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BY ELECTRONIC MAIL

November 8, 2016

Xavier Fernandez, Environmental Scientist
California Regional Water Quality Control Board,
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Re: Alternatives Analysis for Dutra Haystack Asphalt Plant Project, Sonoma County - CIWQS
Place ID 767268, Corps File No. 28104N

Dear Mr. Fernandez and Members of the Board,

I am writing on behalf of the Petaluma River Council ("PRC"), Friends of Shollenberger Park, Moms for Clean Air, Petaluma Tomorrow and their members living in and around Petaluma, California and Sonoma County, and on behalf of Petaluma residents David Keller, Stewart Brand, Margie Helm, Andrew Packard and Ryan Phelan (collectively "Council") concerning Clean Water Act Section 404(b)(1) Alternatives Analysis for the Dutra Haystack Plant Project (PN No. 2003-28104N) ("Project") submitted on October 11, 2016 as part of its application for water quality certification. The Council has been involved in the review process for the Project since it was proposed over ten years ago and has submitted comments to the U.S. Army Corps of Engineers ("USACE" or "Army Corps"), the Sonoma County Board of Supervisors, the County's Permit and Resource Management Department, and the California Regional Water Quality Control Board ("Water Board") identifying many objectionable aspects of the proposed project.

A. Legal Background

In applying for water quality certification, an applicant is required to provide, "[a] description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss or significant adverse impacts to beneficial uses of waters of the State." 23 California Code of Regulations ("CCR") 3856(h)(6). The Water Board has prepared guidance

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interpreting this provision to require an applicant to “demonstrate that the project is designed to avoid and minimize impacts to wetlands and other waters of the state and/or U.S. within the project area to the maximum extent practicable.”¹ The State Board instructions require applicants to adhere to the following sequence in proposing projects: “1) Avoid – avoid impacts to waters; (2) Minimize – modify project to minimize impacts to waters; (3) Mitigate – Where impacts cannot be avoided, adequate mitigation for the loss of water body acreage and function must be provided. An alternatives analysis, pursuant to the CWA section 404(b)(1) guidelines, may be required to determine the least environmentally damaging practicable alternative.”²

An alternatives analysis under 404(b)(1) asks whether the proposed project is the Least Environmentally Damaging Practicable Alternative (“LEDPA”). In accordance with Army Corps Guidelines, a permit cannot be issued if a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, provided that the LEDPA does not have other significant adverse environmental consequences to other natural ecosystem components. 40 CFR 230.10(a). The Guidelines establish two rebuttable presumptions for projects that will impact waters of the U.S. USACE guidance explains:

The first presumption states that alternatives that do not affect special aquatic sites are presumed to be available. The second presumption states that practicable alternatives located in non-special aquatic sites (e.g., other waters, uplands, etc.) have less adverse impact on the aquatic ecosystem. **It is the applicant's responsibility to clearly demonstrate to the USACE that both of these presumptions have been rebutted in order to pass the alternatives portion of the Guidelines.**³

In order to demonstrate that a proposed project is the LEDPA, it must be well-researched and well-reasoned. The State Board instructions require applications to, “Describe, in detail, measures that have been taken to avoid and minimize direct impacts to waters of the State, including waters of the U.S. If it is not possible to avoid or minimize impacts to waters of the State, the applicant must provide the reasoning and evidence for that conclusion.”⁴

¹ Instructions for Completing the Application for Clean Water Act §401 Water Quality Certification and/or Waste Discharge Requirements for Projects Involving Discharge of Dredged and/or Fill Material To Waters of the U.S. and/or Waters of the State p. 8, available at http://www.waterboards.ca.gov/lahontan/water_issues/programs/clean_water_act_401/docs/401instructions2app.pdf.

² *Id.*

³ USACE “Preparing An Alternatives Analysis Under Section 404 of the Clean Water Act” at p.1 (hereinafter “USACE Guidance”), available at http://www.swf.usace.army.mil/Portals/47/docs/regulatory/Handouts/Preparing_An_Alternatives_%20Analysis.FINAL.pdf.

⁴ *Id.*

B. The Project Description is Inaccurate, Precluding Accurate Comparison of Costs and Impacts from Alternatives.

The Project Description is critical to an alternatives analysis. Without an accurate project description, there is no means to effectively compare project alternatives to determine relative practicability or environmental impact. The Project Description states that Dutra will receive aggregate via barge to the current Shamrock Material, Inc. Landing Way off-loading facility on the west bank of the Petaluma River. Dutra hopes to construct a conveyor system over the Sonoma Marin Rail Transit (SMART) right-of-way to transport the material from the Shamrock facility to the Dutra plant. The conveyor also will cross over PG&E's rights of way for two 12" high pressure gas mains that pass under Parcel A of the project (the "Barton" parcel). This method for transporting aggregate, however, is purely aspirational. Contrary to Dutra's proposal, in 2010 Shamrock sent a letter to Sonoma County indicating that it was unwilling to agree to permit Dutra to use their e-crane.⁵ Shamrock expressed concern about having to reopen and/or modify its existing permits to allow for additional off-loading and conveying.⁶ In addition, Shamrock expressed concern about having to add or amend their permit conditions. Shamrock concluded that there was "no possible benefit to our operation from this proposed action."⁷ Furthermore, according to the County's Final Conditions of Approval, no construction equipment may be permitted on top of the PG&E gas line easement.⁸

EPA has also expressed concern about the lack of evidence of Dutra's authority to utilize the Landing Way e-crane. In response to the Army Corps' issuance of the Public Notice in November of 2015, EPA stated, "In order to avoid inappropriate piecemealing, no USACE permit for filling the wetlands on the onshore portion of the property should be issued unless and until authority to use the existing offloading facility has been secured and documented."⁹ Until the project description is firm, any alternatives analysis is in vain. In order to ensure impact minimization, a new alternatives analysis must be prepared that puts forth a verified feasible action from which alternatives can be analyzed. At a minimum, an on-site alternative with no

⁵ See Letter from David Ripple, Shamrock Materials, to Steve Padovan, Sonoma Co. PRMD, re: 210-222 Landing Way, Petaluma UPE03-0110 (Mar. 23, 2010). ("Although we would like [*sic*, 'to be'] good neighbors and cooperate, we cannot allow our property to be associated with the Dutra proposal to allow their project barges to unload at our facility."), attached as Exhibit A.

⁶ *Id.*

⁷ *Id.*

⁸ Final Conditions of Approval- PLP04-0046 p. 1 (December 14, 2010), attached as Exhibit B ("121 The easement boundaries for the PG&E gas lines and any water easement on the Landing Way Depot property and Area A shall be marked and **no construction equipment shall be permitted on top** of the easements.") (emphasis added).

⁹ See EPA Comment Letter (Nov. 24, 2015) attached as Exhibit C.

link to the Shamrock facility that avoids the impacts to the mitigation wetlands, must be considered in the 404(b) alternatives analysis. (40 CFR 230.10(a).)¹⁰

Furthermore, the Project description fails to address any rail component. Dutra's water quality certification application submitted in December of 2014 stated one criteria for finding a suitable site for the project was "proximity to Northwest Pacific Railroad tracks for efficient importation of material when that transportation option becomes feasible in the future."¹¹ Consistent with this intention to serve the Dutra facility by rail, the Council has discovered that Dutra has been negotiating with SMART and the NCRA for the installation of an onsite switch since at least 2011.¹² Any decision to transport incoming aggregate by rail instead of by barge would transform the nature of environmental impacts of the project, in addition to settling the question of whether the Project is water-dependent (which EPA confirms it is not¹³). A new alternatives analysis must be prepared with a complete and accurate project description.

C. The Project Objectives Unduly Constrain Project Alternatives.

The alternatives analysis is deficient because Dutra has adopted an overly narrow Project purpose thereby constraining otherwise reasonable alternatives. Per USACE guidelines explains, "Need and purpose are inter-dependent terms which are critical to the alternative analysis. They should be articulated individually since the project's purpose is framed in relation to addressing a need. Need is typically the problem or opportunity that the applicant is proposing to meet with their project."¹⁴ The project purpose should be based on the *need*. In the context of commercial projects, USACE suggests that need should be based on market demand.¹⁵ Dutra's Alternatives Analysis does not provide any consideration of need. The analysis states, "The overall project purpose for the project is to provide recycled asphalt pavement (RAP) and aggregate and sand products to be used for public and private construction projects in northern and west Marin and southern Sonoma County." (Alternatives Analysis p. 9)

USACE Guidance also explains that "[A Project's] purpose should not be defined in such a restrictive manner to unduly restrict or preclude other alternatives, nor should it be so broad

¹⁰ See also USACE Guidance at p.5 (requiring alternatives to include, at a minimum, "Onsite alternatives, particularly those that would involve less adverse impact to [waters of the U.S.>").

¹¹ Application for 401 Water Quality Cert. by San Rafael Rock Quarry, Inc., dba Dutra Materials (Dec. 15, 2014), attached as Exhibit D.

¹² See Letter from Bill Dutra to Farhad Mansourian re: Request for Tailtrack (Dec. 2, 2011), attached as Exhibit 1 to Exhibit E; see also PRC letter to USACE (Apr. 14, 2014), attached as Exhibit E.

¹³ EPA Comment Letter at p.2.

¹⁴ USACE Guidance at p.2.

¹⁵ *Id.*

that a reasonable search of options cannot be accomplished.”¹⁶ The analysis unduly constrains the Project purpose when explaining the process for evaluating practicability of alternatives by creating basic and overall project purposes. It states, “The *basic* purpose of the Proposed Project is to construct a new asphalt plant and associate features... The *overall* project purpose is to replace an asphalt plant to provide aggregate products to serve public and private construction projects in southern Sonoma County and northern and western Marin County.” (*Id.* at 10).¹⁷ If these purposes were not met, the alternative was dismissed from further consideration. (*Id.*) These “basic” and “overall” purposes are inconsistent with the “overall project purpose” stated on the page prior. The goal is not to create a new asphalt plant, or to replace another asphalt plant, it is (as stated by Dutra) to provide recycled asphalt pavement (RAP) and aggregate and sand products to be used for public and private construction projects in northern and west Marin and southern Sonoma County. Therefore, consistent with USACE Guidance’s emphasis on need, the alternatives analysis for Alternative C, the “No Project Alternative” should investigate whether demand in the region can be handled by existing asphalt plants.

The Council is confident that any need-based analysis would demonstrate that there is no need for additional asphalt plants to service southern Sonoma County and western Marin County. As discussed below, there are no less than 11 asphalt plants that already provide asphalt to the southern Sonoma County and western Marin County areas, including one owned and operated by Dutra. In other words, **Dutra has not established, even on a prima facie level, any market need for the Dutra plant's operations** in Petaluma. If there is no need for the project, a ‘no action’ alternative would comport with the purpose, and as such, is the LEDPA. Therefore, the proposed Project should not be permitted to move forward.

D. The Alternatives Analysis Is Vague and Unsupported, and Thus, Insufficient to Ensure That Impacts Are Minimized as Required for Water Quality Certification.

Even if the Project Description and Project Purpose were reasonable, a new alternatives analysis must be prepared because the Alternatives Analysis unreasonably dismisses legitimate alternatives as being impracticable. The discussion of alternatives is vague, conclusory and simply lacks the details necessary to make an informed judgment as to the validity or accuracy

¹⁶ *Id.* at p.4.

¹⁷ The proposed asphalt plant will not, in fact, replace any existing asphalt plant. A temporary plant that was located about a mile from the proposed project site was closed almost a decade ago, in September 2007 (Resolution No. 10-0916A: Resolution of the Board of Supervisors of the County of Sonoma State of California Making and Adopting a Statement of Overriding Considerations, Adopting a Mitigation Monitoring Program, and Approving a Project Excerpt p. 13 (Dec. 14, 2010), attached as Exhibit F).

of the conclusions reached. Each and every alternative follows a similar generic analysis providing no specifics, no calculations, and no legitimate analysis for the Water Board, the Army Corps, or the public to review. This cursory analysis fails to comply with the critical procedural requirements put in place to prevent unnecessary destruction of wetlands and loss of the invaluable ecosystem services they provide.

1. The Alternatives Analysis Unreasonably Dismisses Rail and Truck Transport Without Any Evidence of Its Impracticability or Admission of Dutra's Intention to Employ Those Very Methods of Transport at the Dutra Haystack Plant.

The Alternatives Analysis finds that the Sonoma County Landfill was impracticable in part due to lack of access to deliver materials by barge. In addition, Redwood Landfill, Port Sonoma, Downtown Petaluma, the Pomeroy Site, and Lakeville Highway were all deemed impracticable, at least in part, due to costs of dredging to allow for barge access. The Alternatives Analysis provides no explanation of why aggregates must be delivered by barge. Delivery by barge is not part of the Project Purpose. If barge delivery were included as a purpose, it would unreasonably constrain the scope of alternatives considered.¹⁸ Nor does the Alternatives Analysis provide any comparison of costs for import of aggregate via barge, train, or truck to support its conclusion that lack of access via barge (or high costs associated with dredging) renders alternatives impracticable. Dutra should not be able to insinuate an improper, overly narrow purpose into its rationales for rejecting alternatives.

As EPA emphasizes, an asphalt plant is not a water-dependent operation.¹⁹ In fact, numerous other asphalt plants currently operating in the Bay Area contradict this conclusory statement. Figure 1 provides a map of asphalt plants in the Bay Area.²⁰ Of the 11 plants identified, only one plant is accessible by barge—Dutra's San Rafael Rock Quarry, and it is not even clear if that asphalt plant receives aggregate by barge. Every other plant brings aggregate to the site by truck or rail. If Dutra intends to eliminate alternatives based on their access to water, it must at least provide a cost analysis supporting its assertion that the asphalt plant must operate via barge to be economically sound. However, Dutra's Proposed Project undermines any such conclusion as it will import aggregate material to the Haystack Asphalt Plant via truck for up to three years while the conveyor system is under construction.²¹ This fact in and of itself demonstrates the feasibility of trucks for aggregate transport. And, given Shamrock's stated intent to refuse to allow access to Dutra's barges, either the project ends

¹⁸ See USACE Guidance at p. 2-3.

¹⁹ EPA Comment Letter at p. 2.

²⁰ This map represents all plants found through basic internet search tools. PRC do not maintain that it represents a comprehensive map of all asphalt plants in the Bay Area.

²¹ Final Conditions of Approval at p. 1.

after three-years or trucks or potentially rail are the only means by which aggregate will be delivered.

Figure 1. Bay Area Asphalt Plants



The Alternatives Analysis' dismissal of rail or truck transport is also confounding because, as previously discussed, Dutra intends to use rail to import materials to the Haystack Asphalt Plant. Since Dutra has expressly stated that rail access for importation of material was a criteria for finding a suitable site, it is unreasonable for it to argue that it is impracticable to import material by rail instead of barge at another location. Furthermore, if rail is a practicable alternative to importation by barge, then choosing a site on the Petaluma River is not the LEDPA. An alternative site may be found that is accessible by rail without destroying wetlands.

Dutra may not eliminate an alternative as impracticable for a characteristic also present in the proposed Project. It is unreasonable to dismiss Port Sonoma, Redwood Landfill, Downtown Petaluma, Pomeroy Site, and Lakeville Hwy 37 alternatives without any consideration of relative costs of transport by truck or rail. A new alternatives analysis is required to consider relative costs of alternative transport options for aggregate importation. For example, Port Sonoma and Pomeroy have access to rail that may be an economic alternative to dredging to allow for transport by barge. The new alternatives analysis should also analyze a range of off-site alternatives not along the Petaluma River that may be accessed by truck or rail. The Council suggests consideration of the Novato landfill.

2. The 'Market Area and Technological Constraints' Analysis Is Vague and Fails to Justify the Limitations Set to Allow for Efficient Distribution of Product.

In addition to barge access, the Alternatives Analysis limits practicable alternatives based on their distance to the market area targeted by the Proposed Project. The analysis states that the range of feasible locations is limited because materials must be delivered at a high enough temperature to meet the specifications required to place the asphalt. (Alternative Analysis p. 20). The Analysis notes that distance, speed, traffic delays, ambient temperature, wind speed, quantity of asphalt and general weather all affect the coverable distance. (*Id.*) The analysis provides a map with concentric circles, the outer circle demonstrating the market area and the inner circle providing the area on which a plant could be located to reach the full market area ("Feasible Alternative Location Zone").

This analysis is problematic for a number of reasons. The analysis provides no basis for its determination of the constraints of the Feasible Alternative Location Zone beyond the general explanation of those factors that determine potential distance that may be traveled. In fact, the Feasible Alternative Location Zone provided defies logic. First, the map unreasonably limits the distance which Hot Mix Asphalt (HMA) can travel from source to destination. For example, the map puts the Port of Sonoma outside the potential service area. The furthest point in the market area from Port of Sonoma is approximately a 30 minute drive according to google maps. Thus, the map suggests that HMA cannot travel even 30 minutes before cooling.

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To the contrary, the HMA Handbook developed by the Army Corps among other agencies states that HMA when confined to a truck bed will maintain a reasonable temperature for as long as **2 to 3 hours**.²² By this estimate, Dutra could reach the entire market area from its Richmond and San Rafael locations.

The Market Area map is also misleading because it does not indicate travel times, but instead seems to be based on distance. Common sense dictates that trucks could reach locations on the highways more quickly than locations on surface streets. Indeed, reaching the eastern end of the market area from the Haystack site takes approximately 40 minutes, while it takes less than 20 to reach the northern tip (all without traffic). Consequently, it is unreasonable that both the Feasible Alternative Location Zone and the Market Area would both be circular.

Finally, the analysis acknowledges that portions of the market area for the Proposed Project are well within the market area for Dutra's other asphalt plant located at its San Rafael Rock Quarry. Dutra reasons that it requires another plant because the Rock Quarry location is not authorized to work nights or weekends and such work is necessary for large paving projects. Dutra fails to take into account that these "larger scale projects" take place on highways at night, allowing for an increased range because highways can be traversed rapidly, especially at night when there is no traffic. Thus, if the goal of the project is to accommodate large scale projects, the Feasible Alternative Location Zone should be extended to cover the longer distance trucks may reach to serve these locations at the times specified.

A new Alternatives Analysis is necessary to allow for a determination of practicability of alternatives based on capacity to reach the desired market area. In order to reasonably assess capacity to reach market area, Dutra must first disclose the approximate time period that trucks may travel. Then it must consider relative trip lengths from alternative sites. Based on Army Corps estimates of travel times, all alternatives analyzed should be well within the Feasible Alternative Location Zone. From the Council's estimations, it is unreasonable for the Alternatives Analysis to dismiss the Sonoma County Landfill, Port of Sonoma and Lakeville Highway alternatives on these grounds. Likewise, an alternative at the Redwood landfill would be able to service the identified market area. Dutra must support any determination of

²² Federal Aviation Administration & USACE et al., HOT MIX ASPHALT PAVING HANDBOOK, Appendix 1, Part III, p.119, available at https://www.faa.gov/documentLibrary/media/Advisory_Circular/150_5370_14b_coversheet.pdf. CalTrans and UCD Pavement Research Center studies found working haul times for Warm Mix Asphalt (WMA) and Recycled Asphalt Product (WMA-RAP) of 1-4 hours. See Presentation: Warm Mix Asphalt State of the Practice, by Cathrina Barros, PE – Caltrans, available at http://www.webpages.uidaho.edu/bayomy/IAC/51st/Presentations_51st/9.%20Warm%20Mix_Cathrina%20Barros.pdf.

infeasibility with support that can be reviewed and verified.

3. The Alternatives Analysis Dismisses Alternatives Due to Costs of Installing a Gas Line Without Evidence of any Gas Line on the Proposed Site.

The Alternatives Analysis dismisses alternatives including the Port of Sonoma and Lakeville Highway sites, at least in part, on the grounds that no natural gas pipeline services the site, and it would be expensive to deliver natural gas to the sites. However, nothing in the Alternatives Analysis or prior environmental review documents has indicated that a natural gas pipeline services the Haystack site. While there are PG&E twin 12" high pressure gas lines that cross the Barton parcel, there is no evidence that PG&E has or will grant access to connect to that line. Even if such access was granted, there would be costs to connect this line to the Haystack site. In fact, the existence of the PG&E line creates risk of potential impacts during construction of the conveyor system leading to both increased costs and dangerous consequences.²³

A new alternatives analysis is required to determine whether natural gas is necessary and whether Dutra has access to a natural gas pipeline on the Haystack site. Only then can a legitimate comparison of costs be conducted. Dutra should provide full maps of available natural gas lines on all sites analyzed to allow for review of its conclusions.

4. The Cost Assessment Undervalues the Cost of the Proposed Project.

The cost analysis provided in Table 2 is practically the only substantive analysis available in the entire Alternatives Analysis. However, it undermines the practicability of alternatives by undervaluing the cost of the Proposed Project and including unnecessary costs for alternatives. First, the cost analysis represented in Table 2 assumes that alternatives E through I would all involve costly dredging (between \$1.8 and \$15 million) and construction of an e-crane (\$1.5 million). As discussed above, operation of the asphalt plant does not require barge accessibility. Therefore, it was improper to assume water access-related costs for these alternatives, especially without any consideration of costs of alternative transport methods.

Second, the cost analysis fails to account for the full cost of the Proposed Project location including:

- Costs of wetlands mitigations, revegetation, restoration and monitoring at the Haystack site. This cost should include the costs of decommissioning the existing, separately

²³ See EPA comment Letter at p.2.

permitted USACE mitigation wetlands on the Shamrock Landing Way parcel and replacing them at some other location.

- Costs of acquiring use of Shamrock's e-crane (if allowed by Shamrock at all). While the proposed Project would not require construction of an e-crane, there would still be costs associated with use of Shamrock's e-crane. For example, use of that facility would require re-opening, modifying and re-permitting of Shamrock's approvals from the County. Table 2 shows "N/A" for "Additional Permitting Cost." Furthermore, a conveyor system must be constructed to take aggregate from the e-crane to the plant. In addition to construction costs, Dutra must account for costs of obtaining permission and easements from PG&E for Dutra to cross PG&E's existing twin 12" high pressure gas line easements, the City of Petaluma's 10' water main easements on the Landing Way site, and the SMART rail tracks and right-of-way. None of these costs are represented.
- Costs for onsite gas lines. The Council is unaware of any existing gas supply on site, and Dutra has not demonstrated that PG&E has granted access to connect to the existing twin 12" high pressure gas lines that cross the Barton parcel. Even if such access was granted, there would be costs to connect this line to the Haystack site. These costs must be reflected in the table, especially where alternatives are dismissed at least in part due to costs of installation of a natural gas line.
- Costs associated with dredging. The Petaluma River has not been dredged in many years, limiting depths and loading of barges. There are proposals from the City of Petaluma to charge river users fees or charges to cover the costs (or partial costs) of dredging the river. These potential costs should be reflected, especially where alternatives are dismissed for associated dredging costs.

The failure of the alternatives analysis to take into account these costs associated with the proposed Project improperly biases the analysis in favor of the Project. A new alternatives analysis must be prepared to accurately portray all costs associated with the Haystack site and alternatives.

5. The Practicability of Many Alternatives Warrant Reconsideration.

Due to the misleading representation of costs associated with dredging, e-crane construction, and natural gas line installation, the Council believes many of the alternatives are practicable. For example, the practicability of the Sonoma County Landfill is dismissed with a few sentences referring to "significant logistical and technological constraints compromis[ing] the timely delivery of asphalt to the desired market area" and lack of access by barge. (Alternatives Analysis p. 13). For the reasons discussed above, these constraints are insufficient to eliminate this alternative as impracticable. A site specific analysis is necessary to determine

whether trucks could reasonably reach the market area (which should be developed based on need) from the Sonoma County Landfill.

The Council also questions the impracticability of the Pomeroy alternative. The Alternatives Analysis provides no specifics, dismissing the site due to “several complicating logistical factors similar to a downtown Petaluma alternative,” namely high cost of dredging and poor highway access. The Pomeroy site already has a barge docking facility. In addition, for the reasons discussed above, the dredging costs are unnecessary as the site may be accessed by truck or rail. With respect to highway access, there is no map or any discussion of what routes trucks would take on local streets. A site specific analysis is necessary to determine whether trucks could reasonably reach the market area (which should be developed based on need) from the Pomeroy site.

The Redwood Landfill site warrants reconsideration. The Redwood Landfill site is dismissed solely based on dredging costs and associated environmental and aquatic impacts. Further analysis is required to consider the practicability of this site if accessed by rail or truck instead of by barge. The Council emphasizes the Sonoma Landfill, Pomeroy, the Redwood Landfill, and Port Sonoma as examples of alternatives unfairly dismissed as impracticable. Other dismissed alternatives should be reexamined to ensure a full, fair review. Moreover, since the Project is not water-dependent, additional alternatives not on the Petaluma River should be considered in an alternatives analysis.

E. The Proposed Project is Not the Least Damaging Environmental Alternative.

The Alternatives Analysis fails to take into account the full scope of damage that the proposed Project will have to ‘beneficial uses’ of the Petaluma River under 23 CCR § 3856(h)(6). Because the Proposed Project is deemed the only practicable alternative, it was selected as the LEDPA. Without any other practicable alternative with which to compare the proposal, the Alternatives Analysis makes this determination essentially in one sentence: “[T]his alternative will minimize impacts to waters of the United States and has the least environmental damaging consequences compared to other alternative.” (Alternatives Analysis p.22) The Alternatives Analysis only briefly covers the affected wetland habitat as part of the Project description, failing to fully account for wetland impacts. It does not even mention other impacts including impacts on Shollenberger Park, navigational hazards on the Petaluma River, and water quality impacts from plant emissions.

Throughout the permitting process, the Council has continually emphasized that the environmental impacts associated with constructing an asphalt plant at the Haystack site are particularly significant because of nearby sensitive receptors. The Haystack site is situated right

across the Petaluma River from Shollenberger Park. Shollenberger Park is the most visited park in Petaluma, with over 150,000 visitors per year, including families, runners, bird and wildlife watchers, school trips, and recreational visitors. The City of Petaluma, Open Space District, and state and federal governments have invested millions of dollars to acquire and develop this park and adjacent wetlands for public use and enjoyment and to protect fish and wildlife habitat. The Asphalt Plant will disrupt the public's use and enjoyment of the Park by introducing intrusive noise levels, emitting PAH, heavy metals, macronutrients, and diesel emissions, and creating nighttime light pollution. These impacts will both disturb park visitors directly and indirectly by disturbing the wildlife that makes the Park so special. These impacts are not discussed in the Alternatives Analysis.

The wetland impacts caused by the proposed Project are substantial. The Wetlands Mitigation and Monitoring Plan revised in October 2015 suffered from numerous deficiencies calling into question the efficacy of the plan.²⁴ In addition, Dutra's current proposal requires decommissioning existing mitigation wetlands from Shamrock to construct the conveyor belt. Should the construction of Dutra's conveyor belt harm, move, displace or replace the existing wetland constructed in compliance with the USACE permits for Shamrock, the original Shamrock permit must be reopened and adjusted accordingly. (See 33 CFR 332.8(g).)

In addition, the heavy barge and tug use on the Petaluma River associated with the proposed Project increases navigational hazards to rowers and paddlers. The Petaluma River has become a popular location in the San Francisco Bay Area for competitive and recreational rowers and paddlers. A letter by the North Bay Rowing Club (NBRC) to the Sonoma County Board of Supervisors in response to the original Dutra proposal outlined a number of safety concerns including increased turbulence and blocking of the river due to additional tug operations leading to and obstruction from mooring of Dutra barges.²⁵ Rowers already complain of near-collisions with tugs and barges associated with Shamrock's operations. Because of risks posed by large tugs, the US Coast Guard has issued guidance to Dutra and Shamrock to give prior notice to rowing events to allow safe passage of rowers. Increasing barge traffic on the Petaluma River will heighten the risk of personal injury to the rowers who frequent the River in practices, races, and rowing regattas. Competitive athletes training on the river, especially younger athletes, will experience the greatest health risk from air emissions from the Project site due to their proximity and volumes of air intake during exertion.

The Haystack site will also result in unavoidable navigational hazards by resulting in intrusions to the 100 ft. wide U.S. Army Corps Navigable Channel. Shamrock's Landing Way is

²⁴ See PRC Comments to USACE re 404 Public Notice p.2-6 (Nov. 30, 2015) attached hereto as Exhibit G.

²⁵ Letter from North Bay Rowing Club (December 29, 2009), attached hereto as Exhibit H.

only designed to accommodate one barge without blocking the 100 ft. navigation channel. However, NBRC members report and photos confirm that Shamrock's dock often moors two barges at once. This configuration undoubtedly impairs navigational safety. The Council discussed this issue at length and provided photographic evidence in its November 30, 2015 letter to USACE (p.16-18). Furthermore, since replacement of the railroad bridge over the Petaluma River in 2015 widened the passageway under the bridge, larger ships may reach Landing Way.²⁶ With these modifications, 250 ft. by 45 ft. barges may now dock at Shamrock's Landing Way. Unloading even one 250 ft. barge may result in encroachment into the 100 ft. navigation channel, because the barges must move to allow the e-crane to remove all material. Dutra must demonstrate practicability of the Proposed Project by providing clear engineering documents, reviewed and approved by US Coast Guard, proving the contention that Dutra and Shamrock can safely and legally moor and unload their barges completely outside the USACE 100' wide Navigable Channel.

Finally, the State Land Commission (SLC) has determined preliminarily that the Haystack site is a tideland within the jurisdiction of the SLC.²⁷ Thus, unlike other alternatives, this site would also have to be consistent with the public trust and obtain approval from the SLC.

Without a full consideration of these impacts, the Alternatives Analysis does not provide a comprehensive analysis from which the least impactful alternative may be selected. Given that additional alternatives are likely practicable, these environmental impacts must be fully accounted for in a comprehensive Alternatives Analysis in order to determine the appropriate LEDPA.

F. Conclusion

The above discussion demonstrates that the Alternatives Analysis unfairly dismisses Project alternatives by adopting a narrow project purpose, ignoring alternative transport options for aggregate importation, and providing an incomplete cost comparison. A new alternatives analysis is required to provide an accurate and verifiable project description explaining what transport alternatives Dutra intends to use onsite.²⁸ The alternatives analysis

²⁶ New rail bridge spans Petaluma River, ARGUS COURIER (Sep. 17, 2015)

<http://www.petaluma360.com/news/4494765-181/new-rail-bridge-spans-petaluma>

²⁷ E-mail from Ninette Lee, re: SLC Jurisdictional Question for Petaluma River Project (Mar. 30, 2015), attached as Exhibit I.

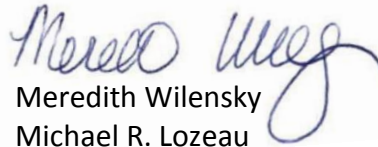
²⁸ Dutra must clarify whether the Project includes current or future rail access. If so, Dutra must inform the County to allow for further CEQA analysis. The CEQA evaluation conducted did not include rail. In fact, Sonoma County PRMD declared that rail access to the site was inconsistent with the County's General Plan, and was rejected as part of Dutra's project during the project approvals process.

November 8, 2016

Comments of Petaluma River Council et al. on Dutra Alternatives Analysis

must also redefine the project purpose in the context of market demand. Moreover, Dutra must provide a more thorough analysis of the practicability of selected alternatives, and those alternatives should include sites not accessible by barge. All practicable alternatives must then be compared to the proposed Project to determine the LEDPA. Until a new alternatives analysis is prepared, the Water Board should refrain from certifying the Project.

Sincerely,

A handwritten signature in blue ink that reads "Meredith Wilensky". The signature is written in a cursive style with a large, looping flourish at the end.

Meredith Wilensky

Michael R. Lozeau

Lozeau Drury LLP

Attorneys for Petaluma River Council, Friends of
Shollenberger Park, and Moms for Clean Air

cc:

Bryan Motsumoto, U.S. Army Corps of Engineers

Ninette Lee, California State Lands Commission

David Keller

Michael Lozeau