June 26, 2008

Mr. Dennis Hunter, President
Humboldt Bay Harbor, Recreation, and Conservation District
601 Startare Drive
Eureka, CA 95502

Re: Draft Redwood Marine Terminal Business Plan

Commissioner Hunter,

On behalf of board, staff, and supporting members of Humboldt Baykeeper and the Environmental Protection Information Center (EPIC), we would like to offer these comments regarding the Draft Redwood Marine Terminal Business Plan (“Business Plan”). While we recognize the importance of economic development around Humboldt Bay, we strongly believe that this Business Plan is deeply flawed and does not adequately present the true costs of an endeavor of this magnitude, especially when considering detrimental impacts to the environment in and around Humboldt Bay from this type of industrial development.

The Business Plan clearly outlines a phased approach for the development of the Redwood Dock facility, and by adopting the Redwood Marine Terminal Feasibility Study in February of this year, the District’s Board of Commissioners, in essence, defined the scope of work to develop this property for industrial port activity.

The District would pursue a multi-year terminal development effort given major terminal development can take 10 years or more to complete, and given the shipping industry is now considering alternatives to major West Coast port gateways that could face capacity constraints in the 2015 to 2020 time period. The District would be competing for investment against other secondary ports on the West Coast and new port locations. A rail connection is a requirement for the terminal to compete for inland markets. Option B incorporates initial construction of a multipurpose berth to allow the District to capitalize on short to medium term opportunities, and generate revenues to support long term development (Draft Redwood Marine Terminal Business Plan, p. 1).

By developing and adopting a Business Plan for the Redwood Marine Terminal, and dedicating public funds to pursue development of a Business Plan for the project, the
Redwood Marine Terminal Project is subject to environmental analysis required under California Environmental Quality Act (CEQA) and other state and federal environmental laws.

The Harbor District is required to conduct environmental analysis of their proposed development of the Redwood Dock into a shipping port under both the California Environmental Quality Act and the National Environmental Policy Act. Both of these statutes are designed to provide full environmental analysis and disclosure of any project that may have a significant effect on the environment. These are both full disclosure documents, allowing both decision makers and the public full access to information prior to any action being taken or any resources being committed.

According to the CEQA guidelines, one of the general purposes of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.” 14 C.C.R. §15002(a)(2) (“CEQA Guidelines”). This requirement is manifested in the preparation of an Environmental Impact Report (“EIR”). The preparation of an EIR is required as early as feasible in the planning process in order to allow environmental considerations to influence the project. Public agencies are not supposed to undertake actions concerning the proposed project that would have significant environmental effect or limit the choice of alternatives or mitigation measures before completion of CEQA compliance.

Baykeeper and EPIC cannot help but question the District’s decision to delay completion of environmental review of the proposed Redwood Marine Terminal. Although Feasibility Studies are statutorily exempt from CEQA compliance, this exemption does not apply to feasibility or planning studies for possible future actions which have been approved, adopted, or funded by the relevant agency. Additionally, the exemption does not apply to the adoption of a plan that will have a legally binding effect on later activities. Clearly once the Business Plan is adopted or approved by the District full environmental review will be required. It appears to Baykeeper and EPIC that the completion of the Business Plan itself, however, requires analysis of the environmental effects of the proposals contained within the plan.

At a public meeting on February 28th, 2008, the District’s Board of Commissioners voted by majority to receive and file the Redwood Marine Terminal Feasibility Study and to authorize TransSystems to proceed with the Redwood Marine Terminal Business Plan for Development of Option B. (Draft Redwood Marine Terminal Business Plan at p. 10).

The completion of the Business Plan is clearly an action that has been funded by the District in pursuit of the development of the Redwood Marine Terminal as described in the Business Plan, and without full environmental analysis.

It would seem logical that any Business Plan to implement a project of this nature, using public funds, would include the costs of environmental study and the financial impacts
that the results of those analyses have on the project as a whole, yet the District’s Business Plan fails to address this important issue. And cannot, in fact, address this issue without first determining what the scope of environmental impact from implementation of the plan would be.

In addition to the need to complete environmental review of the proposed Business Plan, the District is obligated to consider the Plan’s impacts on the District’s Public Trust responsibilities. The District holds and manages the lands that are the subject of the Business Plan in trust for the people of the state. What this means is that the District is required to consider the effects of their decision on all users of the trust resources, and should not assign their responsibilities without making this analysis.

The Business Plan repeatedly states that the Harbor District will “function as a landlord port authority” and provide a variety of services in that capacity. Though it may in fact be a portion of the District’s mandate to provide for harbor and port facilities, they have an equal mandate to provide for recreation and protection of natural resources. The continued pursuit of the development of the Redwood Marine Terminal as described in the Business Plan without completion of full environmental review is in clear contradiction of the multiple purpose mandate established by the legislature for the District.

Thank you for your consideration of Baykeeper’s and EPIC’s concerns regarding this matter. Please feel free to contact either of the undersigned should you have any questions.

/s/ Pete Nichols, Director
Humboldt Baykeeper

/s/ Scott Graecen, Director
Environmental Protection and Information Center