

NOTE ITEM
This Calendar Item No. 44
was approved as Minute Item
No. 44 by the State Lands
Commission by a vote of 3
to 0 at its 6-30-92
meeting.

CALENDAR ITEM

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44

06/30/92

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CONSIDER A MEMORANDUM OF UNDERSTANDING
CONCERNING GRAVEL EXTRACTION OPERATIONS
ON THE MAD RIVER IN HUMBOLDT COUNTY

The Mad River in Humboldt County has for many years been a source of construction aggregates for local industry. The staff believes that the bed of the Mad River at the gravel extraction sites is under the jurisdiction of the Commission, although this conclusion may be disputed by private parties. The property boundaries between the State's interests and those of adjacent private parties have not been mapped. The various sites at which extraction has occurred are generally in the vicinity of the town of Blue Lake and the area downstream.

Partly as a result of the effects of the prolonged drought, the Department of Fish and Game, State Lands Commission staff, Caltrans, the Resources Agency, environmental groups, and local water supply and water quality agencies have become concerned about the cumulative effects of continued gravel mining. At the same time, local government, the construction industry, and the aggregate mining industry are concerned about assuring a continuing supply of aggregate resources, a concern exacerbated by reconstruction activities following the recent earthquake. As a result of these concerns, a meeting was convened in Eureka to discuss options which would allow gravel extraction to continue this year, if and where feasible, while a study of cumulative effects of continued mining is conducted. The meeting included private sector representatives as well as interested agencies. The proposed study would meet the requirements of CEQA.

As a result of the Eureka meeting, a Memorandum of Understanding (MOU) was developed under the auspices of the Resources Agency. The MOU spells out the process and parameters which would govern a short-range aggregate supply feasibility analysis and an analysis of the cumulative effects of continuing mining on the Mad River system. The MOU defines the roles and responsibilities

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of the various resource agencies and local government with respect to the assessment of cumulative impacts of continued mining. Humboldt County would serve as Lead Agency. It also provides for a Technical Committee made up of agency representatives. That Committee provides guidance to a Scientific Committee which would analyze where, if at all, aggregate could be extracted on an interim basis while the environmental assessment work is completed. The MOU also provides for gravel operators to share the cost of the long term evaluation, and for public review of the MOU.

AB 384:

N/A

EXHIBIT:

A. Memorandum of Agreement

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.
2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE SUBJECT MEMORANDUM OF UNDERSTANDING, IN SUBSTANTIALLY THE FORM ATTACHED AS EXHIBIT "A", CONCERNING GRAVEL EXTRACTION OPERATIONS ON THE MAD RIVER IN HUMBOLDT COUNTY.

EXHIBIT "A"

RA 6/26

DRAFT/PROPOSED

MEMORANDUM OF AGREEMENT

concerning

GRAVEL EXTRACTION OPERATIONS ON THE MAD RIVER

IN HUMBOLDT COUNTY
DURING 1992

I. PURPOSES AND INTENTION OF MOU

Whereas, the Mad River ecosystem located within Humboldt County contains valuable high quality natural resources, including but not limited to spawning and rearing habitat for anadromous fish that supports a commercial and recreational fishery, gravel resources used for local construction activities, and riparian and wetland habitat supporting wildlife, all of which contribute to the local economy and quality of life.

Whereas, the undersigned parties recognize the need for a full evaluation of the short-term and the long-term environmental effects of various activities, including the cumulative impacts of gravel extraction operations, on the natural resources of the Mad River, and also recognize the need to obtain gravel economically for use within the County during 1992;

Whereas, gravel extraction operations must comply with all applicable permit and approval requirements of state and local agencies, and state and local agencies must comply with the applicable provisions of the California Environmental Quality Act;

Whereas, although in areas which are not subject to tidal influences the State holds fee title in trust for the public to rivers and streams below their ordinary low water marks and holds an easement termed the public trust easement over the areas between the ordinary high and ordinary low watermarks of rivers and streams, the precise location of the low water and high water boundaries on the Mad River has not been determined as of the date of this agreement;

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Whereas, in order for gravel extraction from the Mad River which will not result in significant adverse environmental effects to proceed in 1992, pending a full evaluation of the cumulative, longterm impacts of existing and proposed activities on the natural resources of the Mad River, it is necessary and appropriate to develop special operating conditions and to coordinate state and local agency proceedings concerning gravel extraction operations in 1992;

Whereas, the undersigned parties desire to expedite and to work cooperatively in assessing environmental impacts, both from individual projects and cumulatively, and in processing applications for approval related to gravel extraction operations on the Mad River;

Whereas, the undersigned parties desire also to avoid and to reduce duplication and potential conflict in the processing by state and local agencies of applications for gravel extraction operations and reclamation plans on the Mad River;

Whereas, the undersigned parties do not by this agreement waive or intend to waive, nor shall this agreement be construed to waive, any rights, claims, or statutory responsibilities of any of the parties hereto.

BASED UPON AND FOR THE REASONS SET FORTH ABOVE, THE UNDERSIGNED PARTIES AGREE AS FOLLOWS:

II. SCOPE AND APPLICABILITY OF THIS MOU

A. AGENCY ROLES AND RESPONSIBILITIES

Humboldt County (hereinafter "County") is the lead agency for purposes of compliance with the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) in adopting a general plan and ordinances and in issuing conditional use permits (CUPs) and other county permits, entitlements, or approvals for gravel extraction operations; and is the lead agency for purposes of the State Mining and Reclamation Act (SMARA), as certified by the Mining and Geology Board.

The Resources Agency (hereinafter "Agency") provides state agency coordination for activities which may affect the free-flowing and natural character of the state's designated wild and scenic rivers, adopts the state CEQA Guidelines (14 CCR 15000 et seq.), and coordinates various inter-Department issues.

The Mining and Geology Board (hereinafter "Board") and the Department of Conservation are the state agencies with responsibility for implementing SMARA (Public Resources Code

Section 2710 et seq.). Pursuant to SMARA the Board has established standards for reclamation plans, has certified the County's ordinance governing reclamation of mining sites, and exercises continuing review authority with regard to certified agency compliance with SMARA. Pursuant to SMARA and CEQA the Department of Conservation (hereinafter "DOC") reviews and submits comments on proposed reclamation plans for gravel extraction operations, reviews local agency determinations of vested rights for mining claims, monitors compliance with approved reclamation plans, and monitors lead agency implementation of SMARA.

The Department of Fish and Game (hereinafter "DFG"), as the state trustee agency for fish and wildlife (Fish and Game Code Sections 711.7 and 1802) and pursuant to CEQA, reviews and submits comments on projects which may affect fish and wildlife resources, reviews projects which may adversely affect the free-flowing and natural character of designated wild and scenic rivers, enters into agreements pursuant to Fish and Game Code Section 1600 et seq., and is responsible for administering Section 1505 of the Fish and Game Code.

The State Lands Commission (hereinafter "Commission") administers lands and resources owned by the state and public trust easements overlying such lands and resources, submits comments pursuant to CEQA on projects which may affect state lands or public trust easements, and collects royalties for the removal of mineral resources from state fee-owned lands.

B. GRAVEL EXTRACTION OPERATIONS

This agreement shall apply to all surface mining operations (hereinafter "Operators") which are in the bed or within one-half (1/2) mile from the center line of the Mad River; which receive, or have received county authorization applicable to 1992 extraction operations; and which have signed this agreement. These operators include, but are limited to, the following companies: Arcata Readmix, Eureka Sand and Gravel, Mercer Fraser, Mad River Sand and Gravel and Redwood Empire Aggregates.

C. OTHER AGENCY PARTICIPATION

The public agencies below are agencies interested in, and possess subject matter expertise related to, and may submit comments pursuant to CEQA on the gravel extraction operations which are the subject of this agreement.

(1) The California Department of Transportation (Caltrans) submits comments pursuant to CEQA and SMARA (Public Resources Code Section 2770.5) on projects which may affect Caltrans facilities, including bridges crossing the Mad River.

(2) The North Coast Regional Water Quality Control Board submits comments as an interested or responsible agency on projects subject to CEQA which may affect water quality, and assists in developing monitoring plans to meet water quality objectives adopted pursuant to the Porter-Cologne Water Quality Control Act (Water Code Section 13000 et seq.).

(3) The Humboldt Bay Municipal Water District operates wells and provides water supplies which draw on the Mad River and its underlying aquifers, and submits comments as an interested agency on proposed projects subject to CEQA which may affect the volume or quality of its water supplies.

(4) The federal agencies which may comment and provide information concerning the impacts of proposed gravel extraction operations include the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

IV. SHORT TERM OPERATIONS

The parties agree that the following provisions shall apply to all gravel extraction activity which occurs on the Mad River in 1992. These provisions are intended and understood to apply as conditions to gravel extraction in 1992, pending the completion of the environmental impact report described below in Section V which is to address the cumulative effects of gravel extraction operations on the Mad River.

A. On behalf of the undersigned parties, a Technical Committee, comprised of the persons listed on Attachment 1, is established and has provided direction, as set forth in a letter dated June 12, 1992, which is incorporated herein as Attachment 2, to the Scientific Committee which is established pursuant to paragraph IV. B. below.

B. A Scientific Committee is established for the purposes of conducting a review of the current condition of natural resources of the Mad River and providing recommendations to public agencies concerning the volumes, methodologies and sites of potential, environmentally safe gravel extraction operations, if any, for 1992 on the Mad River. The Scientific Committee consists of the following four members:

Douglas Jager, CSU at Humboldt

William Trush, River Institute

Andre Lehre, PSW Range and Experiment Station

Randall Klein, NPS, Redwood National Park

(1) Each member of the Scientific Committee shall disclose for the period from January 1, 1990 through the present, all economic interests in and income from (including income of more than \$250 from any single source) any business or activity which is related in any way to gravel extraction operations in Northern California. Disclosure shall be accomplished by filing a statement of economic interest at the Office of the County Clerk, Humboldt County, and at the Office of the Secretary for Resources in Sacramento, as soon as possible after the effective date of this agreement.

(2) Pursuant to the guidance and direction received from the Technical Committee and based on its review of the present condition of the natural resources of the Mad River, the Scientific Committee shall provide recommendations to the undersigned public agencies concerning gravel extraction operations which may occur in 1992, if any, without significant environmental harm or risk of such harm.

(3) The Scientific Committee shall provide its recommendations, along with a succinct statement of supporting facts and reasoning, in writing to the undersigned public agencies. The written report shall be submitted within 15 calendar days after receiving a written request and direction from the Technical Committee; provided, however, that the Scientific Committee may request an extension of time, if necessary, to complete its evaluation and recommendations.

(4) If significant new or additional information which may affect the recommendations of the Committee is submitted to one or more of the undersigned public agencies, the new information shall be referred immediately to the Scientific Committee for evaluation. Upon completing its evaluation, the Scientific Committee shall promptly submit to the undersigned agencies such further written recommendations as may be appropriate.

C. The parties agree that the following standard conditions shall be included in all permits, amendments, approvals, and Section 1603 agreements issued by state and local agencies which apply to surface mining activities on the Mad River in 1992.

(1) Authorizations shall be issued for and apply to gravel extraction operations in 1992 only. Before commencing mining in 1992, each operator shall have an approved reclamation plan and approved financial assurance in compliance with requirements of SMARA.

(2) The locations, depths and volumes of allowed gravel extraction shall not exceed the levels recommended by the Scientific Committee. In accordance with the recommendations of the Scientific Committee, gravel retention requirements may be

specified as percentage (%) of annual recruitment at specified sites, as necessary for downstream recruitment, stream restoration or other resource protection purposes, pending the completion of the EIR described in Section V below.

(3) The operator shall execute an enforceable commitment to fund a proportionate share of the costs for the preparation of the EIR described below in Section V, by depositing in an interest bearing trust account, which is established by the County, the amount of \$ _____ and an amount equal to \$1.00 per cubic yard of gravel removed from the Mad River in 1992.

(4) Each operator shall create and maintain a written record of gravel extraction during 1992 which contains at least the following information for each surface mining site: a site description, boundary lines, baseline cross-section or transect data, the estimated mineral volume (cubic yards) removed during each day of operations, ending cross-section or transect data, riverbed depth at close of 1992 operations, and the estimated total mineral volume (cubic yards) removed in 1992.

(5) Appropriate monitoring requirements shall be included for each gravel extraction operation, and shall require each operator to submit to the County and to the DFG Regional Manager, Region I, no later than November 15, 1992, a written report containing the results of required monitoring and the information required by paragraph (4) above. The Department of Fish and Game shall provide copies of monitoring reports to the undersigned public agencies.

(6) Recognizing the claim to jurisdiction of the State Lands Commission regarding state owned lands and resources, pending and subject to the final determination of the ordinary low water boundary of the Mad River, (a) the existing low flow riverbed channel shall be treated administratively by the parties to this agreement as belonging to the State, and the remainder of the riverbed up to the ordinary high water mark shall be treated as subject to a public trust easement held by the State; and (b) gravel extraction operations shall be approved only in those areas which are above the presently existing low water line.

D. Each agency which signs this agreement shall take all reasonable and feasible steps to expedite its review, evaluation, and issuance of permits, approvals, agreements, and any other required entitlement or authorization applicable to gravel extraction operations in 1992.

F. To the maximum extent feasible and practicable all affected state and local public agencies shall review and evaluate proposed gravel extraction operations based upon the same information and documentation.

V. LONG TERM EVALUATION OF THE RESOURCES

The County shall prepare, or cause to be prepared under contract to it, a programmatic EIR to evaluate the cumulative effects of gravel extraction operations on the natural resources of the Mad River between the Fish hatchery and the mouth of the River.

(1) The County agrees to commence the preparation of this EIR upon the effective date of this agreement, and to pursue the completion of the EIR in accordance with the schedule set forth in Attachment 3, which is incorporated herein by this reference.

(2) Except for the normal costs of administrative processing, which shall be borne by the county and shall include providing public notice, circulating draft documents, collecting and responding to comments, and holding public meetings, the costs of the preparation of the draft and the final EIR shall be borne by and shared among operators with authorizations for extraction in 1992, and shall be allocated in proportion to the gravel volumes extracted. The signature of an Operator to this agreement shall signify agreement to bear a proportionate share of the preparation costs for the EIR described herein.

(3) Each state agency shall designate a person to provide technical advice and assistance through consultation with the County concerning the EIR. The designated representatives of the undersigned state agencies shall serve as a Technical Advisory Committee to the County with regard to the EIR.

(4) A public advisory committee is to be formed to provide guidance to the County in the preparation of the EIR.

VI. EFFECTIVE DATE, IMPLEMENTATION AND TERMINATION

A. For purposes of implementing this agreement, each state and local agency described in Section II. A. above shall designate a contact person for consultation and coordination with other agencies, and shall inform the Resources Agency and the County of the designated person's name, phone number, facsimile number, and business address. Each interested agency described above in Section II. C. is encouraged likewise to designate a contact person.

B. This agreement shall take effect upon July __, 1992, for each signatory party. This agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the parties to the counterparts had signed the same instrument.

C. Each party agrees to implement, to monitor compliance with, and to cooperate in the enforcement of the terms of this agreement.

D. This agreement shall terminate upon whichever of the two following dates occurs first, the date the notice of determination is filed for the final EIR described above in Section V or June 15, 1993.

Attachment 1 -- Technical Committee Membership List

Attachment 2 -- Technical Committee letter to Scientific Committee

Attachment 3 -- Schedule for EIR Preparation

SIGNATURES

ATTACHMENT I

MOU GRAVEL EXTRACTION OPERATIONS - MAD RIVER

TECHNICAL COMMITTEE

Name	Address	Telephone
* Ms. Bonnie Neely, Supervisor Humboldt County	825 Fifth Street, Room 111 Eureka, California 95501	(707) 445-7694
* Mr. Janky Curtis Regional Manager Department of Fish and Game	601 Locust Redding, California 96001	(916) 225-2363
Mr. Larry Preston Associate Fishery Biologist Department of Fish and Game	619 Second Street Eureka, California 95501	(707) 445-6493
Ms. Karen Kovacs Associate Wildlife Biologist Department of Fish and Game	619 Second Street Eureka, California 95501	(707) 445-6493
Ms. Anna Sparks, Supervisor Humboldt County	825 Fifth Street, Room 111 Eureka, California 95501	(707) 445 7694
Mr. Don Tuttle Environmental Services Manager Department of Public Works Humboldt County	1106 Second Street Eureka, California 95501-0579	(707) 445-7741
Mr. Bill Davis Dun & Martinek Attorneys at Law	730 Seventh Street, Suite B Eureka, California 95501	(916) 442-3791
Mr. David Krueger Environmental Concerns	Box 649 Arcata, California 95521	(707) 839-5971
Mr. Tom Conlon Planning Director Humboldt County	3015 H Street Eureka, California 95501	(707) 445-7541
Ms. Cathy Crosssett Hydraulic Engineer Department of Transportation	P.O. Box 942874 Sacramento, California 94274-0001	(916) 327-3212
Ms. Diana Jacobs Staff Ecologist State Lands Commission	1807 13th Street Sacramento, California 95814	(916) 445-5034

* Co-Chair Persons

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DEPARTMENT OF FISH AND GAME

1416 NINTH STREET
P.O. BOX 944209
SACRAMENTO, CA 94344-2090
(916) 225-2363



June 12, 1992

Mr. Randy Klein
Consultant
1360 Stromberg Avenue
Arcata, California 95521

Dr. Andre Lehre
Humboldt State University
2335 Grace Avenue
McKinleyville, California 95521

Dr. Doug Jager
Humboldt State University
349 Stagecoach Road
Trinidad, California 95570

Dr. Bill Trush
Humboldt State University
Arcata, California 95521

Dear Mr. Klein and Drs. Lehre, Jaeger, and Trush:

Potential Gravel Extraction on the Mad River in 1992

It is my understanding that you have all been contacted by Mr. Tom Conlon, Humboldt County Planning Director, and have agreed to participate as members of the scientific team for assessing the potential for environmentally safe gravel extraction on the Mad River in 1992. As co-chairman of the task force charged with the establishment of a Memorandum of Understanding (MOU) between the Resources Agency, State Lands Commission, Humboldt County, California Department of Fish and Game, and the gravel operators on the Mad River, I want to thank you for your willingness to participate in this process.

I understand that you will meet soon and discuss the protocol and scheduling for your task. On behalf of Ms. Bonnie Neely and myself as co-chairs of the technical committee, I want to be sure you are apprised of the objectives that were agreed upon by the various agencies and other representatives at the May 22, 1992 meeting in Eureka.

The primary question that needs to be addressed is -- how much, if any, gravel could be extracted from sites with all the necessary county permits on the Mad River in 1992 without resulting in significant adverse environmental impact in the near term and without long-term damage to the natural resources of this river system? This assessment should also include recommendations for methods of extraction and methods, sites, and amounts of gravel that need to be maintained in the river to begin the restoration process.

Mr. Randy Klein, et al.
June 12, 1992
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Priority should be given to the sites of Arcata Readimix, Eureka Sand and Gravel, Mercer Fraser, and Mad River Sand and Gravel companies, which are currently the operations with the necessary legal entitlements except for required agreements under Section 1603 of the Fish and Game Code.

Potential gravel extraction sites should also be assessed in the same manner on four Redwood Empire Aggregates' parcels which do not currently have the necessary county permits. The Department of Fish and Game and the Resources Agency may agree to consider, as part of the proposed MOU, a conditional one-season permit and reclamation plan for Redwood Empire Aggregates' sites provided the county completes an adequate CEQA document and agrees to complete an EIR for all gravel extraction on the Mad River prior to the 1993 gravel extraction season.

Your assessment should embrace the concerns of all agencies and special service districts. These concerns are:

- 1) Fish spawning and rearing habitat and maintenance of an adequate fish passage.
- 2) Degradation of the Mad River at the Mad River Hatchery weir.
- 3) Degradation of the streambed near or so as to affect adversely the Highway 101, Highway 299, Railroad and Blue Lake Boulevard bridges.
- 4) Streambed degradation and water surface elevation at the Humboldt Bay Municipal Water District's Ranney well collector and direct river diversion.
- 5) Impact to riparian vegetation from lowered water surface elevations.
- 6) Recruitment potential to downstream areas.
- 7) Bank failure, riparian loss, and increases of instream sedimentation.

We appreciate your acceptance of this challenging task, and we believe that you are collectively the most qualified team to make this assessment and submit recommendations to the decision making agencies. Please conduct your field assessment and provide us your recommendations as soon as possible.

Mr. Randy Klein, et al.
June 12, 1992
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Please contact me if you have any questions. My address is
Department of Fish and Game, 601 Locust, Redding, California 96001,
telephone (916) 225-2363.

Sincerely,

COPY Original signed by
Banky Curtis

Banky E. Curtis
Regional Manager
Region 1

cc: Mr. William Davis
Dun & Martinek
Attorney at Law
730 Seventh Street, Suite B
Eureka, California 95501

Ms. Christine Sproul ✓
Assistant Secretary, Legal Affairs
Resources Agency
1416 Ninth Street, 33th Floor
Sacramento, California 95814

Ms. Bonnie Neely, Supervisor
Humboldt County
825 Fifth Street, Room 111
Eureka, California 95501

Ms. Sandra Corcoran
District Office Field Representative
Assemblyman Dan Hauser's Office
510 O Street, Suite G
Eureka, California 95501

Mr. Dennis O'Bryant, Chief
Office of Mine Reporting and Reclamation Compliance
Department of Conservation
801 K Street, MS 09-06
Sacramento, California 95814

Mr. Lance Kiley, Senior Staff Counsel
State Lands Commission
1807 13th Street
Sacramento, California 95814

Mr. Art Bolli, General Manager
Humboldt Bay Municipal Water District
P.O. Box 95
Eureka, California 95502

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Mr. Randy Klein, et al.
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cc: (Cont.)

Mr. David Krueger
Environmental Concerns
Box 649
Arcata, California 95521

Mr. Jerry Haynes, Deputy District Director
Project Development
Department of Transportation
P.O. Box 3700
Eureka, California 95501

Mr. Don Tuttle, Environmental Services Manager
Department of Public Works
Humboldt County
1106 Second Street
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Ms. Cathy Crosselt, Hydraulic Engineer
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Mr. John Hannum
Senior Water Resources Control Engineer
Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403

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SCHEDULE FOR EIR PREPARATION AND COMPLETION

- (A) On or before July 15, 1992, issue Notice of Preparation.
- (B) On or before August 1, 1992, select technical consultant(s) and execute contracts between County and consultant(s).
- (C) Hold scoping meeting(s) between July 15 - August 1, 1992.
- (D) On or before August 1, 1992, gather from all affected state and local agencies technical comments regarding the scope of the EIR, research data and other relevant information to be taken into consideration in drafting the EIR, including any needed subsurface geology data obtained by Caltrans near and underlying the footings of the Blue Lake and Highway 299 Bridges, fisheries and hydrology data from DFG, water quality and flow data from the Humboldt Bay Municipal Water District and the North Coast Regional Water Quality Control Board.
- (E) On or before August 15, 1992, convene Technical Advisory Committee to consult with County regarding the scope of the EIR.
- (F) On or before August 15, 1992, convene Public Advisory Committee to consult with County regarding the scope of the EIR.
- (G) On or before December 1, 1992, provide notification of the availability of the draft EIR for public review and of the public comment period, which shall close no earlier than sixty (60) days after issuance of the notice of availability.
- (H) Prepare final EIR.
- (I) Certify and adopt the final EIR by May 1, 1993.