project would enhance the quality of Clark Slough and associated wetlands which in their current state are highly degraded and offer little habitat or biological value. See Section IV.D, Biological Resources, Impact discussion D-3, and Table IV.D-2, Wetland Functions and Values to Result From Implementing the Wetlands Restoration /Mitigation Plan. See also Mitigation Measures D-1a-D-1b. The project would be consistent with this policy because it would not significantly disrupt habitat values in any portion of the project site, including in Clark Slough or in the wetlands; instead the project would improve and create new habitat values. The existing slough and wetlands offer meager and highly disturbed habitat. The proposed wetland reserve would provide much higher quality habitat and foraging areas. Also, the buffer area surrounding the proposed wetland preserve would be developed in a manner designed to protect the wetland reserve over the long term.</p>
	<p>Policy 6.A.7 Within the Coastal Zone, the City shall ensure that environmentally sensitive habitat areas are protected against any significant disruption of habitat values, and that only uses dependent on such resources shall be allowed within such areas. The City shall require that development in areas adjacent to environmentally sensitive habitat areas be sited and designed to prevent impacts which would significantly degrade such areas, and be compatible with the continuance of such habitat areas.</p>	<p>CONSISTENT The proposed project would result in an improvement of wetland habitat values. It would involve creation of an estuarine wetland preserve, which would be entirely "dependent upon," and sited within, a wetland area. Once restored, the wetland preserve area would constitute an environmentally sensitive habitat area. As discussed in Section IV.D, Biological Resources, the associated development would be designed to prevent adverse impacts to the adjacent wetland area and would be compatible with the continuance of a healthy, functioning wetland within the Nature Reserve area. See Section IV.D, Biological Resources, Impact discussion D-3 and associated Mitigation Measures. The project would be consistent with this policy because it would not significantly disrupt habitat values in any portion of the project site, including in Clark Slough or in the wetlands; instead the project would improve and create new habitat values. The existing slough and wetlands offer meager and highly disturbed habitat. The proposed wetland reserve would provide much higher quality habitat and foraging areas. Also, the buffer area surrounding the proposed wetland preserve would be developed in a manner designed to protect the wetland reserve over the long term.</p>

LCP Policies <sup>1</sup>	General Plan Policy	Project Compliance Discussion
	<p>Policy 6.A.9 The City shall permit the diking, filling, or dredging of open coastal waters, wetlands, or estuaries only under the following conditions: The diking, filling or dredging is for a permitted use in that resource area; There is no feasible, less environmentally damaging alternative; Feasible mitigation measures have been provided to minimize adverse environmental effects; The functional capacity of the resource area is maintained or enhanced.</p>	<p><b>CONSISTENT</b> Creation of an estuarine wetland reserve, as proposed by the project, would provide significant water quality and habitat benefits to the coastal ecosystem, and create a net environmental improvement. As discussed in the Section IV.D, Biological Resources, the project would include feasible measures to minimize adverse environmental effects and maximize the resource value of the restored wetlands. The functional capacity of the wetlands would be enhanced as described in Section IV.D, Biological Resources, Impact discussion D-3.</p>
	<p>Policy 6.A.11 The City shall require that diking, filling or dredging of a wetland or estuary maintain or enhance the functional capacity of these resources. Functional capacity means the ability of the wetland or estuary to be self-sustaining and to maintain natural species diversity. In order to establish that the functional capacity is being maintained, all of the following must be demonstrated. Presently-occurring plant and animal populations in the ecosystem will not be altered in a manner that would impair the long-term stability of the ecosystem, i.e., natural species diversity, abundance and composition are essentially unchanged as the result of the project; A species that is rare, threatened, or endangered will not be significantly adversely affected; and Consumptive (e.g., fishing, aquaculture and hunting) or nonconsumptive (e.g., water quality and research opportunity) values of the wetland or estuary ecosystem will not be significantly reduced.</p>	<p><b>CONSISTENT</b> The proposed project would enhance the functional capacity of the wetlands on the project. See Section IV.D, Biological Resources, Impact D-3, and Table IV.D-2, Wetland Functions and Values to Result From Implementing the Wetlands Restoration /Mitigation Plan. As discussed in Section IV.D, Biological Resources, Impact D-1, no special status species would be significantly adversely affected by the proposed project. Nonconsumptive values of the wetland/estuary ecosystem would be increased.</p>
	<p>Policy 6.A.13 The City shall require that diking or filling of a wetland that is otherwise in accordance with the policies of this General Plan, shall, at a minimum, require the following mitigation measures: A detailed restoration plan shall be required as part of the project application for each specific restoration site. The restoration plan shall include provisions for purchase, if required, and restoration of an equivalent area of equal or greater biological productivity, and dedication of the land to a public agency or other method which permanently restricts the use of the site to habitat and open space purposes. The restoration site shall be purchased or otherwise made available prior to any permitted diking or filling. Areas adequate to maintain functional capacity shall be opened to tidal action or other sources of surface water shall be provided. This provision shall apply to diked or filled areas which themselves are not environmentally sensitive habitat areas, but would become so if, as part of a restoration program, they are opened to tidal action or provided other sources of surface water. All of the provisions for restoration, purchase (if necessary), and dedication described under item a. of this policy shall apply to any program or activity performed pursuant to this policy. Mitigation shall, to the maximum extent feasible, be of the same type as the wetland to be filled (i.e., freshwater marsh for freshwater marsh, saltwater marsh for saltwater marsh, etc.). Where no suitable private or public restoration or enhancement sites are available, an in-lieu fee may be required to be paid to an appropriate public agency for use in the restoration or enhancement of an area of equivalent productive value or surface area.</p>	<p><b>CONSISTENT</b> The proposed project would provide the requisite restoration plan, conservation easements and/or other required mitigation. See Section IV.D, Biological Resources, Impact D-3. The proposed project would provide detailed restoration plans and open the restored wetlands to tidal action to maintain functional capacity. Some palustrine wetlands would be replaced with estuarine wetlands because in-kind mitigation is neither feasible nor environmentally preferable.</p>
	<p>Policy 6.A.19 The City shall require establishment of a buffer for permitted development adjacent to all environmentally sensitive areas. The minimum width of a buffer shall be 100 feet, unless the applicant for the</p>	<p><b>CONSISTENT</b> The project proposes a buffer that would be adequate to protect the proposed wetland preserve area as described in Section IV.D, Biological Resources, Impact D-3. The</p>

LCP Policies <sup>1</sup>	General Plan Policy	Project Compliance Discussion
	development demonstrates on the basis of site specific information, the type and size of the proposed development, and/or proposed mitigation (such as planting of vegetation) that will achieve the purpose(s) of the buffer, that a smaller buffer will protect the resources of the habitat area. As necessary to protect the environmentally sensitive area, the City may require a buffer greater than 100 feet. The Buffer shall be measured horizontally from the edge of the environmental sensitive area nearest the proposed development to the edge of the development nearest to the environmentally sensitive area. Maps and supplemental information submitted as part of the application shall be used to specifically define these boundaries.	proposed project would establish a buffer around the wetland preserve area that would be adequate to protect the resources of the habitat area and would incorporate attractively designed and strategically located barriers and informational signs to prevent intrusion into the wetland.
	Policy 6.A.20 To protect urban wetlands against physical intrusion, the City shall require that wetland buffer areas incorporate attractively designed and strategically located barriers and informational signs.	CONSISTENT As described in discussion of impact D-3, the proposed buffer incorporates willows, blackberry bushes, slopes, signs, and other barriers to prevent intrusion into the wetland preserve.
	Goal 7.E To minimize the risk of loss of life, injury, serious illness, damage to property, and economic and social dislocations resulting from the past or future use, transport, treatment, and disposal of hazardous materials and hazardous materials wastes.	CONSISTENT The transport and disposal of contaminated soils removed from the site in Phase 1 will comply with all local, state and federal standards.
	Policy 7.E.11 The City shall work with owners of property affected by toxic contamination to identify cost-effective approaches to remediation of contaminated soils. In particular, the City shall focus its efforts on developing unified strategies to addressing cleanup of large areas (e.g., the Westside Industrial Area, the waterfront area) so as to reduce the unit cost of remediation.	CONSISTENT Phase 1 would include interim remediation of the brownfield site to meet RWQCB requirements.

**Implementation Plan**

The Implementation Plan includes the coastal zoning regulations, the zoning map and specific coastal zone ordinances that implement the policies of the LUP. In addition to specifying the regulations pertaining to specific zoning districts, the coastal zoning regulations, Section 10-5.2940 et. seq. (section 156.050 et. Seq.), specify Coastal Zone Development Standards that apply to all development in the coastal zone. The standards include those for public access, environmental resources, natural hazards, visual resources, public works, and development.

As discussed below, Phase 1 is consistent with the Zoning Designations and the Coastal Zone Development Standards of the Implementation Plan.

**Zoning Designations**

The property has three zoning designations: Limited Industrial (ML), Service Commercial (CS) and Public (P). The locations of the zoning designation boundaries follow, for the most part, the location of the corresponding general plan land use designations.

The Phase 1 site remediation activities would occur on lands zoned ML, CS and P. The Phase 1 remediation activities would remove existing debris piles, old foundations and other structures, and remnants that remain on the property. Contaminated soils in five focused areas would be

excavated then back-filled with clean material, and the site would be graded to prevent 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.

The coastal zoning district regulations control, among other things, the uses allowed within each zoning district. The Phase 1 site remediation activities are not "uses" which are controlled by the district regulations but are necessary actions to remediate pre-existing contaminated soils resulting from past railroad and industrial activities on the property. Eureka Municipal Code section 10-5.2906 (section 156.006) defines "use" as "[t]he purpose for which a site or structure is arranged, designed, intended, constructed, erected, moved, altered, or enlarged or for which either a site or a structure is or may be occupied or maintained." The Phase 1 remediation activities are necessary to allow the development of the property with uses that would be consistent with the existing ML, CS and P zoning designations.

The proposed wetland reserve surrounding Clark Slough would be located in the southwest corner of the property on lands zoned P. Because the proposed wetland reserve would be permanent, it *is* a "use" subject to the district regulations. The Phase 1 Clark Slough restoration includes excavating and re-contouring a portion of the area surrounding Clark Slough to create new seasonal and muted tidal wetlands. Debris that has accumulated in and along Clark Slough and concrete rip-rap that has been placed along the banks of Clark Slough would be removed.

The purpose of the P zoning designation is to provide a procedure for the orderly establishment of public facilities, expansion of their operations, or changes in the use of lands owned by governmental agencies. 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. As discussed in the Marina Center EIR, 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, the creation of the wetland reserve, which would improve stormwater flow and reduce flooding, is a public facility consistent with the uses allowed in the P zone.

### **Coastal Zone Development Standards**

#### *Public Access Standards*

The Public Access Standards (section 10-5.2941/156.051) provide regulation for the dedication and protection of public access to and along Humboldt Bay. Generally, public access easements are required for project sites that front the Bay or are located between the first public road and the Bay. Because the project site is not located on Humboldt Bay, nor is it between the first public road and the Bay, coastal public access standards do not apply to the project or the project site.

#### *Environmental Resource Standards*

The Environmental Resource Standards (section 10-5.2942/156.052) mirror the Land Use Plan policies and Coastal Act regulations pertaining to protection of environmentally sensitive habitat

areas. The Environmental Resource Standards are discussed in the Draft EIR Chapter IV.D, *Biological Resources* and are summarized below.

The Land Use Plan of the Local Coastal Program contains policies (in particular, Policies 6.A.1 through 6.A.24) that protect biological resources in the coastal zone, these policies are implemented through the coastal Environmental Resource Standards found in section 10-5.2943 (section 156.052) of the Implementation Plan.

The project site does not contain the essential elements of an "environmentally sensitive area" as those areas are defined by the Coastal Act. The Coastal Act defines environmentally sensitive areas as:

"Any area in which plant or animal life or their habitats are either rare or specially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

(California Public Resources Code Section 30107.5).

The project site does not satisfy these criteria. Neither the plant nor the animal species under existing conditions at the project site are rare or valuable; there is no potentially suitable habitat for special-status species on the project site; and much of the existing vegetation is non-native and invasive.

The existing scattered palustrine wetlands on the site are formed in depressions created by industrial use of the site in imported soils. These wetlands offer only minimal habitat value and perform only marginal wetland functions. The existing remnant of Clark Slough (the only potential existing on site riparian habitat) has been rip-rapped and disturbed so extensively that it provides only minimal habitat value and performs limited wetland functions.

The project would replace palustrine wetlands with estuarine wetlands. This out-of-kind mitigation is, in this instance, the most appropriate, practicable, and protective of regional coastal wetland resources. Estuarine wetlands can only be established within tidally influenced coastal areas, and therefore opportunities to create estuarine wetlands are rare and particularly valuable. The existing palustrine wetlands are a relatively recent human creation offering little to no wetland value or function. By contrast, creation of an estuarine wetland reserve would provide the following significant water quality and habitat benefits to the coastal ecosystem:

1. Increase the geographic extent of tidal marsh, and rehabilitate and restore the Humboldt Bay coastal wetlands and estuary ecosystem.
2. Reintroduce freshwater flows from the Clark Slough watershed drainage and muted-tidal flows from Humboldt Bay into the restored wetlands.

3. Remove and mitigate contaminated soils in the Humboldt Bay watershed.
4. Remove non-native invasive plant species.
5. Reintroduce native marsh vegetation and restore natural estuarine wetland conditions.
6. Restore potential habitat for native and special-status species.

Generally, the project's effects on environmental resources would be beneficial rather than adverse. 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. As a result, the project would be consistent with the coastal Environmental Resource Standards.

#### *Natural Hazard Standards*

The Natural Hazard Standards (section 10-5.2943/156.053) are intended to minimize risks to life and property in areas of high geologic and flood hazard, assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. These standards are discussed in the Draft EIR Chapter IV.F, *Geology, Soils, and Seismicity* and are summarized below.

The City of Eureka is a region of significant seismic activity. The project site could experience a range of ground shaking effects during an earthquake on the Cascadia Subduction Zone, Mad River Fault Zone, or other regional active faults.

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. Liquefaction causes ground failure that can potentially damage roads, pipelines, underground cables, and buildings with shallow foundations. 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.

#### *Visual Resource Standards*

Generally, scenic and visual qualities of coastal areas are considered and protected as a resource

of public importance. The Visual Resource Standards (section 10-5.2944/ 156.054) provide protection for designated coastal scenic areas and designated coastal scenic routes. The Visual Resource Standards are discussed in the Draft EIR Chapter IV.A, *Aesthetics* and are summarized below.

The southwest portion of the project site would be restored as wetland reserve. Currently this area, like much of the rest of the project site, includes dilapidated warehouse structures and uneven terrain, consisting of a variety of land forms including mounds of debris, a channelized muted tidal drainage (Clark Slough), and graveled and paved areas that are used occasionally as storage or log deck for the adjacent lumber mill. The project would enhance the visual character and allow for some pedestrian activity on the site.

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. The Eureka Municipal Code (section 10-5.2944.4/156.054 (D)), states that local scenic routes in the coastal zone shall be as depicted on the map "Eureka Scenic Routes" contained in the Scenic Route Element of the Eureka General Plan (City of Eureka, 1966). The scenic routes map of the 1977 Eureka General Plan shows a scenic route along the then-planned downtown freeway bypass that was subsequently rejected (City of Eureka, 1977). Highway 101, in its present location, is not identified as a scenic route. It appears that Waterfront Drive from about Marina Way eastward is designated as a scenic route. Thus a portion of Waterfront Drive bordering the project site is a local scenic route. The Visual Resource Standards provide that along scenic routes the city shall:

1. Ensure that the scenic route rights-of-way are maintained in an attractive manner.
2. Incorporate bicycle lanes and pedestrian walkways along scenic routes, whenever possible.
3. Establish a public information system which would guide and direct visitors to various scenic areas in the community.
4. Provide street furniture and other accessory amenities which serve to enhance the use of scenic routes.

The project's proposed wetland reserve, interpretive trail, informational kiosks, and benches would implement the Visual Resource Standards for scenic routes as prescribed in above.

While protecting coastal views is an important consideration, pursuant to the Visual Resource Standards, neither Humboldt Bay nor the Samoa Peninsula are identified as "Scenic Coastal Resources" for which special protection measures are required. The closest scenic vista points are the Wharfinger Building and the City's Boardwalk. The project site is landward of these vista points and would, therefore, not impact the coastal scenic views available from these vista points.

*Public Works Standards*

The Public Works Standards (section 10-5.2945/156.055) provide regulations for the construction and/or expansion of public utilities such as sewer and water. Phase 1 does not require either the construction or the expansion of public utilities or services. Therefore, the Public Works Standards are not applicable to the proposed project.

*Development Standards*

The Development Standards (section 10-5.2946/156.056) regulate the expansion of the urban limit line and the extension of services beyond the urban limit; the development of regional commercial and highway commercial uses; and, land divisions. More importantly for the proposed project, the Development Standards discuss the precedence of natural resources, and development in archaeological areas.

The Development Standards (section 10-5.2946.5/156.056(E)) provide for the precedence of natural resources as follows:

“Development type and density shall be that specified by the land use categories and designations in the land use plan map. However, natural resource designations and policies shall take precedence in all cases, except as otherwise provided in this Local Coastal Program, consistent with applicable policies of the Coastal Act. Where a parcel is located partly within and partly without an environmentally sensitive habitat area, development shall be located and designed to avoid significant adverse effects on the environmental resources.”

The existing wetlands on the site were largely created incidental to, and as a result of, past human activities on the site; are contaminated with elevated levels of substances harmful to human health and wildlife; are usually dry and subject to vegetation maintenance to protect against fires; and are scattered, such that they have limited habitat value. Phase 1 would restore wetlands onsite in a quantity greater than that which presently exists and to enhance their value by not only consolidating them but also by improving their hydrologic connectivity with Humboldt Bay and providing them with an upland buffer. The certified EIR which analyzed the projects impact on environmental resources concludes that with the incorporation of the identified mitigation measures into project approval that the impact to environmental/natural resources would be Less than Significant. Therefore, Phase 1 would be consistent with the Development Standards for the precedence of natural resources (section 10-5.2946.5/ 156.056(E)).

The Development Standards (section 10-5.2946.9/156.056(I)) provide protection for archaeological areas as follows:

- “(1) When development is proposed within a known archaeological area, project design shall avoid or minimize impacts to the resource.
- “(2) When development in archaeological sites cannot be avoided, adequate mitigation

measures shall be required. Mitigation shall be designed in accord with Guidelines of State Office of Historic Preservation and the State Native American Heritage Commission. When, in the course of grading, excavation, or any other development activity, evidence of archaeological artifacts is discovered, all work which could damage or destroy such resources shall cease and the City Planning Director shall be notified immediately of the discovery.

- “(3) The Director of Community Development shall notify the State Historic Preservation Officer and the Sonoma State University Cultural Resources Facility of the find. At the request of the State Historic Preservation Officer, development of the site may be halted until an archeological survey can be made and appropriate and feasible mitigation measures are developed.”

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 for Phase 1 would be conditioned upon compliance with the archeological protection mitigation measures identified in the certified EIR (Mitigation Measures E-2a through E-2c).

In addition to other measures, the archeological protection mitigation measures require, in conjunction with Phase 1 ground-disturbing activities, that a qualified archaeological consultant prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s). If archaeological materials are discovered, the archaeologist would determine the significance of the resources and, if necessary, develop a plan for their protection. The certified EIR concludes that with the incorporation of the identified mitigation measures into project approval that the impact to archaeological resources would not be Less than Significant. Therefore, Phase 1 would be consistent with the Development Standards for the protection for archaeological area (section 10-5.2946.9/156.056(I)).

## CEQA

In accordance with the requirements of CEQA, on October 27, 2009, the City Council certified the EIR prepared for the Marina Center project as complete and accurate (SCH# 2006012024). CEQA requires that the City Council consider the environmental impacts of Phase 1 of the Marina Center project and make specific findings before approving the coastal development permit. The CEQA findings are described and included in the attached “*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*,” adoption of the Resolution would include adoption of the findings required by CEQA.

## SUMMARY

As discussed in the EIR and in this staff report, Phase 1 of the Marina Center project is consistent with the adopted and certified Local Coastal Program. Therefore, staff recommends that the City Council adopt the findings as required by CEQA section 15091 and approve the coastal development permit for Phase 1 of the Marina Center project subject to conditions of approval by adopting the attached "*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.*"

## ATTACHMENTS

- Attachment 1 *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*
- Attachment 2 Certified Marina Center EIR  
(previously provided to the Council)

Resolution No. 2009-\_\_\_\_\_

**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 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 would improve stormwater flow and reduce flooding, 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.

- f. 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.
  - 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** 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 \_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

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

ATTEST:

\_\_\_\_\_  
*Virginia Bass*  
Mayor

\_\_\_\_\_  
*Pamela J. Powell*  
City Clerk

APPROVED AS TO ADMINISTRATION:

APPROVED AS TO FORM:

\_\_\_\_\_  
*David W. Tyson*  
City Manager

\_\_\_\_\_  
*Sheryl Schaffner*  
City Attorney

**EXHIBIT "A"**

**STATEMENT OF FINDINGS**

**Section 1**

**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 alphanumeric 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

### 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 as follows:

- 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 as follows:

- 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.
  - Eliminate unauthorized or illegal activities within the Balloon Track, which are detrimental to public safety and a drain on public resources.
  - 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 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-gallon 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

### 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. No Impact A-4: 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. No Impact C-1: 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.

Finding: 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.

Facts in Support of Finding: Annual project fugitive dust emissions associated with site remediation and wetland restoration in Phase 1 would not exceed NCUAQMD thresholds of significance for ROG, NO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>. 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. Less-than-Significant Effect C-3: 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 PM<sub>10</sub>, 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.

Finding: 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.

Facts in Support of Finding: 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. No Impact C-6: 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. Significant Effect D-1: 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.

Finding: 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. 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.

2. 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. Significant Effect D-2: 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.

Finding: 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. 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. Significant Effect D-3: 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.

Finding: 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. 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
2. 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
3. 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 (*Muehlenbeckia complexa*)
  - Tree tobacco (*Nicotiana glauca*)
  - Fountain grass (*Pennisetum setaceum*)
  - Pyracantha (*Pyracantha angustifolia*)
  - Castor bean (*Ricinus communis*)
  - Black locust (*Robinia pseudoacacia*)
  - German ivy (*Delairia odorata* = *Senecio mikianoides*)
  - Spanish broom (*Spartium junceum*)
  - Tamarisk (*Tamarix* spp.)
  - Gorse (*Ulex europaeus*)
  - Periwinkle (*Vinca major*)
  - Purple fountain grass (*Pennisetum setaceum*)

4. Significant Effect D-4: 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.

Finding: 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. 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. Significant Effect D-5: 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.

Finding: 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. 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. Significant Effect D-7: 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.

Finding: 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. During site remediation and preparation, the limited wetland functions of Clark Slough and the adjacent wetlands would be adversely affected.
2. Biological Resources Mitigation Measure D-7a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below:

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.

Finding: 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. 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.
2. 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
  2. Perform pre-construction surveys to locate any nesting birds in the area and establish 100 to 250-foot-wide exclusion zones around any identified active nest, depending on site conditions and nature of the work being performed
9. Significant Effect D-9: 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.

Finding: 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. 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. Significant Effect E-2: 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.

Finding: 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. 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 ground-disturbing activities to occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as "highly sensitive" in the reported entitled *A Cultural Resources Investigation of the Proposed Balloon Tract Development* (May, 2006) prepared by Roscoe & Associates:

- (i) Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s) to determine the presence or absence of archaeological resources in those specific locations predetermined to be culturally sensitive (Roscoe et al., 2006). The investigation shall be conducted based on a subsurface strategy prepared by the archaeological consultant, which shall prescribe the trenching and/or boring locations and expected depths of exploration reasonably necessary to discover significant archaeological resources if present. The subsurface strategy, in turn, should rely on an examination of extant soil boring logs and other data from the project area by a qualified 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.
- (ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and

15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented by the Project Applicant to avoid or mitigate any significant adverse affects to the resource. A treatment plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: (a) recovery of the object or feature and the preservation of any data available for scientific study; (b) modification to the land-use plan or construction methods to avoid the object or feature; (c) placement of soil sufficient to protect the integrity of the feature or object; and/or (e) permanent protection of the feature through the conveyance of a conservation easement. The archaeologist shall determine the extent of monitoring based on the findings of the investigation. The treatment and monitoring plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment plan.

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

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

- (i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area),

procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.

- (ii) If archaeological artifacts or other archaeological materials are discovered onsite during construction, all construction activities within 100 feet of the find shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review to evaluate whether or not the archaeological materials would be considered "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3).
- (iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.
- (iv) If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a 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 qualified archaeologist shall be summoned within 48 hours to conduct an independent review to evaluate whether the remains belong to a single individual or multiple individuals. If the latter, and if there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the NAHC.

4. Significant Effect E-4: 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.

Finding: 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-than-significant level.
  
5. Significant Effect E-5: 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.

Finding: 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. 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-than-significant level and reduce the contribution to less than cumulatively considerable.

#### **F. Geology, Soils and Seismicity**

1. No Impact F-1: 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.
2. 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.

Finding: 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 less-than-significant level.
3. No Impact F-3: 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. Significant Effect F-6: 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.

Finding: 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 less-than-significant level, and the project's cumulative contribution to erosion would not be cumulatively considerable.

#### **G. Hazards and Hazardous Materials**

1. Significant Effect G-1: 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.

Finding: 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. 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-than-significant 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. Significant Effect G-2: 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.

Finding: 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. 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 site-appropriate measures from these guidelines.

4. Significant Effect G-4: 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.

Finding: 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. 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.

2. 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.

9. 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.

Finding: 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-cumulatively-considerable level.

## H. Hydrology and Water Quality

1. Significant Effect H-1: 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.

Finding: 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. 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. Significant Effect H-3: 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 on- or 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.

Finding: 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 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.
2. *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

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 10-mils 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 off-site 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 be 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.

7. *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.

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. Significant Effect H-6: 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.

Finding: 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. 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. No Impact H-7: 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. No Impact H-10: 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. Significant Effect H-11: 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.

Finding: 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. No Impact K-2: 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. No Impact K-3: 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. Significant Effect K-4: 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.

Finding: 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. 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.
2. 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. No Impact K-7: The EIR evaluates the impact of the Marina Center project, in combination with other planned or 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 increase 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. No Impact M-1: 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. Significant Effect M-2: 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 physical 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.

Finding: 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. 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 on-site security patrol to handle routine situations that do not require emergency response from the Eureka Police Department.

## **O. Transportation**

1. Significant Effect O-1: 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.

Finding: 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.

1. 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. No Impact O-6: 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. No Impact Q-8: 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

### 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

### 5. Alternatives

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
- Old 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

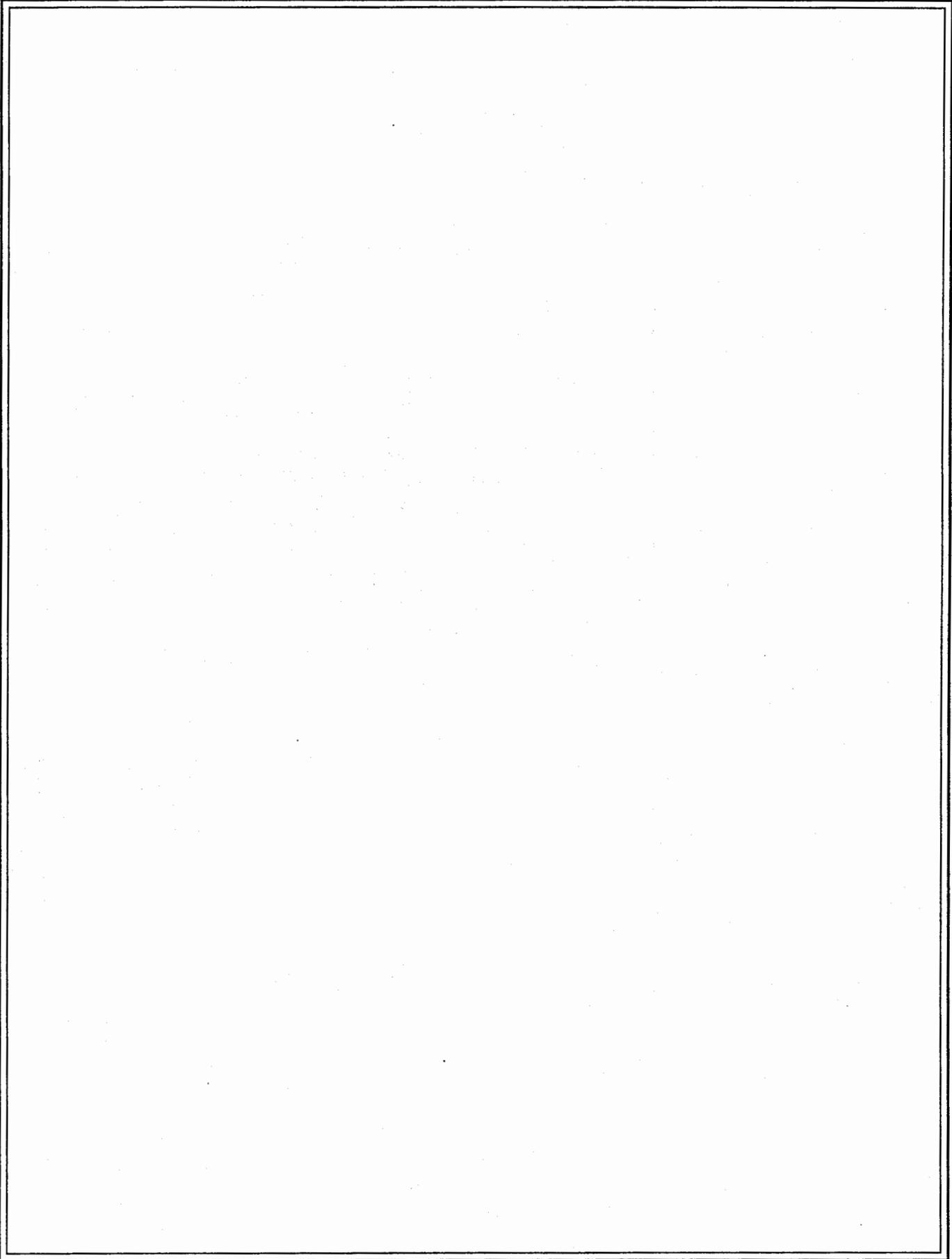
The Off-Site Shoreline Property Alternative would not avoid or substantially lessen any of the significant or potentially significant impacts that would result from the Marina Center project. Many of the environmental issues associated with the project site – including biological resources, cultural 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.



## **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.

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**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.

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**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"**  
**MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL AND MITIGATION MONITORING PROGRAM- PHASE 1**

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>3. Biology</p>						
<p>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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall construct an exclusionary fence to meet requirements of the mitigation measure</p>	<p>City of Eureka Community Development Department; City of Eureka Building Department</p>	<p>Review the construction plan(s) for the project to ensure the installation of a fence would occur prior to any grading or construction</p>	<p>Both Phase 1 and Future Phases: Prior to approval of grading or building permit(s)</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>
<p>D-3a: Obtain the requisite 404 permit and 401 certification from the Corps and RWQCB, which shall, at a minimum, 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):</p> <ol style="list-style-type: none"> <li>1. Replace or restore the affected wetlands onsite 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</li> <li>2. 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</li> <li>3. Contribute in-lieu funds for restoration, enhancement, or preservation of off-site wetlands, subject to approval by the Corps and RWQCB.</li> </ol>	<p>Phase 1</p>	<p>Project Applicant and its contractor(s) shall incorporate mitigation requirements into construction plans</p>	<p>City of Eureka Community Development Department; City of Eureka Building Department; Army Corp of Engineers; RWQCB</p>	<p>Review of construction plan to ensure it includes wetland replaced or restored at a minimum 1:1 ratio; if not met payment of in-lieu contribution has been received</p>	<p>Prior to issuance of grading permit</p>	<p>Verified by: Date:</p>
<p>D-3b: Prior to site grading, prepare a detailed Restoration Plan in accordance with the U.S. Army Corps of Engineers (Corps) <i>Habitat Mitigation and Monitoring Proposal Guidelines</i> and Regulatory Guidance letters 02-02 and 06-03; Federal Register, 2008. <i>Compensatory Mitigation for Losses of Aquatic Resources; Final Rule</i>. 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 <i>Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone</i></p> <p>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</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare a detailed Restoration Plan that incorporates mitigation requirements</p> <p>Submission of an annual report from the qualified biologist addressing the status of the restoration plan; a final report from the biologist upon completion of the</p>	<p>City of Eureka Community Development Department; City of Eureka Building Department; Army Corp of Engineers; California Department of Fish and Game; California Coastal Commission</p>	<p>Review and approval of the restoration plan by applicable agencies</p> <p>Receipt of the annual and final report(s) on the status of the restoration plan</p>	<p>Both Phase 1 and Future Phases: Prior to issuance of grading or building permits; prior to construction</p> <p>Future Phases: Ongoing monitoring for 5</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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.</p> <p>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.</p>	Phase 1 Maintained in Future Phases	restoration plan	City of Eureka Community Development Department; City of Eureka Building Department	Approval of buffer zone size and design	years after project completion	<p>Verified by:</p> <p>Date:</p>
<p>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 vegetation such as blackberries that act as a barrier, and signs warning against intrusion.</p>	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; Eureka Building Department; Army Corp of Engineers; RWQCCB	Approval of the conservation easement, deed restriction, or other means of preservation and recording of that control	Prior to issuance of grading and building permit(s)	<p>Verified by:</p> <p>Date:</p>
<p>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, RWQCCB, 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, RWQCCB, 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 reserve.</p>	Phase 1 Maintained in Future Phases	Project Applicant and its contractor(s) shall incorporate wetland reserve into design plans and property agreements prior to design	City of Eureka Community Development Department; Eureka Building Department; Army Corp of Engineers; RWQCCB	Review of construction plan to ensure it includes lighting requirements	Prior to approval of the grading or building permit(s)	<p>Verified by:</p> <p>Date:</p>
<p>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, low 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.</p>	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; Eureka Building Department	Receive and review plans for non-native invasive species control program	Phase 1 Prior to issuance of grading permit	<p>Phase 1 Verified by:</p> <p>Date:</p> <p>Future Phases</p>
<p>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.</p>	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; Eureka Building Department	Receipt of report on the status of the program's implementation after	Phase 1 Prior to issuance of grading permit	<p>Phase 1 Verified by:</p> <p>Date:</p> <p>Future Phases</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>During construction:</p> <ol style="list-style-type: none"> <li>1. Educate construction workers about invasive species and control measures;</li> <li>2. Ensure construction-related equipment arrives onsite free of mud or seed-bearing material by, for example, requiring wheel washing upon entry;</li> <li>3. Use native seeds and straw material to the extent feasible;</li> <li>4. Revegetate with appropriate native species; and</li> <li>5. Prohibit the use of the following non-native invasive plants for landscaping or other planting purposes:               <ul style="list-style-type: none"> <li>Pampas grass (<i>Cortaderia jubata</i>, <i>C. selloana</i>)</li> <li>Tree-of-heaven (<i>Ailanthus altissima</i>)</li> <li>Giant reed (<i>Arundo donax</i>)</li> <li>Bamboo (<i>Bambusa</i> spp., et al)</li> <li>Cotoneaster (<i>Cotoneaster pannosa</i>)</li> <li>French broom (<i>Genista monspessulana</i> = <i>Cytisus monspessulanus</i>)</li> <li>Scotch broom (<i>Cytisus scoparius</i>)</li> <li>Blue gum (<i>Eucalyptus globulus</i>)</li> <li>English ivy (<i>Hedera helix</i>)</li> <li>Fig-marigold family members (<i>Conicosia</i>, <i>Carpobrotus</i> and <i>Mesembryanthemum</i>)</li> <li>Tall fescue (<i>Festuca arundinacea</i>)</li> <li>Mattress vine (<i>Muehlenbeckia complexa</i>)</li> <li>Tree tobacco (<i>Nicotiana glauca</i>)</li> <li>Fountain grass (<i>Pennisetum setaceu</i> <i>Pyracantha</i> (<i>Pyracantha angustifolia</i>)</li> <li>Castor bean (<i>Ricinus communis</i>)</li> <li>Black locust (<i>Robinia pseudoacacia</i>)</li> <li>German ivy (<i>Delainia odorata</i> = <i>Senecio mikianoides</i>)</li> <li>Spanish broom (<i>Spartium junceum</i>)</li> <li>Tamarisk (<i>Tamarix</i> spp.)</li> <li>Gorse (<i>Ulex europaeus</i>)</li> <li>Periwinkle (<i>Vinca major</i>)</li> <li>Purple fountain grass (<i>Pennisetum setaceum</i>)m)</li> </ul> </li> </ol> <p>D-7a: Phasing of project construction shall minimize the amount of time that both the existing degraded wetlands and the wetlands in the</p>	Phase 1	Project Applicant and its contractor(s) shall	City of Eureka Community	Review and approval of the remediation plan	Prior to issuance of grading permit	<p>Verified by:</p> <p>Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>southwest corner of the site (stated 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.</p> <p>See also recommended Mitigation Measures D-3a through D-3f and H-3a.</p> <p><b>D-8a:</b> Implement one of the following mitigation measures to reduce the potential impact on breeding birds or their nests or eggs:</p> <ol style="list-style-type: none"> <li>1. Refrain from performing vegetation clearing/initial grading activities during the avian breeding season (February 1 to August 31); or</li> <li>2. Perform pre-construction surveys to locate nesting birds in the area and establish 100 to 250-foot-wide exclusion zones around any identified active nest, depending on site conditions and nature of the work being performed.</li> </ol>	<p>Phase 1 Maintained in Future Phases</p>	<p>concurrently restore wetland during remediation</p> <p>Project Applicant and its contractor(s) shall identify measures in the construction plan(s) to reduce impacts to birds and their nests/eggs</p>	<p>Development Department; City of Eureka Building Department; RWCQB; Army Corp of Engineers</p> <p>City of Eureka Community Development Department</p>	<p>that includes wetland restoration</p> <p>Review and approval of the construction plan that includes bird avoidance</p>	<p>Prior to issuance of grading or building permit</p>	<p>Date:</p> <p>Verified by:</p> <p>Date:</p>
<p><b>E. Cultural Resources</b></p> <p><b>E-2a:</b> The following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as "highly sensitive" in the reported entitled <i>A Cultural Resources Investigation of the Proposed Balloon Tract Development</i> (May, 2006) prepared by Roscoe &amp; Associates:</p> <p>(i) Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s) to determine the presence or absence of archaeological resources in those specific locations predetermined to be culturally sensitive (Roscoe et al., 2006). The investigation shall be conducted based on a subsurface strategy prepared by the archaeological consultant, which shall prescribe the trenching and/or boring locations and expected depths of exploration reasonably necessary to discover significant archaeological resources if present. The subsurface strategy, in turn, should rely on an examination of extant soil boring logs and other data from the project area by a qualified geoarchaeologist 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. A qualified archaeologist shall be present at all times during the subsurface investigation.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall retain archaeologist</p> <p>Archaeologist shall (a) conduct subsurface archaeological investigation and (b) determine components of treatment and monitoring plan, if required</p>	<p>City of Eureka Community Development Department</p>	<p><b>Both Phase 1 and Future Phases:</b> 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</p>	<p><b>Both Phase 1 and Future Phases:</b> 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 continuation of construction</p>	<p>Phase 1 Verified by:</p> <p>Date:</p> <p>Future Phases Verified by:</p> <p>Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>(ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented 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:</p> <p>(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. A qualified archaeologist shall monitor implementation of the treatment plan</p> <p>(iii) If no "historically significant" or "unique" archaeological resources are discovered during excavation monitoring or pre-construction investigations, implement Mitigation Measure E-2b for ground-disturbing activities within the areas specifically delineated as "highly sensitive" in the above-referenced Cultural Resources Investigation.</p>	<p>Phase 1 and Future Phases</p>	<p>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</p>	<p>City of Eureka Community Development Department</p>	<p>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 the treatment and monitoring plan if archaeological materials are discovered</p>	<p>Both Phase 1 and Future Phases: Review and approve worker training program prior to issuance of building permits If resources encountered, review of treatment and monitoring plan prior to continuation of</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>
<p>E-2b: Except for monitoring that is required under the treatment and monitoring plan in Mitigation Measure E-2a(i), the following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site but outside the geographic areas specifically delineated as "highly sensitive" in the above-referenced Cultural Resources Investigation:</p> <p>(i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.</p> <p>(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</p>	<p>Phase 1 and Future Phases</p>	<p>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</p>	<p>City of Eureka Community Development Department</p>	<p>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 the treatment and monitoring plan if archaeological materials are discovered</p>	<p>Both Phase 1 and Future Phases: Review and approve worker training program prior to issuance of building permits If resources encountered, review of treatment and monitoring plan prior to continuation of</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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).</p> <p>(iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archaeologist 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.</p> <p>(iv) 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant or its contractor(s) shall implement treatment plan</p>			<p>construction</p>	
<p><b>E-2c:</b> 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 descendant 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 &amp; Safety Code section 7050.5, CEQA Guidelines section 15064.5(e), and Public Resources Code section 5097.98. If the human remains are determined to be of Native American origin, a qualified archaeologist shall be summoned within 48 hours to conduct an independent review to evaluate whether the remains belong to a single individual or multiple individuals. If the latter, and if there are six or more Native American burials on the site, the site shall be identified as a Native</p>	<p>Phase 1 and Future Phases</p>	<p>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 <b>Project Applicant and</b></p>	<p>City of Eureka Community Development Department; NAHC; County Coroner</p>	<p>Contact City, NAHC, or County Coroner if human remains are encountered</p>	<p>Ongoing</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

Litigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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.</p>		<p>contractor(s) shall negotiate recovery or reburial arrangements</p>				
<p><b>i. Hazards and Hazardous Materials</b></p>						
<p>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 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare Health and Safety Plan (HASP)</p>	<p>RWQCB; City of Eureka Building Department</p>	<p>RWQCB to review and approve HASP; Building Department to confirm RWQCB approval</p>	<p>Approval of HASP by RWQCB Confirm prior to permit(s) issuance</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>
<p>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 RWQCB or other applicable oversight agency, undertaking soil excavation or other appropriate remedial measures as required.  If required, soil may be excavated using a backhoe or excavator. The excavated soil shall be loaded into a dump truck and transported as required to a secured stockpile area where it shall be protected from contact with stormwater. The excavation contractor shall employ dust control measures during excavation and stockpiling activities. Soil samples shall be collected from each excavation area, as required by the RWQCB, to confirm that remaining soil meets site clean-up goals. Following site excavation, the excavation pits shall be left open pending receipt of satisfactory confirmation soil sampling analytical results. Each excavation pit shall be secured with a fence during the 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 collected during the backfill process, submitted to the analytical 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.  <b>Soil Stockpile Characterization.</b> 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall complete characterization and remediation, as well as test and remove soil as directed by RWQCB</p>	<p>RWQCB; City of Eureka Building Department</p>	<p>RWQCB to confirm requirements are met; Building Department to confirm RWQCB approval</p>	<p>Approval by RWQCB Confirm prior to permit(s) issuance</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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.</p> <p><b>G-1c:</b> During site preparation, construction, or restoration of the wetland, suspected residual contamination 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 ensure that site workers have adequate training and proper protective equipment 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 loaded into a dump truck and transported to a secured stockpile area that is away from routine traffic and protected from contact with ponding water and stormwater. The excavated soil shall be sampled and analyzed for petroleum hydrocarbons, metals, and volatile organic compounds (VOCs), as appropriate or required by the RWQCB. The analytical results of the soil stockpile sample(s) shall be used to determine the proper handling and disposal method for the soil. In the event that the soil requires off-site disposal, a contractor licensed to transport such material shall transport the contaminated soil to a facility that is licensed to accept such soil. All contaminated soil that requires removal shall be removed from the site within 90 days following excavation.</p> <p>Following site excavation, the re-filling of excavation pits, soil stockpile characterization and soil disposal shall be the same as for Mitigation Measure G-1a above.</p> <p>Any suspected contaminated groundwater or surface water that is encountered shall be sampled and analyzed for petroleum hydrocarbons, metals, and VOCs, as appropriate or required by the RWQCB. Identified contaminated water that requires removal shall be pumped into appropriate containers, depending on the volume of water to be removed. If only a small volume is removed, Department of Transportation-approved, 55-gallon steel drums may be appropriate. If a large volume must be removed, a Baker Tank or equivalent shall be used to temporarily store the extracted water. Contaminated water shall be disposed of as required by the RWQCB in light of the level and type of contamination.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall stop work if suspected residual contamination is encountered</p> <p>Site supervisor shall ensure protective equipment and adequate training are provided to all present before beginning work again</p> <p>Project Applicant and its contractor(s) shall test excavated soil / water and dispose of contaminated soils offsite</p>	<p>City of Eureka Building Department; RWQCB</p>	<p>Building Department shall perform inspections of job site to ensure proper procedures are followed</p> <p>RWQCB shall ensure proper analysis and disposal of contaminated materials</p>	<p>Building Department shall perform inspections during excavation and grading</p> <p>RWQCB shall review analysis and disposal procedures, if contaminated materials are found</p>	<p>Phase 1 Verified by:  Date:  Future Phases Verified by:  Date:</p>
<p><b>G-1d:</b> 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</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall receive approval of local</p>	<p>Applicable environmental oversight agency (see</p>	<p>Review proposed reuse of excavated soil as subgrade fill material</p>	<p>Upon receipt of information regarding future</p>	<p>Verified by:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Scheduling	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:
G-1e: The following measures shall be undertaken to the satisfaction of the RWQCB to ensure that human and environmental health is protected: 1. Upon completion of site remediation activities, a post-remediation groundwater-monitoring program shall be implemented as required by the RWQCB; 2. The RWQCB will outline the monitoring schedule, including what constituents will require testing and at what frequency the monitoring will occur; and 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, additional site remediation shall also occur.	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 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.	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 training 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 <i>California Stormwater Best Management Practices Handbooks</i> . The guidelines recommend techniques for erosion and sediment control, non-stormwater 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, <i>Hydrology and Water Quality</i> of this EIR.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall prepare and implement a SWPPP	RWQCB; City of Eureka Building Department	RWQCB 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:
<b>H. Hydrology and Water Quality</b>						
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	RWQCB; 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
<p><b>1. Erosion/Sediment Control.</b> 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 runoff on the project 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 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.</p> <p><b>2. Scheduling.</b> 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 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.</p> <p><b>3. Protection of Water Courses and Drainage Inlets.</b> 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.</p> <p><b>4. Soil Stockpiles.</b> 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 example) at least 6- to 10-mils 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.</p> <p><b>5. Dust Control.</b> 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</p>	<p>Phases</p>	<p>prepare and implement a plan that uses all BMPs listed to project water quality</p>	<p>Department</p>	<p>approve BMPs plan Building Department to inspect site during construction to verify compliance</p>	<p>issuance of grading or building permit(s) Onsite verification during construction</p>	<p>Date:  Future Phases Verified by:  Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>ensure there is no off-site runoff.</p> <p>6. <i>Material Delivery, Storage and Use.</i> 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 areas. Chemicals, paints or bagged materials shall not be stored directly on the ground, but instead shall be 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 onsite during construction activities. There shall be no fueling or equipment washing activities conducted onsite.</p> <p>7. <i>Monitoring.</i> During construction, 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare plans and apply for Erosion Control Permit and implement the permit during all construction activities</p>	<p>City of Eureka Public Works Department</p>	<p>Review and approve erosion control plan Perform building site inspections to confirm adherence to permit requirements</p>	<p>Review and approve plans prior to issuance of building or grading permit(s) Inspect site during construction</p>	<p><i>Phase 1 Verified by:</i>  <i>Date:</i>  <i>Future Phases Verified by:</i>  <i>Date:</i></p>
<p>H-3b: Prior to any cleaning, 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, 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 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 always 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.</p> <p>H-4a: Prepare a drainage plan indicating the specifics of the project drainage system. The drainage plan shall demonstrate that the culverts are adequately sized and configured to address peak runoff and protect against a 10-year storm event. The drainage plan shall ensure that any increase in stormwater drainage runoff in a 10-year storm event</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare drainage plan, submit it to the City, and implement plan during</p>	<p>City of Eureka Engineering Department; City of Eureka Building Department; City of</p>	<p>Public Works Department approve Drainage Plan Confirm adherence to</p>	<p>Prior to issuance of building or grading permit(s) Inspect site during</p>	<p><i>Phase 1 Verified by:</i>  <i>Date:</i></p>

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/siltation 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:
<b>X. Noise</b>						
K-4a: 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-generating activity permitted between 12:30 p.m. and 1:30 p.m. No construction activities 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.	Phase 1 and Future Phases	Project Applicant 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); inspection during construction	Phase 1 Verified by: Date:  Future Phases Verified by: Date:
K-4b: To reduce daytime noise impacts due to construction: 1. Equipment and trucks used for project construction 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 project construction 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	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall use best available noise-control techniques described and locate stationary noise sources as far from adjacent receptors as possible	City of Eureka Building Department	Require use of noise-control techniques in building permit; inspect construction site to confirm adherence to those requirements	Prior to issuance of grading building permit(s); inspect during construction	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
<p>used whenever feasible.</p> <p>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.</p> <p>K-4c: To mitigate pile driving and/or other extreme noise-generating construction impacts, a qualified acoustical 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 Eureka to ensure that noise attenuation and acoustical standards will be achieved. These attenuation measures may include, as necessary, the following control strategies:</p> <ol style="list-style-type: none"> <li>1. Erect temporary plywood noise barriers around the construction site.</li> <li>2. Use noise control blankets on building structures as buildings are erected to reduce noise emission from the site.</li> <li>3. Monitor the effectiveness of noise attenuation measures by taking noise measurements at locations and frequencies necessary to ensure acoustical standards are satisfied.</li> </ol>	Phase 1 and Future Phases	<p>Project Applicant and its contractor(s) shall hire qualified acoustical professional to prepare plan</p> <p>Acoustical professional prepares plan and submits to City; implement during construction</p>	City of Eureka Building Department	<p>Review noise-attenuation plan and incorporate plan into building permit; inspect site during construction to confirm adherence to plan</p>	<p>Prior to issuance of grading or building permit(s); inspect site during construction</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>
<b>M. Public Services</b>						
M-2a: 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.	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	<p>Verified by: Date:</p>
<b>O. Transportation</b>						
<p>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:</p> <ol style="list-style-type: none"> <li>1. 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 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 lanes can be closed to traffic. Excepting extraordinary circumstances, lane closures are</li> </ol>	Phase 1 and Future Phases	Project Applicant and its contractor(s) obtain approval of construction management plan and implement the plan during construction	City Engineering Department; City of Eureka Building Department; Caltrans	<p>Engineering Department and Caltrans must review and approve Construction Management Plan; Building Department must receive the approvals</p>	<p>Prior to issuance of building or grading permit(s); inspect during construction</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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.</p> <p>2. If construction activities result in unacceptable traffic congestion, flaggers shall supplement approved traffic control plans to ensure that traffic moves through the construction zone with minimal delays.</p> <p>3. 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</p> <p>4. 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.</p> <p>5. The Construction Management Plan shall provide for accommodation of bicycle flow, particularly along First Street and Waterfront Drive.</p> <p>6. 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.</p>						

## AGENDA SUMMARY

RE:	MARINA CENTER Certification of EIR	For Agenda Date: October 27, 2009  Agenda Item No.:
<b>RECOMMENDATION:</b>		
1. Certify the EIR for the MARINA CENTER MIXED USE DEVELOPMENT PROJECT by adopting the "RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT."		
<b>SUMMARY OF THE ISSUE:</b>		
<p>On March 7, 2006 CUE VI, LLC made application to the Community Development Department for the Marina Center project which consists of a mixed use development on a 43 acre brownfield site.</p> <p>The City determined that the Marina Center project is a "project" under the California Environmental Quality Act (CEQA) and that an Environmental Impact Report (EIR) would be required. The City issued a Notice of Preparation for the EIR and subsequently prepared a Draft EIR which was circulated for public and agency comment for a period of 62 days. The City prepared a Final EIR which includes the Draft EIR, the comments received on the Draft EIR, the responses of the City to the comments, and the Mitigation Monitoring and Reporting Program.</p> <p>The City Council is being asked to certify the EIR as complete and adequate by adopting the attached Resolution titled "<i>RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT.</i>"</p> <p style="text-align: center;">(continued on next page...)</p>		
<b>FISCAL IMPACT:</b> No impacts to the City General Fund have been identified as a result of this action.		
DH SIGN:	 Kevin R. Hamblin Director of Community Development	CM SIGN: _____ David W. Tyson City Manager
REVIEWED BY:	DATE:	INITIALS:
City Attorney	10/23/09	SS
<b>COUNCIL ACTION:</b>		
Ordinance No. _____	Resolution No. _____	

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**PROJECT DESCRIPTION:**

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

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

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

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

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

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

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

### **CEQA PROCESS:**

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

#### ***Section 15082. Notice of Preparation and Determination of Scope of EIR.***

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

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

#### ***Section 15083. Early Public Consultation.***

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

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

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

**Section 15084. Preparing the Draft EIR.**

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

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

- (1) Preparing the draft EIR directly with its own staff.
- (2) Contracting with another entity, public or private, to prepare the draft EIR.
- (3) Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.
- (4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of a draft EIR by an independent contractor.
- (5) Using a previously prepared EIR.

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

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

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

analysis that is experienced and competent.

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

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

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

**Section 15085. Notice of Completion.**

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

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

**Section 15086. Consultation Concerning Draft EIR.**

The lead agency shall consult with and request comments on the draft EIR from:

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

- (4) Any city or county which borders on a city or county within which the project is located.
- (5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site.
- (6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the State Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.
- (7) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources.

The lead agency may consult directly with:

- (1) Any person who has special expertise with respect to any environmental impact involved.
- (2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.
- (3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

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

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

**Section 15087. Public Review of Draft EIR.**

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

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

- (2) Posting of notice by the public agency on and off the site in the area where the project is to be located.
- (3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

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

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

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

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

***Section 15088. Evaluation of and Response to Comments.***

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

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

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

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

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

***Section 15088.5. Recirculation of an EIR Prior to Certification.***

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

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com.*(1989) 214 Cal.App.3d 1043).

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

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

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

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

"The project is expected to be constructed in phases which would also result in implementation of mitigation measures in phases. Because the project applicant has not identified the actual construction phasing for the project the impact analysis and recommended mitigation measures listed in Chapter IV of this EIR are for full project build-out. When the project applicant has completed a project phasing plan, the specific mitigation measures required for each phase will be determined and a Development Agreement will be entered into to assure full compliance with the recommended mitigation measures. Before the City approves the phasing plan and associated discretionary entitlement (e.g., the Development Agreement), the phasing and mitigation plan will be evaluated to ensure that there are no changes to the project, changes to surrounding circumstances, or other new information that triggers the need for supplemental or subsequent environmental review under Section 21166 of the Public Resources Code.

"An example of possible phasing:

"Phase 1: would span 12 months and would include the wetland restoration and site remediation.

"Phase 2: would span 12 months and would include the development of the Anchor 1 through 4 buildings and the industrial area.

"Phase 3: would extend over about 18 months and would include the completion of the proposed Second Street extension, construction of about half of the mixed-use retail and office buildings, and construction of the parking structure.

"Phase 4: would extend over an approximately 12-month period and would include construction of the remaining mixed-use retail and office buildings and the mixed-use retail and multi-family residential building."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Section 15089. Preparation of Final EIR.***

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

the draft EIR.

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

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

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

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

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

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

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

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

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

**Section 15090. Certification of the Final EIR.**

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

- (1) The final EIR has been completed in compliance with CEQA;
- (2) The final EIR was presented to the decisionmaking body of the lead agency and that the decisionmaking body reviewed and considered the information contained in the final EIR prior to approving the project; and
- (3) The final EIR reflects the lead agency's independent judgment and analysis.

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

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

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

## **SUMMARY OF MASTER RESPONSES:**

### ***Master Response 1: Urban Decay Analysis***

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

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

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

***Master Response 2: Air Quality Health Risk Assessment***

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

***Master Response 3: Local Coastal Program Policy Issues***

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

***Master Response 4: Site Remediation Plans and Project Phasing***

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

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

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

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

***Master Response 5: Coastal Commission Wetland Fill Policies***

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

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

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

***Master Response 6: Cumulative Conditions on Broadway***

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

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

With regard to implementation of the mitigation measures, while the Project Applicant is only required to pay its fair share, and there is no program in place or funding otherwise identified to ensure completion of the mitigation measures. To ensure that the improvements are nevertheless

completed within the time period necessary to avoid the impact, almost all of the mitigation measures would be installed by the Project Applicant under a reimbursement agreement with the City and/or Caltrans or other method for receiving credit against future improvements.

***Master Response 7: Trip Distribution***

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

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

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

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

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

**Master Response 9: Wiyot Cultural Resources**

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

**REVISIONS TO MITIGATIONS MEASURES:**

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

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

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

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

- (ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented by the Project Applicant to avoid or mitigate any significant adverse affects to the resource. A treatment plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: (a) recovery of the object or feature and the preservation of any data available for scientific study; (b) modification to the land-use plan or construction methods to avoid the object or feature; (c) placement of soil sufficient to protect the integrity of the feature or object; and/or (e) permanent protection of the feature through the conveyance of a conservation easement. The archaeologist shall determine the extent of monitoring based on the findings of the investigation. The treatment and monitoring plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment plan
- (iii) If no "historically significant" or "unique" archaeological resources are discovered during excavation monitoring or pre-construction investigations, the Project Applicant shall implement Mitigation Measure E-2b for ground-disturbing activities within the areas specifically delineated as "highly sensitive" in the above-referenced Cultural Resources Investigation.

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

- (i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.
- (ii) If archaeological artifacts or other archaeological materials are discovered onsite during construction, all construction activities within 100 feet of the find shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review to evaluate whether or not the archaeological materials would be considered "historically significant" or "unique" under the criteria set forth under Public Resources

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

- (iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.
- (iv) If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a determination that the archaeological material is not significant or unique or a treatment or protection plan is prepared and initiated.

~~**Mitigation Measure E-2a:** For construction in the geographic areas described below workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources. In addition, a Native American representative shall be present to monitor coring activities. If an archaeological artifact or other archaeological remains are discovered on-site during construction, all construction activities shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review of the site. If the find is determined to be significant, adequate time and funding shall be devoted to conduct data recovery excavation.~~

~~Protection plans for either unique archaeological resources or culturally important archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.~~

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

- ~~1. — East of Commercial Street.~~

2. ~~Within 100 feet of the common property line between the Balloon Track and those properties fronting Broadway that are not a part of the project (e.g., Nilsen's and Bob's Fine Cars).~~
3. ~~The southeast corner of the property east of the proposed garden area of Anchor 1 and south of Bob's Fine Cars.~~

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

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

~~**Mitigation Measure G-1b,** third paragraph, seventh line:~~

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

~~**Mitigation Measure G-1c,** first paragraph, second line:~~

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

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

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

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

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

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

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

## **SB 610 WATER SUPPLY ASSESSMENT**

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

an assessment of water supply sufficiency. The assessment discusses whether the total projected water supplies will meet the projected water demand associated with the proposed project in addition to existing and planned future uses.

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

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

**ATTACHMENTS:**

- Attachment 1 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EUREKA, CALIFORNIA, CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE MARINA CENTER PROJECT, AND ADOPTING WATER SUPPLY ASSESSMENT
- Attachment 2 EIR for the MARINA CENTER MIXED USE DEVELOPMENT PROJECT (previously provided to the Council)

**Attachment 1 Resolution No. 2009-\_\_\_\_\_**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

\_\_\_\_\_  
*Virginia Bass*

\_\_\_\_\_  
*Pamela J. Powell*

RE: MARINA CENTER  
Certification of EIR

For Agenda Date: October 27, 2009

*Mayor*

*City Clerk*

APPROVED AS TO ADMINISTRATION:

APPROVED AS TO FORM:

---

*David W. Tyson*  
*City Manager*

---

*Sheryl Schaffner*  
*City Attorney*

**Resolution No. 2009-50**

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, the City Council of the City of Eureka received public input on the Final EIR at its October 20, 2009 and at its October 27, 2009 meeting;

**WHEREAS**, comments on the FEIR by Caltrans and the Blue Lake Rancheria have resulted in modification to the mitigation measures as follows (new language is underline, deleted language has ~~strikethrough~~):

Mitigation Measure O-1b: Obtain an encroachment permit from Caltrans for ~~and complete the following~~ modifications at the intersection of Broadway and Wabash Avenue/Fairfield Street: which shall include approved traffic control measures/devices to prohibit northbound access to Wabash Avenue and Broadway from Fairfield Street. Signal phasing shall be adjusted to eliminate this movement.

1. ~~Close northbound Fairfield Street access to Wabash Avenue and Broadway approximately 40 feet south of the intersection, and post signs on northbound Fairfield at Del Norte advising motorists that traffic is "LOCAL ACCESS ONLY - NO ACCESS TO BROADWAY OR WABASH AVENUE".~~
2. ~~Closure should be accomplished by extending the east curb of Fairfield to the street centerline, and posting a "DO NOT ENTER" sign at the closure. Modify the Broadway and Wabash signal to account for the elimination of northbound Fairfield access.~~

Mitigation Measure E-2b(iv): 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 initiated the field portion adequately completed.

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

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

1. The Final EIR has been completed in compliance with CEQA;
2. The Final EIR was presented to the City Council, the decision making body of the lead agency, and the City Council reviewed and considered the information contained in the Final EIR;
3. The Final EIR reflects the City's independent judgment and analysis;
4. No significant new information has been added to the EIR since the City of Eureka provided public notice of the Draft EIR, and therefore recirculation of the EIR is not required under section 21092.1 of the Public Resources Code or section 15088.5(a) of the CEQA Guidelines.

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

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

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

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

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Eureka, County of Humboldt, State of California, on the 27th day of October 2009, by the following vote:

AYES: COUNCIL MEMBERS: LEONARD, JAGER, JONES

NOES: COUNCIL MEMBERS: GLASS, ATKINS

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

ATTEST:

\_\_\_\_\_  
*Virginia Bass*  
Mayor

\_\_\_\_\_  
*Pamela J. Powell*  
City Clerk

APPROVED AS TO ADMINISTRATION:

APPROVED AS TO FORM:

\_\_\_\_\_  
*David W. Tyson*  
City Manager

\_\_\_\_\_  
*Sheryl Schaffner*  
City Attorney

CBRE CONSULTING, INC.

**CBRE**

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October 26, 2009

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

**Re: Public Media Conflict of Interest Comments Regarding CBRE**

Dear Ms. Olson:

The purpose of this letter is to respond to the Sunday, October 18, 2009 The Times-Standard article titled "Urban Decay: Marina Center EIR talks economics" in which questions arise regarding CBRE Consulting's conflict of interest in conducting the urban decay analysis for the Marina Center EIR. Comments are made in the article questioning CBRE Consulting's independence and objectivity, especially in regard to CBRE Consulting's client relationship with the project developer and CBRE's brokerage work for Home Depot.

In conducting urban decay analyses, CBRE Consulting (formerly Sedway Group) typically works directly for cities where the projects under study are planned or for the EIR consultants retained by cities. In some cases, for ease of administration, CBRE Consulting is retained directly by the project developer or the developer's legal counsel, but CBRE Consulting always works in coordination with the EIR consultant and other members of the EIR team. This is the case of Marina Center, where CBRE Consulting worked directly for the project developer, but in coordination with the EIR consultant. In reference to the newspaper article comments, it is notable that CBRE Consulting was not retained by Home Depot for this assignment.

The nature of the work we conducted for the urban decay analysis of Marina Center is no different than the work we conduct directly for cities or as a sub-consultant to EIR firms on other proposed high-volume retail centers. A comparison between these studies will indicate a similarity in approach, methodology, assumptions, and tone. In all cases we strive for objectivity. We are not project advocates, just urban economic and real estate analysts. That is the case with most of the work conducted by our firm. The information we use in our high-volume retail economic impact studies is the same type of information that would be available to any other independent analyst conducting a similar study, and the general approach used is comparable to the approach used by other analysts.

The entity that conducted the urban decay analysis for Marina Center is CBRE Consulting, Inc., a group engaged in real estate and urban economic consulting. This is a wholly-owned subsidiary of CB Richard Ellis, Inc. a commercial real estate services firm providing commercial property and corporate facilities management, tenant representation, property/agency leasing, property sales, valuation, real estate investment management, commercial mortgage origination and servicing, capital markets (equity and debt) solutions, development services and proprietary research. Any Home Depot-related services referenced in the Times-Standard article were provided by individuals not associated with CBRE Consulting, Inc., and were not relevant

Ms. Sidnie Olson  
October 26, 2009  
Page 2

to assessing the impacts of new retail store development, as is the focus of the urban decay analysis.

Moreover, on the Marina Center urban decay assignment, all of CBRE Consulting's work was conducted by the professional staff of CBRE Consulting. No one from the commercial real estate services division of CB Richard Ellis, Inc. was involved in the analysis or the formulation of its findings and conclusions. Nor was CB Richard Ellis, Inc. involved as a source of information about the local retail market, as were other commercial brokerage firms active in the market. Therefore, we do not believe there was any conflict of interest in our performance of the urban decay analysis for Marina Center.

The Times-Standard article cites that Philip King has a "history of submitting comments critical of CBRE's reports." Please note that Philip King routinely submits comments critical of an array of urban economists in the State of California who conduct urban decay studies, including Bay Area Economics, The Natelson Dale Group, and Applied Development Economics. Thus, Dr. King's issues are not specifically with CBRE Consulting's work, but rather with urban decay analyses in general, for which project opponents or their attorney's routinely retain his services. Thus, Dr. King's comments and analyses do not come from a position of objectivity, but rather one of advocacy.

In our experience, Dr. King always reaches the conclusion that urban decay will result from the development of the large-scale retail development projects evaluated by him and/or his consulting group California Economic Research Associates. He typically makes findings that are not subsequently borne out. For example, in Anderson, California, relative to the planned development of a Walmart Supercenter, he cited that an existing Safeway store would be displaced following the opening of the Walmart. The Walmart opened in 2006, and as of early 2009, the referenced Safeway had not only not closed, but had undergone a recent remodeling, including the addition of a Starbucks café, signaling the store's plans to remain in operation. In like manner in American Canyon, where a Walmart Supercenter opened in September 2007, Dr. King predicted in 2005 that the commercial space created by the Walmart-anchored project would create physical deterioration and decay in the immediate area surrounding the site and lead to a less healthy business climate in the city. This is in direct contradiction with the view of American Canyon's Finance Director, who has cited to CBRE Consulting that the referenced project has been a great advantage to the city and has become a focal point of new retail activity for a wide variety of businesses not previously present. In addition, in April 2008, Fortune Small Business magazine ranked American Canyon 11<sup>th</sup> on its list of the 100 best places in the United States to live and launch a business. Thus, it does not appear that Dr. King's forecast for American Canyon has come to fruition. We believe the same will be the case with Dr. King's forecast for Eureka following the opening of Marina Center.

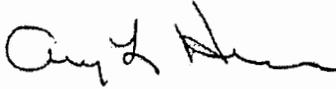
Finally, CBRE Consulting's analysis for Marina Center was peer reviewed, not once, but twice. The first peer review occurred by the City of Eureka's independent consultant, Economic Research Associates (ERA). ERA's conclusion to the City of Eureka was that they did not find any fatal flaws in the analysis that would invalidate the findings of the CBRE Consulting report. In addition, the City's EIR consultant, ESA, also peer reviewed the report pursuant to inclusion of the findings in the FEIR for the project. The fact that no untoward bias in favor of the project surfaced as a result of these peer reviews supports the independence and objectivity of the

Ms. Sidnie Olson  
October 26, 2009  
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urban decay analysis. In addition, on several occasions CBRE Consulting updated or re-examined the study findings pursuant to changes in the economy. Thus, changes in the regional economy were taken into consideration in determining the continued validity of the urban decay analysis findings. Finally, Marina Center is a mixed use development project that will replace existing blight on a prominent parcel in the City of Eureka. Development alone, as cited in the urban decay analysis, will comprise a major improvement to the property, with the planned residential and employment generating uses providing a stimulus for new economic activity, both at Marina Center and elsewhere in the City of Eureka.

I hope the information included in this letter provides you with sufficient information regarding CBRE Consulting's independence relative to the urban decay analysis for the Marina Center project. Please let me know if you have any questions about the information included in this letter or seek further information.

Sincerely,



Amy L. Herman, AICP  
Senior Managing Director



225 Bush Street  
Suite 1700  
San Francisco, CA 94104  
415.896.5900 phone  
415.896.0332 fax

www.esassoc.com

# memorandum

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

This memorandum provides responses to three letters, one from an individual, Jeremy Mills, whose comments were submitted several days after the close of the public review period on the Draft EIR on January 30, 2009 due to legitimate technical transmission problems and was inadvertently not responded to in the Final EIR (FEIR) along with two letters received from public/quasi-governmental agencies commenting on the FEIR, Caltrans and the Blue Lake Rancheria. These letters are attached. To assist the reader, comments raised by these letters are responded to as numbered by the letter author or, in the case of the Mills letter (which is considered Letter 180 on the DEIR) and the Caltrans letter, numbered by the responder.

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## Letter 180: Jeremy Mills

180-1 This comment states the Draft EIR should look at all contaminants on the site including dioxins and furans. Dioxins and furans (often referred to collectively as “dioxins”) refer to groups of related compounds that are found in soil, sediment, air, and water all over the world. They are formed as a result of combustion processes, including commercial or municipal waste incineration, the burning of fuels like wood, coal, oil, gasoline, or diesel, and from some manufacturing processes. Dioxins can be formed as a result of natural processes such as forest fires.

Sampling for dioxin has occurred and would be remediated as part of implementing phase 1 of the proposed project. Phase 1 includes the Supplemental Interim Remedial Action Plan (SIRAP), which is summarized in Master Response 4 of Volume 1 of the FEIR and included in its entirety as Appendix S in Volume 2 of the Final EIR. Dioxins in sediment samples from onsite ditches and the Clark Slough remnant were also discussed on Draft EIR (DEIR) page IV.G-6. Further, Mitigation Measure G-1b of the DEIR states that prior to commencement of construction activities, the Project Applicant must complete characterization and remediation of all contaminants to the satisfaction of the Regional Water Quality Control Board (RWQCB). This includes dioxin. See also responses to comments 23-4 and 23-5 of the Final EIR for additional discussion of dioxin and related compounds such as furans.

- 180-2 This comment states that there is no clear threshold of significance set for exposure to contaminants. There are no existing thresholds for exposure to contaminants beyond those regulated by the U.S. Environmental Protection Agency, the California Department of Toxic Substances Control (DTSC), and the RWQCB. As such, these thresholds are used in the Draft EIR to identify project related impacts.

The levels of dioxin identified onsite are modestly elevated, but within the range of levels recommended as cleanup standards by DTSC (i.e., 200 to 1000 parts per trillion). DTSC is the primary agency in California with responsibility for cleaning up contaminated soils. Soils that come within cleanup levels need no further action. Nevertheless, the Project Applicant is proposing to remove dioxin-contaminated soils within Clark Slough and the ditches in Phase 1 as part of the SIRAP. Additional sampling would be performed during the excavation process, and soils with elevated levels would be removed.

- 180-3 The commenter states that there is no analysis of the impacts on fish, wildlife and vegetation. Section IV.D of the Draft EIR is entitled Biological Resources and is entirely devoted to documenting project related impacts on fish, wildlife and vegetation.

- 180-4 The commenter states that no performance standards are set for evaluating the deferred mitigation measure of "a site specific remediation plan and health and safety plan". As noted on page III.15 of the Draft EIR, site remediation is Phase 1 of the proposed project, and is analyzed as such. The SIRAP, which has been approved by the RWQCB, is included as Appendix S.

It is appropriate under CEQA to defer such details when it is impractical to do so, and measures including performance standards are included to ensure that the impact will be mitigated to a less than significant level. Concerning the remediation plans, this is one part of the project that is proposing to improve the baseline environmental conditions over current conditions. Details concerning the SIRAP only became available after the close of the comment period on the Draft EIR as part of the ongoing process to remediate the site in response to the RWQCB's 2001 Cleanup and Abatement Order. Further details concerning the Final Remedial Action Plan are not known at this time because those details depend on further site characterization, final land use plans, and further direction from the RWQCB. This step-wise approach to remediation planning and implementation is effective, and will ensure that the project applicant cleans up the property to levels that satisfy federal and state standards and are appropriate for the proposed uses. Consequently, the EIR provides sufficient information with which to evaluate the impacts of the project and the effectiveness of its mitigation.

- 180-5 This comment states that traffic impacts beyond U.S. Highway 101 and the Sixth and Seventh Street corridor should be analyzed as project related traffic would cause diversions. Project traffic was distributed onto all streets within the Greater Eureka Area Traffic Model based on roadway capacity and driver behavior considerations. The volume and location of those trips are portrayed in Appendix H of the Draft EIR. Larger plots (24 inch by 36 inch) including street names are available at the City because the amount of information in Appendix H does not easily lend itself to a letter-size print.

As shown on the output plots, project trips were distributed throughout the city, although the vast majority of project trips were assigned by the model to Broadway (U.S. 101) east and south of the project site, the model predicted that some trips (both trips generated by the project and other "background" trips) would divert to other arterial routes, such as 6th and 7th Streets east into Downtown. The model results demonstrate that intersections beyond the focused study intersections would operate at acceptable levels

of service. Therefore, the project would have a less-than-significant impact on those additional segments and intersections and therefore conducting a more detailed analysis of those intersections and roadway was not warranted.

- 180-6 The commenter states that there is no analysis of how increased traffic would affect quality of life or pedestrians and bicycle crossing of U.S. 101. The proposed project's potential impacts to traffic circulation and bicycle safety are discussed in Chapter IV.O, Transportation of the DEIR. As stated on Draft EIR page IV.O-42 under Impact O-1, with the exception of one intersection, the identified mitigation measures would reduce the potential impacts of the Marina Center project's increase in traffic to less-than-significant-levels. As stated on Draft EIR page IV.O-48 under Impact O-7, with the implementation of the proposed measures, the potential for the proposed project to conflict with adopted policies, plans, or programs supporting alternative transportation is less than significant.
- 180-7 The commenter states that there is no analysis of how the reopening of the railroad would affect traffic exiting onto Waterfront Drive. Potential conflicts associated with the reactivation of the railroad right-of-way are discussed in the Draft EIR under Impact O-7 beginning on page IV.O-45. Vehicles exiting the site onto Waterfront Drive would queue onsite behind safety gates until all train traffic had passed. As train traffic, if ever re-established, would not be either high volume or frequent, these queues would be minimal in length and wait time.
- 180-8 The commenter states that the proposal for exiting bicycle traffic to use the sidewalk to reach Seventh Street is dangerous if done while walking one's bicycle and illegal if riding. The comment criticizes the location of the proposed bicycle route crossing Broadway at Sixth Street. With the Marina Center project, an alternative route is available by guiding bicyclists to exit the Marina Center site from the Fourth Street access drive, go south on Broadway to Fifth Street, turn left on Fifth Street to go east, turn south on B Street, and then turn onto Seventh Street connecting to the existing Class II bike lanes on Seventh Street. The out-of-the-way problem already exists for the bicyclist travelling from Waterfront Drive wishing to access the existing bike lanes on Seventh Street, in that they must either go east on Washington Street to Summer Street and then to Seventh Street, or they can go south on Commercial Street to get to the Seventh Street bike lane. Therefore, the project would improve bicycle circulation by opening a route directly across the project site from Waterfront Drive to Fourth Street and Broadway. It should be noted, the project does not propose to circulate bicycles on the sidewalk.
- 180-9 This comment states that there should be analysis of whether the project could better fit into the existing traffic pattern with a signal at Seventh Street and access on to Washington Street. As illustrated in Figure III-2 of the Draft EIR, the design of the proposed project, with the Clark Slough wetland in the southwest corner, would not leave any project frontage access points on Washington Street for vehicle access.

A signal at Seventh Street was initially examined as part of the proposed project, but was rejected after signal and queuing analysis revealed that the intersection would operate poorly and cause additional traffic congestion on Broadway. In order to address these deficiencies, the proposed project access and egress was realigned to Sixth Street, as portrayed in the Project Description and preliminary site plans.

- 180-10 This comment states that a roundabout at the Fairfield, Wabash, and Broadway intersection should be considered. A roundabout was not considered a feasible mitigation for the Fairfield, Wabash, and Broadway intersections because of physical constraints for properly designing and sizing the feature for the amount

and types of vehicles that use the intersection. Furthermore, roundabouts provide the best results for intersections that have relatively equal volumes on all approaches and large numbers of left-hand turns. This intersection has mostly through moving vehicles on Broadway. Mitigation Measure O-1b, presented in the Draft EIR, would reduce impacts to this intersection to a less-than-significant level.

- 180-11 This comment states that a no retail alternative should be analyzed, as the majority of traffic is generated by retail. As described on page IV-9 of the Draft EIR under item 19, a No Retail Alternative was analyzed per comments made on the Notice of Preparation. The No Retail Alternative was screened out for future analysis as it wouldn't reduce project impacts to a less-than-significant level (see Tables VI-1 through VI-4 of the Draft EIR).
- 180-12 This comment states that an alternative with more housing should be evaluated as it would better balance jobs and housing and thus reduce traffic. A Housing Alternative was not analyzed in the Draft EIR as it would not meet the basic objectives of the project as defined by the City of Eureka (Draft EIR page VI-3), in that a Housing Alternative would not "[s]trengthen Eureka as the retail and employment center of Humboldt County" or "[d]evelop an economically viable mixed use project." By not meeting two of the three basic objectives, a Housing Alternative was screened-out for further analysis. The proposed project does include a housing component.
- 180-13 This comment questions the Reduced Footprint Alternative's inclusion of the home improvement store as it is the largest trip generator. As described on page IV-19 of the Draft EIR, the Marina Center Reduced Footprint Alternative includes 182,000 square feet of retail/service/future and 28,000 square feet of nursery/garden. The commenter incorrectly concludes that the large scale retail would generate more vehicle trips than the other smaller retail uses combined. As presented in Table IV.O-5 of the Draft EIR, Anchor 1 would generate approximately 3,667 daily vehicle trips compared to the approximately 6,954 daily vehicle trips that would be generated by the other retail uses. Thus, the inclusion of Anchor 1 in the Reduced Footprint Alternative was selected as it would reduce project related traffic impacts.
- 180-14 This comment states that the urban decay analysis does not look at the reuse of such buildings as the Daly's or Bistrin's which exemplify that buildings in the area become blighted before they are reused. See Master Response 1 in the Final EIR under "Vacancy in the City of Eureka" for the results of additional fieldwork completed in April 2009, which supplements that in the Draft EIR. The April 2009 fieldwork found that three vacant buildings in the Old Town and Downtown areas of Eureka had signs of a lack of maintenance and some graffiti. Given the recessionary conditions, drop in consumer spending, and many vacant storefronts, this is a fairly strong performance for the hundreds of buildings located in the Old Town and Downtown areas. No signs of urban decay were observed at any of the other business districts and shopping centers in Eureka. As such, although the commenter states that two buildings, that are currently occupied, stood vacant for sometime before begin retenanted, this does not represent the vast majority of buildings in the Old Town or Downtown areas, and does not suggest that the proposed project would cause further urban decay. Indeed, the fact that those two buildings have been retenanted is evidence that urban decay has been addressed. Likewise, the project proposes to redevelop and clean up an existing, blighted condition.

**State of California Department of Transportation (Caltrans), District 1  
(Rex Jackson)**

1. The commenter refers to response to comment 5-1 and restates the need to devise an implementation phasing plan for the identified mitigation measures. The commenter requests that such a phasing plan and supplemental traffic impact study be required as a condition of project approval.

As the proposed project is a phased project, and the first phase of the project, site remediation and the creation of the wetland reserve, would not require transportation improvements. Beyond Phase 1 it is impracticable, if not impossible, to outline the necessary phasing for transportation improvements because the phasing scenarios have not been developed and ultimately would depend on market conditions and other business-related factors. Nonetheless, the Draft EIR evaluates the worst-case scenario – full build-out of the project by 2010.

When phasing scenarios are developed for additional phases, The City of Eureka (and the Project Applicant) would work with Caltrans to determine the appropriate supplemental analysis necessary and mitigation phasing plan, as Broadway is a coordinated corridor.

2. The commenter refers to response to comment 5-3 and states that the required appropriate Project Initiation Document(s) (i.e., Project Study Report or Preliminary Engineering Evaluation Report) would be determined when encroachment permits are requested.

It is acknowledged that an encroachment permit and appropriate ignition documents would be required prior to construction of improvements within Caltrans right-of-way. The City of Eureka (and the Project Applicant) would work with Caltrans to determine the appropriate documentation when encroachment permits are requested.

3. The comment refers to response to comment 5-4 and states that they stand by their original comment regarding projections for collision reductions. As acknowledged in response to comment 5-4, accident forecasting methodologies have limitations, and the traffic analysis used one of the best methodologies available to demonstrate the proposed project's effect on traffic safety, which concludes that the proposed project would have a less-than-significant impact on traffic safety (pages IV.O-43 and IV.O-44 of the Draft EIR).
4. The comment refers to response to comment 5-6 and states that they stand by their original comment regarding bicycle use on sidewalks. As stated in response to comment 5-4, the project does not propose to circulate bicycles on the sidewalk, and the proposed project would improve bicycle circulation around the project site by providing direct access from Waterfront Drive to Fourth Street and Broadway.
5. The comment refers to Chapter 6 of the Final EIR, Mitigation Measure O-1b, and suggests the language be changed to:

“Approved traffic control measures/devices will be used to prohibit northbound access to Wabash/Broadway from Fairfield Street. Signal phasing will be adjusted to eliminate this movement.”

The suggested mitigation language is noted and will be revised as follows.

O-1b: Obtain an encroachment permit from Caltrans for ~~and complete the following modifications~~ at the intersection of Broadway and Wabash Avenue/Fairfield Street: which shall include approved traffic control measures/devices to prohibit northbound access to Wabash Avenue and Broadway from Fairfield Street. Signal phasing shall be adjusted to eliminate this movement.

~~1. Close northbound Fairfield Street access to Wabash Avenue and Broadway approximately 40 feet south of the intersection, and post signs on northbound Fairfield at Del Norte advising motorists that traffic is "LOCAL ACCESS ONLY - NO ACCESS TO BROADWAY OR WABASH AVENUE".~~

~~2. Closure should be accomplished by extending the east curb of Fairfield to the street centerline, and posting a "DO NOT ENTER" sign at the closure. Modify the Broadway and Wabash signal to account for the elimination of northbound Fairfield access.~~

### Blue Lake Rancheria (Janet Eidsness)

1. The commenter states that it is important to acknowledge that in addition to their potential archaeological research significance (per Criterion D of the California Register of Historical Resources), the two subject named Wiyot village sites are important to contemporary Wiyot people for their association with events important in their history and their on-going cultural identity, per Criterion A of the California Register as Traditional Cultural Properties (TCPs) and should be so stated in the Final EIR. The comment calls for continued consultations with and involvement by the Wiyot affiliated tribes (Blue Lake Rancheria Tribe, Wiyot Tribe/Table Bluff Rancheria, Bear River Band of the Rohnerville Rancheria Tribe) need to occur throughout project implementation.

As stated in the Final EIR, and demonstrated in Mitigation Measures E-2a through E-2c in the FEIR, the Project Applicant and its contractors would consult with the appropriate tribal groups in conducting subsequent archeological investigations. The Blue Lake Rancheria would almost certainly be one of those tribes consulted. Although the village is not formally considered a TCP, it is acknowledged that the site is important and any encountered cultural material will be treated with respect.

2. The commenter requests that the three identified Wiyot tribes be explicitly inserted into Mitigation Measure E-2a (i), Mitigation Measure E-2a (ii), and elsewhere as appropriate, as being among the "appropriate Native American group(s)" to be invited to consult and actively participate in the protection of Wiyot cultural resources located within the project site. While the three tribal groups referred to by the commenter would almost certainly be among those consulted, there may be other groups consulted as well, and it seems unnecessary at this stage of the process to be more explicit.
3. This comment states that consultation with and participation by Blue Lake Rancheria, among other interested Wiyot area tribes, needs to be included in carrying out site significance evaluations, and developing and implementing treatment, protection and monitoring plans and worker training, to be crafted by the professional archaeologist and implemented by the Project Applicant, in consultation with and with compliance monitoring by the City of Eureka.

As stated in Mitigation Measures E-2a through E-2c the appropriate Native American group(s) with Wiyot affiliation would be invited to consult and actively participate in the protection of Wiyot cultural resources

located within the project site. This constitutes a commitment to work with and consider treatment recommendations with the Native American community throughout project implementation.

4. The commenter states that at least one representative recommended by one or more of the three Wiyot area tribes participate as a Tribal Monitor-Consultant, and work alongside the archaeologists during mitigation monitoring. The mitigation measures as revised in the FEIR do ensure that when monitoring by a qualified archaeologist is required, there will also be a Native American monitor present.
5. The comment states that Mitigation Measure E-2c should be revised to allow not only recovery and reburial of potentially found cultural resources, but also modification of the land-use plan or construction methods to avoid the object or feature, or permanent protection through conveyance of a conservation easement if the resource is found to be a qualifying TCP.

The City will ensure that treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity shall comply with applicable State laws. This shall include immediate notification of the coroner and, in the event of the coroner's determination that the human remains are Native American, notification of the California State Native American Heritage Commission (NAHC), who shall appoint a Most Likely Descendant (MLD) (PRC Section 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the respectful treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement will take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, and final disposition of the human remains and associated or unassociated funerary objects. All efforts will be made to leave the remains in place if possible, or to rebury them in close proximity to their place of discovery. California Public Resources Code allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the reburial method, the Project will follow Section 5097.98(b) of the California Public Resources Code, which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."

6. The commenter suggests that Mitigation Measure E-2b(iii) be modified as follows to avoid any miscommunications:

"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 initiated the field portion adequately completed."

The language edit suggestions reflecting Mitigation Measure E-2b(iii) are acknowledged and will be incorporated into the final mitigation monitoring and reporting program language.

RECEIVED

HSU Webmail

FEB 04 2009

jtm10@humboldt.edu

DEPARTMENT OF  
COMMUNITY DEVELOPMENT

Marina Center DEIR

Thursday, January 29, 2009 4:40:44 PM

From: jtm10@humboldt.edu

To: DEIRcomments@ci.eureka.ca.us

After reading the Marina Center Draft Environmental Impact Report I have several concerns about how well the impacts of the project are analyzed:

Hazardous Materials

The document does not look at all contaminants on the site including dioxins and furans. [180-1

There is no clear threshold of significance set for exposure to contaminants. [180-2

There is no analysis of the impacts on fish, wildlife, and vegetation. [180-3

No performance standards are set for evaluating the deferred mitigation measure of "a site specific remediation plan and health and safety plan". [180-4

Transportation

The analysis only looks at the Highway 101 corridor and 6th and 7th streets. A project of this scale could lead to the diversion of traffic onto neighborhood streets. [180-5

There is no analysis of how the increased traffic will affect quality of life or pedestrian and bicycle crossings of Highway 101. [180-6

There is no analysis of how the reopening of the railroad will affect the traffic exiting onto Waterfront Drive. [180-7

The proposal for exiting bicycle traffic to use the sidewalk to reach seventh street is dangerous if done while walking one's bicycle and illegal if riding. [180-8

There should be analysis of whether the project could better fit into the existing traffic pattern with a signal on 7th street and access to Washington street. [180-9

A roundabout at the Fairfield, Wabash, and Broadway intersection should be analyzed. If the blighted buildings on the south side of the intersection were removed there would be sufficient space for a roundabout to be constructed. [180-10

Alternatives Analysis

The no retail alternative should be analyzed. Because the majority of traffic is generated by retail this may lower the traffic impacts below the level of significance. [180-11

An alternative with more housing should be evaluated. A better jobs housing balance may lower the amount of traffic generated below the level of significance. [180-12

Why does the reduced footprint alternative include the home improvement store and exclude the smaller retail? The home improvement store creates the largest impacts from the project. [180-13

Urban Decay

The analysis of urban decay does not look at the Daly's or Bistrin's buildings. Neither of these buildings was successfully reused after they became vacant and both became blighted. This suggests that the market for retail space is much weaker and the possibility of urban decay is much stronger than the analysis in the DEIR. [180-14

## Comment Letter 180

HSU Webmail: [jm10@humboldt.edu](mailto:jm10@humboldt.edu)

<https://zimbra.humboldt.edu/zimbra/public/launchnewwindow.jsp?sk>

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**DEPARTMENT OF TRANSPORTATION**

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*Flex your power!  
Be energy efficient!*

October 15, 2009

1-HUM-101-78.026  
Eureka Marina Center FEIR  
SCH# 2006042024

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

Dear Ms. Olson,

We have reviewed the Final Environmental Impact Report (FEIR) and Mitigation Monitoring and Reporting Program, released on October 6, 2009. We commend the City for its thorough approach to this project and its continued proactive approach in working with us and other stakeholders as the project develops. We are pleased to note the City's commitment to implementing all needed mitigation, as required to maintain safety and mobility for the traveling public. We offer the following comments on the FEIR's response to our original comments, and an additional comment on the Mitigation Monitoring and Reporting Program:

5-1

We continue to have some concerns regarding the implementation of the identified mitigation measures in concert with discrete phases of the project as it is constructed. The Mitigation Monitoring and Reporting Program identifies and describes all of the required mitigation measures to be constructed under encroachment permits in "Future Phases." As stated in our letter of January 30, 2009, since the required mitigation measures work in conjunction with each other—improving traffic flow up and down 101 as a coordinated system—they can not be implemented piecemeal.

In its Response to Comments, the FEIR states that details of any phased mitigation will be provided in a Development Agreement. However, the selection of the phased traffic measures must be based on a quantitative analysis in order to ensure that the implemented measures are effective. Without this further commitment, the FEIR leaves open the possibility of the City or developer subjectively selecting the traffic measures to be included in each phase. We therefore request to participate in the negotiations of the Development Agreement with regard to implementation of transportation mitigation. The Department's early participation in identifying appropriate mitigation for each phase will facilitate the encroachment permit process.

Ms. Sidnie Olson  
10/15/09  
Page 2

5-3

The required appropriate Project Initiation Document(s) (Project Study Report or Preliminary Engineering Evaluation Report) will be determined when encroachment permits are requested.

2

5-4

Regarding projections for collision reduction, we stand by our original comment.

3

5-6

Regarding bicycle use on the sidewalk (p. 3 of the TIS), we stand by our original comment.

4

Mitigation Monitoring and Reporting Program

Measure O-1b

We have some concerns about the specified method of closure. We recommend that this item be changed to, "Approved traffic control measures/devices will be used to prohibit northbound access to Wabash/ Broadway from Fairfield St. Signal phasing will be adjusted to eliminate this movement."

5

Please feel free to call or email me if you have any concerns or questions regarding these comments. We look forward to continued collaboration with City staff and consultants on this challenging project.

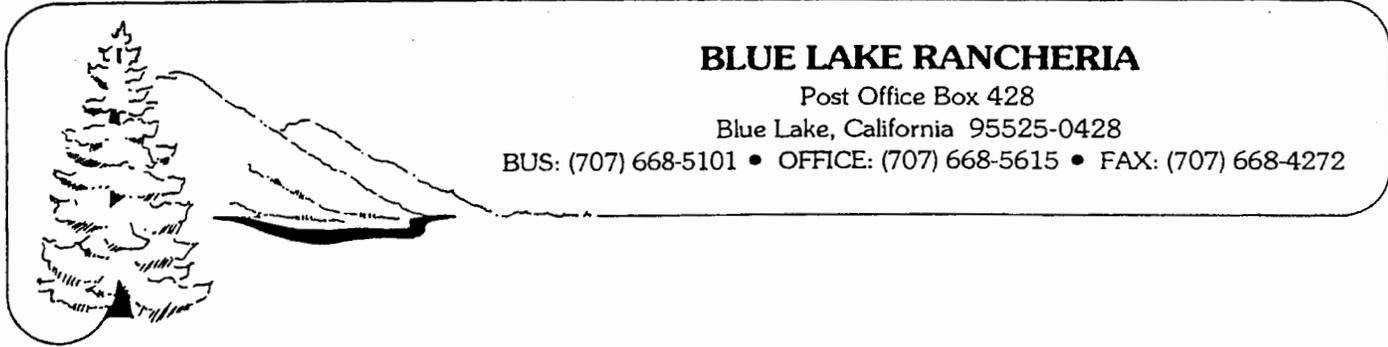
Sincerely,



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

c:

Kurt Gierlach  
Scott Morgan, State Clearinghouse



**BLUE LAKE RANCHERIA**

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October 20, 2009

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

sent via email to [soloson@ci.eureka.ca.org](mailto:soloson@ci.eureka.ca.org)

Re: Comments on Marina Center Final EIR

Dear Ms. Olson:

While we are pleased to find the Final EIR has responded to many of the concerns for the protection of two ethnographically described Wiyot archaeological and heritage resources identified by Roscoe & Associates as being on or near the proposed Marina Center project, several concerns remain.

1. Potential Significance as Traditional Wiyot Cultural Resources. (Final EIR page 3-86, 4<sup>th</sup> paragraph, last sentence): It is important to acknowledge that in addition to their potential archaeological research significance (per Criterion D of the California Register of Historical Resources), the two subject named Wiyot village sites are important to contemporary Wiyot people for their association with events important in their history and their on-going cultural identity, per Criterion A of the California Register as Traditional Cultural Properties (TCPs). This significance criterion is acknowledged in the Draft EIR (Impact E-4, page IV.E-19, paragraph 1) and incorporated into the Final EIR by reference (no changes). It needs to be referenced here as well. While archaeological data recovery excavation may be an acceptable approach for mitigating significant impacts to sites having only scientific research values (only meeting Criterion A), this approach may not reduce to a less-than-significant-level the project impacts for TCPs. Continued consultations with and involvement by the Wiyot affiliated tribes (Blue Lake Rancheria Tribe, Wiyot Tribe/Table Bluff Rancheria, Bear River Band of the Rohnerville Rancheria Tribe) need to occur throughout project implementation.
2. Appropriate Native American group(s). It is important for the City and Applicants to acknowledge in the Final EIR that the Blue Lake Rancheria Tribe, Wiyot Tribe of the Table Bluff Rancheria, and the Bear River Band of the Rohnerville Rancheria Tribe are

the three Federally recognized tribes located within ancestral Wiyot territory, that each tribe include persons of Wiyot ancestry among their memberships, and each tribe works with the City and other local, state and federal governments to protect Wiyot heritage resources. We request that these three tribes be inserted at Final EIR page 3-87 Mitigation Measure E-2a (i), page 3-88 Mitigation Measure E-2a (ii), and elsewhere as appropriate, as being among the "appropriate Native American group(s)" to be invited to consult and actively participate in the protection of Wiyot cultural resources located within the Project area. Specifically, the Blue Lake Rancheria serves this official notice to be included in on-going consultations and project monitoring, with myself, serving as their designated Tribal Heritage Preservation Officer (THPO), being their point-of-contact at (707) 668-5101 (office), (530) 623-0663 (cell phone), and email [jeidsness@bluelakerancheria-nsn.gov](mailto:jeidsness@bluelakerancheria-nsn.gov).

3. Development of Wiyot Sites Treatment, Protection and Monitoring Plans, and Construction Worker Training in Consultation with Blue Lake Rancheria. Consultation with and participation by Blue Lake Rancheria, among other interested Wiyot area tribes, needs to be included in carrying out site significance evaluations, and developing and implementing treatment, protection and monitoring plans and worker training, to be crafted by the professional archaeologist and implemented by the Project Applicant, in consultation with and with compliance monitoring by the City of Eureka. This directive needs to be inserted on Final EIR at Page 3-87, Mitigation Measure E-2a(i) (subsurface archaeological resources investigation), Page 3-88 Mitigation Measure E-2a(ii) (treatment and monitoring plan), and Mitigation Measure E-2b(i) (worker training), and Page 3-89 Mitigation Measure E-2b(iii) (treatment or protection plan).
4. Monitoring Archaeological Explorations, Site Significance Evaluations, Test and Data Recovery Excavations, and Inadvertent Discoveries including Native American Remains, by a Wiyot Representative. It is imperative, for purposes of identifying, evaluating the significance of, and treating significant Wiyot heritage resources in a manner that will reduce impacts to a less-than-significant level, that at least one representative recommended by one or more of the three Wiyot area tribes (see #1 above) participate as a Tribal Monitor-Consultant, and work alongside the archaeologists in accordance with the *Native American Heritage Commission Guidelines for Monitors/Consultants Native American Cultural, Religious, and Burial Sites* (9/13/05; posted at website <http://www.nahc.ca.gov/guidelines-mon.html>). This directive must be inserted at Final EIR Page 3-87 Mitigation Measure E-2a(i) (monitor implementation of subsurface archaeological resources field investigation; it may be in conjunction with the remediation plan soils excavation), Page 3-88 Mitigation Measure E-2b(ii) (independent significance review by archaeologist of discoveries made during construction), Page 3-89 Mitigation Measure E-2b(iii) (monitor implementation of the treatment and monitoring plan, and conduct monitoring specified in that plan), and Page 3-90 Mitigation Measure E-2c (independent archaeological review of discovered Native American remains).
5. Option to Leave In Place Native American Burials. Final EIR Mitigation Measure E-2c (Page 3-90) only provides for "recovery and reburial" of Native American remains in cases where six or more burials are discovered. Contemporary Wiyot peoples would find this very objectionable, and this option would be unlikely to reduce the impact to a less-than-significant-level on a qualifying TCP. This measure needs to be revised to allow for other in situ treatment options as specified in Mitigation Measure E-2a (Page 3-88),

namely, modification of the land-use plan or construction methods to avoid the object or feature, or permanent protection through conveyance of a conservation easement. CEQA Guidelines instruct that archaeological data recovery for future scientific study is *the least preferred alternative, whereas in place preservation is the most desirable*.

6. Resuming Construction After Treatment or Protection Plan Implemented. As currently written, Final EIR Mitigation Measure E-2b(iii) on Page 3-89 may easily be misinterpreted, although the point is important. We suggest that the language is tightened up to avoid miscommunications (inserts are underlined, words are stricken): “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 ~~initiated~~ the field portion adequately completed.”

Thank you for the opportunity to share our concerns.

Sincerely,

/ - signed - /

Janet P. Eidsness, M.A., RPA  
Tribal Heritage Preservation Officer  
Blue Lake Rancheria

Cc: Maura Eastman, Wiyot Tribe  
Nick Angeloff, THPO for Bear River Band Tribe



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## memorandum

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

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

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

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

### **More Time for Public Review**

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

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

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

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

### **SIRAP and Related Remediation Issues**

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

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

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

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

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

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

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

### **Cumulative Traffic on Broadway and Related Issues**

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

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

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

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

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

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

With respect to the issue of project and other traffic diverting onto other streets due to U.S. 101 congestion during peak periods, the EIR modeling analysis distributed project trips throughout the City as warranted by predicted traffic levels and driver behavior. Although the vast majority of project trips were assigned by the model to Broadway (U.S. 101) east and south of the project site, the model predicted that some trips (both trips generated by the project and other "background" trips) would divert to other arterial routes, such as 6th and 7th Streets east into Downtown. The model results demonstrate that intersections beyond the focused study intersections would operate at acceptable levels of service. In addition, the Draft EIR's analysis shows that after implementation of the identified mitigation measures, all intersections on Broadway in the project area would operate acceptably (i.e., without adverse congestion), so the average driver would have no reason to divert from Broadway onto other roads. Therefore, the project would have a less-than-significant impact on those additional segments and intersections and conducting a more detailed analysis of those intersections and roadway was not warranted.

### **Other Traffic and Circulation Issues**

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

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

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

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

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

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

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

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

### **Cumulative Wastewater Generation and Treatment Plant Capacity**

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

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

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

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

### **Historic Cultural Resources**

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

## Urban Decay

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

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

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

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

10/20/2009  
Jen H



October 20, 2009

Eureka City Council  
531 K Street  
Eureka, CA 95501

Re: Marina Center Final Environmental Impact Report

Mayor and Council:

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

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

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

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

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

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

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

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

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

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

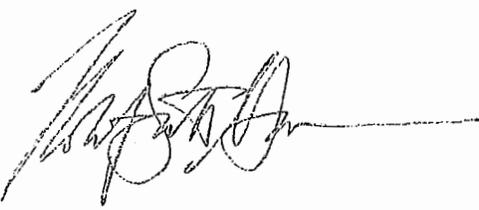
If the City proceeds with EIR certification, we will be forced to consider filing a lawsuit in the public interest to require compliance with the law. In that case, should we prevail, we will ask the court to award attorneys' fees and costs pursuant to the Code of Civil Procedure section 1021.5, or any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

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

Thank you for the consideration of our comments,

Pete Nichols, Executive Director  
Humboldt Baykeeper

  
Jennifer Kalt, Secretary  
Northcoast Environmental Center

  
Scott Greacen, Executive Director  
Environmental Protection and Information Center

Item #16  
10/20/2009

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

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

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

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

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

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

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

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

Thank you

10/20/2009

Item 16

Tom Peters  
221 Dollison St.  
Eureka, CA 95501

October 20, 2009

1.

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

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

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

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

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

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

3.

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

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

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

Thank You for considering my opinion.

A handwritten signature in cursive script that reads "Tom Peters".

Tom Peters

Eureka  
10/20/2009

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

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

Re: Marina Center Project

Dear Council:

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

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

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

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

Sincerely,

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

Ralph Faust

Item 14  
10/20/2009

Ralph Faust

2727 Graham Road

Bayside, CA 95524

October 20, 2009

City Council

City of Eureka

531 "K" Street

Eureka, CA 95501

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

Dear City Council:

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Ralph Faust".

Ralph Faust

# MERCER, FRASER COMPANY

*General Contractors and Engineers*

SINCE 1870

P.O. BOX 1006 • (707) 443-6371  
EUREKA, CALIFORNIA 95502-1006

October 20, 2009

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

Ref: Balloon Track

Sub: Interim Clean-Up

Dear Mayor and Council:

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

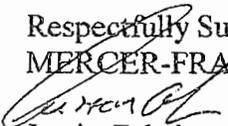
Our main offices and warehouse at 77 West 2<sup>nd</sup> Street, have been located adjacent to the Balloon Track property for the last ninety years. We have seen in the last 20+ years major degradation of the property, transient occupancy, and vandalism that has "spilled over" to neighboring properties.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

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

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

-Please move forward.

Respectfully Submitted,  
MERCER-FRASER COMPANY

  
Justin Zabel

**Sidnie Olson**

---

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

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

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

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

October 20, 2009

**Via E-mail & Fax**

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

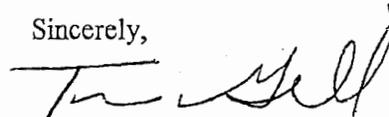
**RE: Marina Center EIR Certification**

City of Eureka Department of Community Development:

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

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

Sincerely,



Tim Gill, President

cc: Kirk Girard  
Bonnie Neeley



October 20, 2009

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

Re: Marina Center  
Final Environmental Impact Report

Dear Mayor and Council:

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

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

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

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

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

Sincerely,

Mary Ann McCulloch  
Preservation Committee Chair

**Sidnie Olson**

---

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

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

October 20, 2009

Dear councilperson and Mayor:

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

However this is what I can see to this point.

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

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

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

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

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

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

Best regards,

Ron Kuhnel

NOV 04 2009

## Resolution No. 2009-51

CALIFORNIA  
COASTAL COMMISSION**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 would improve stormwater flow and reduce flooding, 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.

- f. 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.
  - 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. Powell*  
City Clerk

APPROVED AS TO ADMINISTRATION:

APPROVED AS TO FORM:

\_\_\_\_\_  
*David W. Tyson*  
City Manager

\_\_\_\_\_  
*Sheryl Schaffner*  
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 alphanumeric 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.**
  - **Eliminate unauthorized or illegal activities within the Balloon Track, which are detrimental to public safety and a drain on public resources.**
  - **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-gallon 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. No Impact A-4: 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. No Impact C-1: 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.

Finding: 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.

Facts in Support of Finding: 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. Less-than-Significant Effect C-3: 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.

Finding: 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.

Facts in Support of Finding: 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. No Impact C-6: 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. Significant Effect D-1: 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.

Finding: 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. 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.

2. 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. Significant Effect D-2: 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.

Finding: 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. 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. Significant Effect D-3: 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.

Finding: 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. 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

2. 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
3. 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 (*Delairia odorata* = *Senecio mikianoides*)
  - Spanish broom (*Spartium junceum*)
  - Tamarisk (*Tamarix* spp.)
  - Gorse (*Ulex europaeus*)
  - Periwinkle (*Vinca major*)
  - Purple fountain grass (*Pennisetum setaceum*)

4. Significant Effect D-4: 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.

Finding: 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. 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. Significant Effect D-5: 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.

Finding: 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. 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. Significant Effect D-7: 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.

Finding: 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. During site remediation and preparation, the limited wetland functions of Clark Slough and the adjacent wetlands would be adversely affected.
2. Biological Resources Mitigation Measure D-7a set forth in Table 6-1 of the Final EIR is hereby incorporated by reference and described below:

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.

Finding: 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. 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.
2. 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
  2. Perform pre-construction surveys to locate any nesting birds in the area and establish 100 to 250-foot-wide exclusion zones around any identified active nest, depending on site conditions and nature of the work being performed
9. Significant Effect D-9: 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.

Finding: 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. 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. Significant Effect E-2: 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.

Finding: 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. 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 ground-disturbing activities to occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as "highly sensitive" in the reported entitled *A Cultural Resources Investigation of the Proposed Balloon Tract Development* (May, 2006) prepared by Roscoe & Associates:

- (i) Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s) to determine the presence or absence of archaeological resources in those specific locations predetermined to be culturally sensitive (Roscoe et al., 2006). The investigation shall be conducted based on a subsurface strategy prepared by the archaeological consultant, which shall prescribe the trenching and/or boring locations and expected depths of exploration reasonably necessary to discover significant archaeological resources if present. The subsurface strategy, in turn, should rely on an examination of extant soil boring logs and other data from the project area by a qualified 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.
- (ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and

15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented by the Project Applicant to avoid or mitigate any significant adverse affects to the resource. A treatment plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: (a) recovery of the object or feature and the preservation of any data available for scientific study; (b) modification to the land-use plan or construction methods to avoid the object or feature; (c) placement of soil sufficient to protect the integrity of the feature or object; and/or (e) permanent protection of the feature through the conveyance of a conservation easement. The archaeologist shall determine the extent of monitoring based on the findings of the investigation. The treatment and monitoring plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment plan.

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

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

- (i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area),

procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.

- (ii) If archaeological artifacts or other archaeological materials are discovered onsite during construction, all construction activities within 100 feet of the find shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review to evaluate whether or not the archaeological materials would be considered "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3).
- (iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.
- (iv) If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a 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 qualified archaeologist shall be summoned within 48 hours to conduct an independent review to evaluate whether the remains belong to a single individual or multiple individuals. If the latter, and if there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the NAHC.

4. Significant Effect E-4: 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.

Finding: 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-than-significant level.

5. Significant Effect E-5: 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.

Finding: 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. 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-than-significant level and reduce the contribution to less than cumulatively considerable.

## F. Geology, Soils and Seismicity

1. No Impact F-1: 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.
2. 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.

Finding: 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 less-than-significant level.
3. No Impact F-3: 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. Significant Effect F-6: 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.

Finding: 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 less-than-significant level, and the project's cumulative contribution to erosion would not be cumulatively considerable.

#### **G. Hazards and Hazardous Materials**

1. Significant Effect G-1: 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.

Finding: 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. 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-than-significant 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. Significant Effect G-2: 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.

Finding: 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. 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 site-appropriate measures from these guidelines.

4. Significant Effect G-4: 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.

Finding: 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. 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.

2. 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.

9. 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.

Finding: 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-cumulatively-considerable level.

## H. Hydrology and Water Quality

1. Significant Effect H-1: 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.

Finding: 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. 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. Significant Effect H-3: 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 on- or 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.

Finding: 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 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.
2. *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

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 10-mils 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 off-site 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 be 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.

7. *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.

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. Significant Effect H-6: 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.

Finding: 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. 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. No Impact H-7: 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. No Impact H-10: 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. Significant Effect H-11: 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.

Finding: 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. No Impact K-2: 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. No Impact K-3: 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. Significant Effect K-4: 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.

Finding: 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. 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.
2. 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. No Impact K-7: The EIR evaluates the impact of the Marina Center project, in combination with other planned or 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 increase 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. No Impact M-1: 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. Significant Effect M-2: 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 physical 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.

Finding: 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. 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 on-site security patrol to handle routine situations that do not require emergency response from the Eureka Police Department.

## O. Transportation

1. Significant Effect O-1: 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.

Finding: 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.

1. 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. No Impact O-6: 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. No Impact Q-8: 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

### Alternatives

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
- Old 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.

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**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.

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**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"**  
**MITIGATION MEASURES ADOPTED AS CONDITIONS OF APPROVAL AND MITIGATION MONITORING PROGRAM- PHASE 1**

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p><b>D. Biology</b></p> <p>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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall construct an exclusionary fence to meet requirements of the mitigation measure</p>	<p>City of Eureka Community Development Department; City of Eureka Building Department</p>	<p>Review the construction plan(s) for the project to ensure the installation of a fence would occur prior to any grading or construction</p>	<p>Both Phase 1 and Future Phases: Prior to approval of grading or building permit(s)</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>
<p>D-3a: Obtain the requisite 404 permit and 401 certification from the Corps and RWQCB, which shall, at a minimum, 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, RWQCB, and Coastal Commission):</p> <ol style="list-style-type: none"> <li>1. Replace or restore the affected wetlands onsite 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</li> <li>2. 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</li> <li>3. Contribute in-lieu funds for restoration, enhancement, or preservation of off-site wetlands, subject to approval by the Corps and RWQCB.</li> </ol>	<p>Phase 1</p>	<p>Project Applicant and its contractor(s) shall incorporate mitigation requirements into construction plans</p>	<p>City of Eureka Community Development Department; City of Eureka Building Department; Army Corp of Engineers; RWQCB</p>	<p>Review of construction plan to ensure it includes wetland replaced or restored at a minimum 1:1 ratio; if not met payment of in-lieu contribution has been received</p>	<p>Prior to issuance of grading permit</p>	<p>Verified by: Date:</p>
<p>D-3b: Prior to site grading, prepare a detailed Restoration Plan in accordance with the U.S. Army Corps of Engineers (Corps) <i>Habitat Mitigation and Monitoring Proposal Guidelines</i> and Regulatory Guidance letters 02-02 and 06-03; Federal Register, 2008. <i>Final Compensatory Mitigation for Losses of Aquatic Resources</i>; 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 <i>Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone</i></p> <p>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</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare a detailed Restoration Plan that incorporates mitigation requirements Submittal of an annual report from the qualified biologist addressing the status of the restoration plan; a final report from the biologist upon completion of the</p>	<p>City of Eureka Community Development Department; City of Eureka Building Department; Army Corp of Engineers; California Department of Fish and Game; California Coastal Commission</p>	<p>Review and approval of the restoration plan by applicable agencies Receipt of the annual and final report(s) on the status of the restoration plan</p>	<p>Both Phase 1 and Future Phases: Prior to issuance of grading or building permits; prior to construction Future Phases: Ongoing monitoring for 5</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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.</p> <p>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.</p>		restoration plan			years after project completion	
<p><b>D-3c:</b> 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 vegetation such as blackberries that act as a barrier, and signs warning against intrusion.</p>	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:
<p><b>D-3d:</b> 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 purposes in perpetuity and shall include an endowment for long-term management and protection of the wetland reserve.</p>	Phase 1 Maintained in Future Phases	Project Applicant and its contractor(s) shall 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:
<p><b>D-3e:</b> 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, low 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.</p>	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:
<p><b>D-3f:</b> 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.</p>	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 Verified by: Date: Future Phases

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>During construction:</p> <ol style="list-style-type: none"> <li>Educate construction workers about invasive species and control measures;</li> <li>Ensure construction-related equipment arrives onsite free of mud or seed-bearing material by, for example, requiring wheel washing upon entry;</li> <li>Use native seeds and straw material to the extent feasible;</li> <li>Revegetate with appropriate native species; and</li> <li>Prohibit the use of the following non-native invasive plants for landscaping or other planting purposes: <ul style="list-style-type: none"> <li>Pampas grass (<i>Cortaderia jubata</i>, <i>C. selloana</i>)</li> <li>Tree-of-heaven (<i>Ailanthus altissima</i>)</li> <li>Giant reed (<i>Arundo donax</i>)</li> <li>Bamboo (<i>Bambusa</i> spp., et al)</li> <li>Cotoneaster (<i>Cotoneaster pannosa</i>)</li> <li>French broom (<i>Genista monspessulana</i> = <i>Cytisus monspessulanus</i>)</li> <li>Scotch broom (<i>Cytisus scoparius</i>)</li> <li>Blue gum (<i>Eucalyptus globulus</i>)</li> <li>English ivy (<i>Hedera helix</i>)</li> <li>Fig-marigold family members (<i>Conicosia</i>, <i>Carpobrotus</i> and <i>Mesembryanthemum</i>)</li> <li>Tall fescue (<i>Festuca arundinacea</i>)</li> <li>Mattress vine (<i>Muehlenbeckia complexa</i>)</li> <li>Tree tobacco (<i>Nicotiana glauca</i>)</li> <li>Fountain grass (<i>Pennisetum setaceu</i> <i>Pyracantha</i> (<i>Pyracantha angustifolia</i>)</li> <li>Castor bean (<i>Ricinus communis</i>)</li> <li>Black locust (<i>Robinia pseudoacacia</i>)</li> <li>German ivy (<i>Delainia odorata</i> = <i>Senecio mikianoides</i>)</li> <li>Spanish broom (<i>Spartium junceum</i>)</li> <li>Tamarisk (<i>Tamarix</i> spp.)</li> <li>Gorse (<i>Ulex europaeus</i>)</li> <li>Periwinkle (<i>Vinca major</i>)</li> <li>Purple fountain grass (<i>Pennisetum setaceum</i>)m)</li> </ul> </li> </ol> <p>D-7a: Phasing of project construction shall minimize the amount of time that both the existing degraded wetlands and the wetlands in the</p>	Phase 1			each construction phase	of building permit(s)	<p>Verified by:</p> <p>Date:</p>
		Project Applicant and its contractor(s) shall	City of Eureka Community	Review and approval of the remediation plan	Prior to issuance of grading permit	Verified by:

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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.</p> <p>See also recommended Mitigation Measures D-3a through D-3f and H-3a.</p> <p><b>D-8a:</b> Implement one of the following mitigation measures to reduce the potential impact on breeding birds or their nests or eggs:</p> <ol style="list-style-type: none"> <li>1. Refrain from performing vegetation clearing/initial grading activities during the avian breeding season (February 1 to August 31); or</li> <li>2. Perform pre-construction surveys to locate nesting birds in the area and establish 100 to 250-foot-wide exclusion zones around any identified active nest, depending on site conditions and nature of the work being performed.</li> </ol>	<p>Phase 1 Maintained in Future Phases</p>	<p>concurrently restore wetland during remediation</p> <p>Project Applicant and its contractor(s) shall identify measures in the construction plan(s) to reduce impacts to birds and their nests/eggs</p>	<p>Development Department; City of Eureka Building Department; RWCQB; Army Corp of Engineers</p> <p>City of Eureka Community Development Department</p>	<p>that includes wetland restoration</p> <p>Review and approval of the construction plan that includes bird avoidance</p>	<p>Prior to issuance of grading or building permit</p>	<p>Date:</p> <p>Verified by:</p> <p>Date:</p>
<p><b>E: Cultural Resources</b></p>						
<p><b>E-2a:</b> 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 <i>A Cultural Resources Investigation of the Proposed Balloon Tract Development</i> (May, 2006) prepared by Roscoe &amp; Associates:</p> <p>(i) Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s) to determine the presence or absence of archaeological resources in those specific locations predetermined to be culturally sensitive (Roscoe et al., 2006). The investigation shall be conducted based on a subsurface strategy prepared by the archaeological consultant, which shall prescribe the trenching and/or boring locations and expected depths of exploration reasonably necessary to discover significant archaeological resources if present. The subsurface strategy, in turn, should rely on an examination of extant soil boring logs and other data from the project area by a qualified geoaarchaeologist 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. A qualified archaeologist shall be present at all times during the subsurface investigation.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall retain archaeologist</p> <p>Archaeologist shall (a) conduct subsurface archaeological investigation and (b) determine components of treatment and monitoring plan, if required</p>	<p>City of Eureka Community Development Department</p>	<p>Both Phase 1 and Future Phases: Review and approve extent and methodology of subsurface archaeological investigation</p> <p>If resources are encountered, verify work is suspended and review and approve of the treatment and monitoring plan if archaeological materials are discovered</p>	<p>Both Phase 1 and Future Phases: Review extent of subsurface investigations prior to approval of grading permit(s)</p> <p>If resources encountered, review of monitoring plan prior to continuation of construction</p>	<p>Phase 1 Verified by:</p> <p>Date:</p> <p>Future Phases Verified by:</p> <p>Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>(ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed "historically significant" or "unique" under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archaeologist and implemented 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. A qualified archaeologist shall monitor implementation of the treatment plan</p> <p>(iii) If no "historically significant" or "unique" archaeological resources are discovered during excavation monitoring or pre-construction investigations, implement Mitigation Measure E-2b for ground-disturbing activities within the areas specifically delineated as "highly sensitive" in the above-referenced Cultural Resources Investigation.</p>	<p>Phase 1 and Future Phases</p>	<p>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</p>	<p>City of Eureka Community Development Department</p>	<p><b>Both Phase 1 and Future Phases:</b>                      Review and approve worker training program                      If resources are encountered, verify work is suspended and review and approve of the treatment and monitoring plan if archaeological materials are discovered</p>	<p><b>Both Phase 1 and Future Phases:</b>                      Review and approve worker training program prior to issuance of building permits                      If resources encountered, review of treatment and monitoring plan prior to continuation of</p>	<p><b>Phase 1 Verified by:</b>   <b>Date:</b>   <b>Future Phases Verified by:</b>   <b>Date:</b></p>
<p><b>E-2b:</b> Except for monitoring that is required under the treatment and monitoring plan in Mitigation Measure E-2a(ii), the following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site but outside the geographic areas specifically delineated as "highly sensitive" in the above-referenced Cultural Resources Investigation:</p> <p>(i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.</p> <p>(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</p>	<p>Phase 1 and Future Phases</p>	<p>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</p>	<p>City of Eureka Community Development Department</p>	<p><b>Both Phase 1 and Future Phases:</b>                      Review and approve worker training program                      If resources are encountered, verify work is suspended and review and approve of the treatment and monitoring plan if archaeological materials are discovered</p>	<p><b>Both Phase 1 and Future Phases:</b>                      Review and approve worker training program prior to issuance of building permits                      If resources encountered, review of treatment and monitoring plan prior to continuation of</p>	<p><b>Phase 1 Verified by:</b>   <b>Date:</b>   <b>Future Phases Verified by:</b>   <b>Date:</b></p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>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).</p> <p>(iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.</p> <p>(iv) 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant or its contractor(s) shall implement treatment plan</p>			<p>construction</p>	
<p><b>E-2c:</b> 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 descendant 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 &amp; Safety Code section 7050.5, CEQA Guidelines section 15064.5(e), and Public Resources Code section 5097.98. If the human remains are determined to be of Native American origin, a qualified archaeologist shall be summoned within 48 hours to conduct an independent review to evaluate whether the remains belong to a single individual or multiple individuals. If the latter, and if there are six or more Native American burials on the site, the site shall be identified as a Native</p>	<p>Phase 1 and Future Phases</p>	<p>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 <b>Project Applicant and</b></p>	<p>City of Eureka Community Development Department; NAHC; County Coroner</p>	<p>Contact City, NAHC, or County Coroner if human remains are encountered</p>	<p>Ongoing</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>

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				
<b>G. Hazards and Hazardous Materials</b>						
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 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.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall prepare Health and Safety Plan (HASP)	RWQCB; City of Eureka Building Department	RWQCB to review and approve HASP; Building Department to confirm RWQCB approval	Approval of HASP by RWQCB Confirm prior to permit(s) issuance	Phase 1 Verified by: 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 RWQCB or other applicable oversight agency, undertaking soil excavation or other appropriate remedial measures as required.  If required, soil may be excavated using a backhoe or excavator. The excavated soil shall be loaded into a dump truck and transported as required to a secured stockpile area where it shall be protected from contact with stormwater. The excavation contractor shall employ dust control measures during excavation and stockpiling activities. Soil samples shall be collected from each excavation area, as required by the RWQCB, to confirm that remaining soil meets site clean-up goals. Following site excavation, the excavation pits shall be left open pending receipt of satisfactory confirmation soil sampling analytical results. Each excavation pit shall be secured with a fence during the 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 collected during the backfill process, submitted to the analytical 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.  <b>Soil Stockpile Characterization.</b> 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.	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall complete characterization and remediation, as well as test and remove soil as directed by RWQCB	RWQCB; City of Eureka Building Department	RWQCB to confirm requirements are met; Building Department to confirm RWQCB approval	Approval by RWQCB Confirm prior to permit(s) issuance	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
<p>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.</p> <p><b>G-1c:</b> During site preparation, construction, or restoration of the wetland, suspected residual contamination 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 ensure that site workers have adequate training and proper protective equipment 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 loaded into a dump truck and transported to a secured stockpile area that is away from routine traffic and protected from contact with ponding water and stormwater. The excavated soil shall be sampled and analyzed for petroleum hydrocarbons, metals, and volatile organic compounds (VOCs), as appropriate or required by the RWQCB. The analytical results of the soil stockpile sample(s) shall be used to determine the proper handling and disposal method for the soil. In the event that the soil requires off-site disposal, a contractor licensed to transport such material shall transport the contaminated soil to a facility that is licensed to accept such soil. All contaminated soil that requires removal shall be removed from the site within 90 days following excavation.</p> <p>Following site excavation, the re-filling of excavation pits, soil stockpile characterization and soil disposal shall be the same as for Mitigation Measure G-1a above.</p> <p>Any suspected contaminated groundwater or surface water that is encountered shall be sampled and analyzed for petroleum hydrocarbons, metals, and VOCs, as appropriate or required by the RWQCB. Identified contaminated water that requires removal shall be pumped into appropriate containers, depending on the volume of water to be removed. If only a small volume is removed, Department of Transportation-approved, 55-gallon steel drums may be appropriate. If a large volume must be removed, a Baker Tank or equivalent shall be used to temporarily store the extracted water. Contaminated water shall be disposed of as required by the RWQCB in light of the level and type of contamination.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall stop work if suspected residual contamination is encountered</p> <p>Site supervisor shall ensure protective equipment and adequate training are provided to all present before beginning work again</p> <p>Project Applicant and its contractor(s) shall test excavated soil / water and dispose of contaminated soils offsite</p>	<p>City of Eureka Building Department; RWQCB</p>	<p>Building Department shall perform inspections of job site to ensure proper procedures are followed</p> <p>RWQCB shall ensure proper analysis and disposal of contaminated materials</p>	<p>Building Department shall perform inspections during excavation and grading</p> <p>RWQCB shall review analysis and disposal procedures, if contaminated materials are found</p>	<p>Phase 1 Verified by: Date: Future Phases Verified by: Date:</p>
<p><b>G-1d:</b> 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</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall receive approval of local</p>	<p>Applicable environmental oversight agency (see</p>	<p>Review proposed reuse of excavated soil as subgrade fill material</p>	<p>Upon receipt of information regarding future</p>	<p>Verified by:</p>

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:
<p><b>G-1e:</b> The following measures shall be undertaken to the satisfaction of the RWQCB to ensure that human and environmental health is protected:</p> <ol style="list-style-type: none"> <li>Upon completion of site remediation activities, a post-remediation groundwater-monitoring program shall be implemented as required by the RWQCB;</li> <li>The RWQCB will outline the monitoring schedule, including what constituents will require testing and at what frequency the monitoring will occur; and</li> <li>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, additional site remediation shall also occur.</li> </ol>	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 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	<p>Phase 1 Verified by: _____ Date: _____</p> <p>Future Phases Verified by: _____ Date: _____</p>	
<p><b>G-2a:</b> 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 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.</p>	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 training program and emergency response plan	Prior to commencement of grading, excavation, and construction	<p>Phase 1 Verified by: _____ Date: _____</p> <p>Future Phases Verified by: _____ Date: _____</p>
<p><b>G-2b:</b> 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 <i>California Stormwater Best Management Practices Handbooks</i>. The guidelines recommend techniques for erosion and sediment control, non-stormwater 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, <i>Hydrology and Water Quality</i> of the Draft EIR.</p>	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall prepare and implement a SWPPP	RWQCB; City of Eureka Building Department	RWQCB 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	<p>Phase 1 Verified by: _____ Date: _____</p> <p>Future Phases Verified by: _____ Date: _____</p>
<b>H. Hydrology and Water Quality</b>						
<p><b>H-3a:</b> In addition to the required SWPPP, implement the following BMPs to protect water quality.</p>	Phase 1 and Future	Project Applicant and its contractor(s) shall	RWQCB; 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
<p>1. <i>Erosion/Sediment Control.</i> 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 runoff on the project 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 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.</p> <p>2. <i>Scheduling.</i> 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 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.</p> <p>3. <i>Protection of Water Courses and Drainage Inlets.</i> 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.</p> <p>4. <i>Soil Stockpiles.</i> 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 example) at least 6- to 10-mils 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.</p> <p>5. <i>Dust Control.</i> 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</p>	<p>Phases</p>	<p>prepare and implement a plan that uses all BMPs listed to project water quality</p>	<p>Department</p>	<p>approve BMPs plan Building Department to inspect site during construction to verify compliance</p>	<p>issuance of grading or building permit(s) Onsite verification during construction</p>	<p>Date: <i>Future Phases</i> Verified by:  Date:</p>

Mitigation Measures Adopted as Conditions of Approval	Phase	Implementation Procedures	Monitoring Responsibility	Monitoring and Reporting Action	Monitoring Schedule	Verification of Compliance
<p>ensure there is no off-site runoff.</p> <p>6. <i>Material Delivery, Storage and Use.</i> 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 areas. Chemicals, paints or bagged materials shall not be stored directly on the ground, but instead shall be 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 onsite during construction activities. There shall be no fueling or equipment washing activities conducted onsite.</p> <p>7. <i>Monitoring.</i> During construction, 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare plans and apply for Erosion Control Permit and implement the permit during all construction activities</p>	<p>City of Eureka Public Works Department</p>	<p>Review and approve erosion control plan Perform building site inspections to confirm adherence to permit requirements</p>	<p>Review and approve plans prior to issuance of building or grading permit(s) Inspect site during construction</p>	<p>Phase 1 Verified by:  Date:  Future Phases Verified by:  Date:</p>
<p>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, 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 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 always 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.</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare drainage plan, submit it to the City, and implement plan during</p>	<p>City of Eureka Engineering Department; City of Eureka Building Department; City of</p>	<p>Public Works Department approve Drainage Plan Confirm adherence to</p>	<p>Prior to issuance of building or grading permit(s) Inspect site during</p>	<p>Phase 1 Verified by:  Date:</p>
<p>H-4a: Prepare a drainage plan indicating the specifics of the project drainage system. The drainage plan shall demonstrate that the culverts are adequately sized and configured to address peak runoff and protect against a 10-year storm event. The drainage plan shall ensure that any increase in stormwater drainage runoff in a 10-year storm event</p>	<p>Phase 1 and Future Phases</p>	<p>Project Applicant and its contractor(s) shall prepare drainage plan, submit it to the City, and implement plan during</p>	<p>City of Eureka Engineering Department; City of Eureka Building Department; City of</p>	<p>Public Works Department approve Drainage Plan Confirm adherence to</p>	<p>Prior to issuance of building or grading permit(s) Inspect site during</p>	<p>Phase 1 Verified by:  Date:</p>

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/siltation 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-6c: 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:
<b>K. Noise</b>						
K-4a: 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-generating activity permitted between 12:30 p.m. and 1:30 p.m. No construction activities 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.	Phase 1 and Future Phases	Project Applicant 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); inspection during construction	Phase 1 Verified by: Date: Future Phases Verified by: Date:
K-4b: To reduce daytime noise impacts due to construction: 1. Equipment and trucks used for project construction 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 project construction 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	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall use best available noise-control techniques described and locate stationary noise sources as far from adjacent receptors as possible	City of Eureka Building Department	Require use of noise-control techniques in building permit; inspect construction site to confirm adherence to those requirements	Prior to issuance of grading building permit(s); inspect during construction	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
<p>used whenever feasible.</p> <p>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.</p> <p>K-4c: To mitigate pile driving and/or other extreme noise-generating construction impacts, a qualified acoustical 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 Eureka to ensure that noise attenuation and acoustical standards will be achieved. These attenuation measures may include, as necessary, the following control strategies:</p> <ol style="list-style-type: none"> <li>1. Erect temporary plywood noise barriers around the construction site.</li> <li>2. Use noise control blankets on building structures as buildings are erected to reduce noise emission from the site.</li> <li>3. Monitor the effectiveness of noise attenuation measures by taking noise measurements at locations and frequencies necessary to ensure acoustical standards are satisfied.</li> </ol>	Phase 1 and Future Phases	Project Applicant and its contractor(s) shall hire qualified acoustical 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 Verified by: Date: Future Phases Verified by: Date:
<b>M. Public Services</b>						
M-2a: 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.	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	Verified by: Date:
<b>O. Transportation</b>						
<p>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:</p> <ol style="list-style-type: none"> <li>1. 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 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 lanes can be closed to traffic. Excepting extraordinary circumstances, lane closures are</li> </ol>	Phase 1 and Future Phases	Project Applicant and its contractor(s) obtain approval of construction management plan and implement the plan during construction	City Engineering Department; City of Eureka Building Department; Caltrans	Engineering Department and Caltrans must review and approve Construction Management Plan; Building Department 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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<p>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.</p> <p>2. If construction activities result in unacceptable traffic congestion, flaggers shall supplement approved traffic control plans to ensure that traffic moves through the construction zone with minimal delays.</p> <p>3. 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</p> <p>4. 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.</p> <p>5. The Construction Management Plan shall provide for accommodation of bicycle flow, particularly along First Street and Waterfront Drive.</p> <p>6. 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.</p>						