



October 24, 2018

California Coastal Commission  
Attention: Mr. Robert Merrill  
Coastal Manager, North Coast District Office  
1385 Eighth Street, Suite 130  
Arcata, CA 95521  
*Sent via email*

Re: Appeal of County of Humboldt Coastal Development Permit for Mercer Fraser Company asphalt plant, Big Lagoon area, CDP-17-001M

Dear Mr. Merrill,

I submit this appeal of CDP-17-001M on behalf of Humboldt Baykeeper's staff, board, and members. Humboldt Baykeeper was launched in 2004 with a mission to safeguard coastal resources for the health, enjoyment, and economic strength of the community through education, scientific research, and enforcement of laws to fight pollution.

Below please find specific information regarding our appeal of the County of Humboldt Coastal Development Permit for Mercer Fraser Company asphalt plant, Big Lagoon area, CDP-17-001M, including reasons supporting our appeal and aggrieved party status. Additional information is attached, including the signed appeal form.

Thank you for the opportunity to appeal the deficient Coastal Development Permit approved by the County of Humboldt. Please feel free to contact me if you have any question or would like additional information.

Sincerely,

\_\_\_\_s/\_\_\_\_\_  
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## **SECTION IV. Reasons Supporting This Appeal**

The following policies in the County of Humboldt's North Coast Area Plan (NCAP) apply to projects within this area of the Coastal Zone, and were not adequately evaluated by CDP-17-001M. Jennifer Kalt, Director of Humboldt Baykeeper, provided verbal testimony regarding this project at the Humboldt County Planning Commission hearing on Sept. 20, 2018. In addition, our group requested that the hearing be postponed to allow time for review of the documents which had not been provided in response to a Public Records Act Request on Aug. 29. The Planning Commission vote for postponement failed 2-3, and the project was subsequently approved 4-1 on Sept. 20, without any additional conditions.

We also point out that the Staff Report does not include a clear description of equipment or of the types and quantities of potential hazardous materials that would be onsite. The project map shows "fuel tanks," "rubber oil tank," and "reaction tank," among others (p.12) but these are not described in the project description, nor does the County analyze and mitigate the potential impacts of storing hazardous materials in the floodplain of a sensitive and important coastal waterbody, Big Lagoon and its tributary, Maple Creek.

### **NCAP §3.26: Hazards**

#### *3.26 A(1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.*

In 2017, a temporary CDP and associated Mitigated Negative Declaration were approved by the County (CDP-17-001). The 2017 Mitigated Negative Declaration was used by the County for CDP-17-001M, thereby limiting the analysis to potential impacts of the temporary (one-year) permit which expired in March 2018.

The term of the County's new Conditional Use Permit is limited to 5 years, with the potential for an additional 5-year term, but the CDP (CDP-17-001M) does not appear to be limited to a specific timeframe (Staff Report, p. 14).

The County Staff Report states on page 18 that:

- The project site is located in the flood zone, but utilizes only temporary/moveable equipment and materials, and that the modification will not change the exposure to or impact on the described hazards.
- While potential tsunami inundation is a hazard affecting the site...in the long term the project is not expected to increase the exposure of people or property to tsunami hazards because the project will only site an asphalt batch plant intermittently.
- The modification will not change the exposure to or impact of the described hazards.

On p. 73, the Staff Report states that:

- The project area is mapped as being subject to inundation by the 100-year flood event. It should be noted that the FEMA flood map identified existing levees protecting the Project area; however, the FEMA flood map indicates that they have not been accredited, and therefore are not shown as providing protection from the 100-year flood event....Further, the project is only being requested for a one-year time period and any potential impacts would be temporary in nature.

The County's GIS online maps show the site is in the 100-year floodplain and the tsunami evacuation zone. The levees referred to in the Staff Report only surround the nearby pond, and do not protect the Project area from nearby Maple Creek, according to the FEMA flood map posted on the County's online GIS:

<https://webgis.co.humboldt.ca.us/FLOOD/06023C0340G.PDF>. And though the temporary CDP required demobilization of the asphalt plant by October 29, 2017, the asphalt plant was operating in November and December that year (see enclosed photos taken from a boat on Big Lagoon). The permit expired in March 2018, and yet the asphalt plant remains on the site as recently as Oct. 20 (it is clearly visible from Highway 101). We find this analysis of flood hazards inadequate, and would like to see the operations limited seasonally with removal of the asphalt plant, including all potentially hazardous materials and aggregate stockpiles, to a site outside the 100-year floodplain before the beginning of the rainy season. We recommend a similar schedule that is required of gravel operations in floodplains in the US Army Corps of Engineers 2015 Letter of Permission (see [https://www.spn.usace.army.mil/Portals/68/docs/regulatory/LOP\\_2015-1.pdf](https://www.spn.usace.army.mil/Portals/68/docs/regulatory/LOP_2015-1.pdf)). (June 1 to October 15; gravel stockpiled on river bars must be removed on a daily basis after October 1).

*3.26 A(5) Flood plains –...the County will continue to review development in light of and impose conditions consistent with the National Flood Insurance Program.*

The County's MND included Mitigation Measure H-2 (Staff Report, p. 74):

- For work within the FEMA mapped flood zone the application shall implement relocation of the tanks and other hazardous material storage containers to outside of the 100-year floodplain during the winter season. The "temporary" batch plant must be off the site by October 29<sup>th</sup> to avoid Flood Regulations.

The asphalt plant has not been removed from the site, and photos submitted by recreational users of Big Lagoon show the asphalt plant in operation in Nov. and Dec. of last year. In addition, the applicant reported pouring a concrete foundation for the asphalt plant under the temporary permit (Benzinger, pers. comm.). The County did not require a Floodplain Development Permit consistent with the County's Flood Damage Prevention Ordinance because the asphalt plant is considered temporary, but a concrete foundation may meet the definition of

development in the Coastal Zone. It is also difficult to view a 5-year CUP with the option for a 5-year extension as “temporary,” let alone a CDP that appears to be indefinite.

The applicant’s Emergency Evacuation Plan appears to be tied to flood risk on Redwood Creek at Orick, which is behind levees and not at all comparable or a valid predictor for flood risk at the project site on Maple Creek, which is over 13 miles away and has a much smaller and lower-elevation watershed, and thus different hydrologic characteristics, compared to Redwood Creek.

- Is the Redwood Creek gage the best source of warning of impending flooding? The USGS Little River gage appears to be more appropriate in predicting flooding in Maple Creek, since these are adjacent watersheds, and more comparable in terms of watershed size and elevation.
- The Emergency Evacuation Plan does not identify a site outside of the 100-year flood zone. The applicant has identified a potential location just outside the flood zone (Benzinger, pers. comm.) but this should have been disclosed and analyzed by the County. Since the asphalt plant is required by the County permit to be removed from the site by Oct. 29 each year, that site should have been identified and analyzed unless it is already approved for such activities.

3.26 A.4: Tsunamis – New development below the level of the 100 year tsunami run-up elevation described in *Tsunami Predictions for the West Coast of the Continental United States (Technical Report H-78-26 by the Corps of Engineers)* shall be limited to public access, boating, public recreation facilities, agriculture, wildlife management, habitat restoration, and ocean intakes, outfalls, and pipelines, and dredge spoils disposal.

- The County Staff Report states that while potential tsunami inundation is a hazard affecting the site, in the long term the project is not expected to increase the exposure of people or property to tsunami hazards because the asphalt plant will be used infrequently and on an intermittent basis (p. 21).
- The County Staff Report states that the CA Dept. of Conservation says it is not in a tsunami inundation zone (p. 73) but the County GIS maps it as such (<http://webgis.co.humboldt.ca.us/HCEGIS2.0/>).

The tsunami hazard analysis appears to be inadequate, and should be fully addressed. The Big Lagoon Rancheria is located downstream less than 1.5 miles from the site, and whether or not the applicant’s employees are on site during a tsunami, placing hazardous materials, a 50’ tall asphalt plant, etc. in a tsunami evacuation zone presents a potential hazard to residents.

### **NCAP §3.27: Archaeological Resources**

The County’s findings state that the County referred the project to the Yurok Tribe, and no comments were received (p. 18). However, the Big Lagoon Rancheria is approximately 1.5 miles from the site, and must be consulted.

In addition to archaeological resources, the County should have consulted the Big Lagoon Rancheria regarding potential impacts of air pollution on the residents, as well as impacts to tribal recreational and subsistence use of Big Lagoon.

### **NCAP §3.35: Recreation**

\*\*\*30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

- Big Lagoon is a popular area for water-based recreation, including fishing, sailing, paddling, standup paddleboarding, swimming, windsurfing, shellfish harvesting, and waterfowl hunting. The lagoon and associated wetlands are managed by the California Department of Fish and Wildlife, and much of the surrounding lands are part of Harry A. Merlo State Recreation Area. Big Lagoon and lower Maple Creek are important for water-based recreation.
- The Staff Report states that the project site is a significant distance from nearby recreation areas (~2,500 feet away) and that any potential impacts would be temporary in nature since the project is only being requested for one year (p. 73).

The project is not temporary in nature as discussed above, and the County failed to consider potential impacts to recreation related to smoke and odors from the asphalt plant, particular when winds are blowing toward Big Lagoon and/or an inversion layer causes the smoke to settle over the lagoon.

### **NCAP §3.41: Environmentally Sensitive Habitat Areas (ESHA)**

The project is in close proximity to Maple Creek and Big Lagoon, both of which are identified as ESHA by the NCAP (§3.41.A.1.d and §3.41.A.1.e). However, the County Staff Report and MND only addresses mapped National Wetland Inventory wetlands, which are shown on the County GIS as the log pond and an area adjacent to Maple Creek (<http://webgis.co.humboldt.ca.us/HCEGIS2.0/>).

NCAP §3.41.A.1: As an interim measure for habitat areas not currently identified on the maps, information obtained during the CEQA review process will be used by the County in reviewing applications for coastal development permits.

- No field surveys to delineate wetlands and wetland buffers were conducted for the proposed project.
- No maps showing wetlands, wetland buffers, or the distance from these protected features was included in the County's analysis.

NCAP §3.41.A.2: Wetlands shall be identified according to the 1976 Coastal Act definition (see Chapter 6 - Definitions)

- No discussion of wetland definitions was included in the County's analysis.

NCAP §3.41.A.3: Where there is a dispute over the boundary or location of an environmentally sensitive habitat, the following information may be requested of the applicant:

- a. a base map delineating topographic lines and adjacent roads
- b. vegetation map
- c. soils map
- d. location of dikes, levees, flood control channels, and tide gates.

Review of this information shall be in cooperation with the Department of Fish and Game and the County's determination shall be based upon specific factual findings as to whether an area is or is not environmentally sensitive habitat area based on the criteria and definitions above.

- No vegetation or soils maps were provided, and no review or input from the California Department of Fish and Game (now Department of Fish and Wildlife) was included in the staff report. As noted previously, the Department of Fish and Wildlife manages public lands within 0.5 mile of the Project area, just north of the former log pond.

On-site surveys should be conducted for delineation of wetlands, wetland buffer areas, and riparian vegetation, particularly in the area between Maple Creek and the project site, including the natural drainage that carries discharge from the on-site drainage ditch into Maple Creek.

NCAP §3.41 (E)(1)(b): Wetland Buffer Areas shall be defined as 250 feet from the wetland where the nearest paved road or the 40 foot contour exceed this distance.

- The County states that development is to be set back to 100 to 200 feet from the wetland (Staff Report, p. 19), which is not consistent with the NCAP. In addition, the site plans do not include maps showing the proximity of the project site to wetlands, wetland buffer areas, and ESHA.
- The drainage ditch on the south and east sides of the project site appears to support willows but it is unclear whether it was assessed for coastal wetland or foothill yellow-legged frog habitat.

NCAP §3.41.A.1.g: Other critical habitats for rare and endangered species listed on State or Federal lists.

- Foothill yellow-legged frogs are State of California candidate species and therefore their habitat is considered ESHA under this section of the NCAP. According to the Stormwater Pollution Prevention Plan (SWPPP) approved by the North Coast Regional Water Quality Control Board, stormwater runoff from the paved portion of the project site where the asphalt plant is located

will be discharged to this drainage ditch if and when it exceeds the site capacity (see hydrology and water quality impacts below). The stormwater sample point identified in the SWPPP is at the north end of the drainage ditch where it discharges from the project site into an unidentified natural drainage area connected to Maple Creek and Big Lagoon. The SWPPP does not consider, analyze, or mitigate potential impacts to ESHA either within the drainage ditch or once the stormwater is discharged offsite.

- The Staff Report (page 19) discusses a Northern Spotted Owl activity center, but does not indicate the basis for that information, whether surveys were conducted to determine if any other activity centers for this species occur nearby, or the year of any such surveys. This information would be relevant to determining the potential for project activities to disturb nesting spotted owls.

NCAP §3.41.G: Riparian Vegetation and Definition of Riparian Corridor.

*\*\*\*30230. Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity or coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

- Any downstream impacts of the proposed project – whether from typical stormwater runoff or flood waters – has the potential to impact Big Lagoon, which is identified as ESHA in the NCAP, and is also an area of special biological significance. Big Lagoon is an important area for migratory birds along the Pacific Flyway, and it supports a variety of populations of marine organisms important for commercial, recreational, scientific, and educational purposes, including coho and Chinook salmon, steelhead and coastal cutthroat trout, and tidewater goby. The County Staff Report failed to analyze these impacts in the findings or the MND.

*\*\*\*30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff; preventing depletion of groundwater reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

- The drainage ditch described in the SWPPP discharges into Maple Creek, but the natural channel that connects the ditch to the creek is not identified nor delineated as riparian vegetation in the MND, findings, or project maps. Although the SWPPP claims no discharge because the applicant constructed a berm that will contain the 85<sup>th</sup> percentile storm, it is not clear how the berm

on a paved area will contain stormwater throughout the rainy season. In the event that stormwater is not contained on-site, the berm will be breached so the water can discharge into the drainage ditch and carried to Maple Creek and Big Lagoon. In the event of discharge to the creek, the SWPPP requires sampling for pH, nitrates, oil and grease, and Total Suspended Solids, but there are no specific conditions for protecting designated ESHA in Maple Creek and Big Lagoon from these or any other contaminants or erosion from peak flows.

- The project is located on the site of a former lumber mill that has not been remediated, nor has it been the subject of Phase I and II Site Assessments to characterize industrial contamination. The likelihood of soil and/or groundwater contamination calls for a condition prohibiting ground disturbance to prevent mobilization of dioxins and other mill-related contaminants that would be discharged into Big Lagoon, potentially harming biological productivity, marine organisms, coastal water quality, and human health.

#### **NCAP §3.42: Visual Resource Protection**

*\*\*\* 30251. The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as these designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and by local government shall be subordinate to the character of its setting.*

*\*\*\* 30253. New development shall: (5) Where appropriate, protect special communities and neighborhoods, which, because of their unique characteristics, are popular visitor destination points for recreational uses.*

- The County Staff Report states that the project site is shielded from public roads by existing vegetation (p. 20) and limits structure height to 50 feet (p. 21), but even when not in operation, the asphalt plant is clearly visible from nearby designated Coastal Scenic Areas as well as the Coastal View Area on Highway 101. When in operation, the smoke plume increases the impacts on the visual resources, but these impacts were not analyzed by the County. The height of aggregate stockpiles is not limited.
- Although operations are not limited to daylight hours, and in fact “will require flexibility to operate 24-hours per day, seven days per week” (p. 27), the County Staff Report failed to analyze potential impacts to visual resources and wildlife from on-site lighting. A lighting plan should have been

developed to reduce these impacts, particularly since there is a State Park campground nearby at Big Lagoon.

## **Conclusion**

The CEQA findings for the Addendum to the MND refer to a previous adoption of an EIR and that this Addendum is for an EIR and all findings, mitigation and monitoring program of the EIR are applicable to the current project proposal (p. 16 and 40). But there is no EIR applicable to this project; therefore the project's CEQA findings are not supported by the record.

The project site was designated Industrial to allow a lumber mill to operate in conjunction with timber harvesting of adjacent properties. The asphalt plant is not associated with adjacent land uses and is not a coastal dependent land use that has the potential to impact coastal hazards, ESHA, marine resources, biological productivity, recreation, archaeological resources, and residential communities. These potential impacts have not been adequately analyzed and mitigated according to the policies in the County's North Coast Area Plan.

We look forward to participating in further environmental review of the proposed project. Please keep us informed about further opportunities for public comment.