



Reference: 011184

September 20, 2013

Ms. Jennie Short  
Garberville Sanitary District  
PO Box 211  
Garberville, CA 95542

**Subject: Response to Comments, Garberville Sanitary District Annexation Project**

Dear Jennie:

SHN Consulting Engineers & Geologists, Inc. has been requested to review comments and provide a response to comments to the Initial Study/Mitigated Negative Declaration (IS/MND) for the *Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary and Place of Use* prepared in May 2013 for the use of the Garberville Sanitary District (GSD) Board as the lead agency in making a decision.

Notably, pursuant to the California Environmental Quality Act (CEQA), GSD is only required to *consider* comments received during the public comment period, rather than provide a written response to each comment (Pub. Resources Code, § 21091, subs. (d), (f); CEQA Guidelines, § 15074, subd. (b)). At the District's request, SHN has reviewed the comments and prepared a summary list of the general comments received during the public review. Instead of giving each comment a numerical designation, the comments are summarized by the environmental issues raised and/or changes to the project. Comments that are speculative in nature or that simply express concern or make generalized inquiry are not included. Each comment is italicized with the response below.

1. *The history of water service to the Southern Humboldt Community Park (SHCP).*

The IS/MND acknowledges the history of the SHCP connections on pages 4 and 5. Even though the goal of the project is to update the Humboldt Local Agency Formation Commission (LAFCo) approved jurisdictional boundary (boundary) and State Water Resources Control Board (SWRCB) Place of Use (POU) with the areas of historical water service provided by GSD or Garberville Water Company (GWC), the annexation area at the SHCP has been removed from the project. Any future changes or requests by the SHCP will be considered at that time. Additionally, the GSD took action on October 9, 2012, to provide conditions to be applied to an approval of any future annexation application for the SHCP. This is described on pages 23 through 26.

2. *The proposed uses at the SHCP and pending draft Environmental Impact Report (EIR). There is concern about different project descriptions available to the public.*

The Final IS/MND acknowledges the SHCP project on pages 23 through 26 and Attachment 4 as a project considered within the cumulative impact analysis for this annexation project. The Final IS/MND includes the project description included in the Notice of Preparation (NOP) to prepare an EIR and the one provided to Humboldt LAFCo and GSD staff in February 2013. The schedule of the Draft EIR and project description was confirmed with Humboldt County Planning and Building Supervising Planner, Michael Richardson on July 19, 2013. According to Mr. Richardson, the SHCP project as stated in the NOP is the project that will be analyzed in the Draft EIR with the

exception of the multifamily housing. Any modification to the project description described in the NOP will be addressed in the SHCP EIR's alternative analysis. The Draft EIR is currently scheduled for September 2013, rather than summer 2013, as stated in the IS/MND. Throughout the IS/MND, the impacts of the future SHCP project are discussed in the context of the potential for cumulative impacts within the proposed annexation area in conjunction with this annexation project to the extent that the SHCP project pertains to that impact topic.

*3. Lack of a Water Capacity Study.*

The Final IS/MND includes information regarding available water supplies. During discussions with the SWRCB Department of Water Resources (DWR) and Humboldt LAFCo, it was determined that a water capacity study was not necessary; therefore, a formal analysis was not prepared. The District had evaluated the available water sources for the Draft IS/MND, but only an overview of the information was included in the Draft. This more detailed information pertaining to water supplies, existing and future consumption, and remaining available water supply was included in the Final IS/MND in response to the comments received. This can be located on pages 12 through 17. Furthermore, the Final IS/MND evaluates the potential water consumption of future development within the project area. This can be found on pages 72 through 76 in the Final IS/MND.

*4. Lack of discussion regarding cumulative environmental impacts from several projects by GSD that have been constructed, are currently under construction, or are in the planning phase.*

The Final IS/MND includes a cumulative impact methodology on pages 19 through 26 and impact analysis under each category throughout the Environmental Checklist.

*5. The potential difficulty with enforcement of "islands of service" on Assessor's Parcel Number (APN) 223-061-025 and potential future service on APN 223-061-012.*

APN 223-061-012 is not a part of the annexation project. Enforcement of the planning and building regulations is conducted by the Humboldt County Planning and Building Department and outside the scope of a CEQA document. Enforcement of the Place of Use is conducted by the SWRCB, which is evidenced by the current Cease and Desist Order that addresses water service outside the existing POU.

*6. The history of water service to the Connick Creek Subdivision.*

The history of service to the Connick Creek Subdivision is included on pages 7 and 8. It is understood that GSD did not inherit these water connections from the GWC. Rather, these connections were served from a water line constructed by property owners associated with the Connick Creek Subdivision from a master meter with GWC, GSD, and County approval. In 2010, GSD entered into an agreement with Connick Creek Subdivision for provision of these services.

*7. Concern that this project is being used to legitimize illegal hookups.*

In 2004, when the GSD acquired the GWC, there were water services outside the existing GSD boundary, as well as some services that were outside of the 1978 GWC Public Utility Commission-approved "Service Area" and the POU for the license and permit (see Figure 3 in Attachment 1 for

locations). The GSD has continued service to all existing and historical customers, even if they were outside the GSD boundary or POU. As a result, water services were extended and have continued to be provided to areas for which GWC and subsequently GSD did not have approvals. The objective of this project is to update the current boundary and SWRCB POU with the areas of historical water service provided by GSD or GWC. This project generally proposes water or sewer services in areas currently receiving water or sewer service, areas approved for development, and/or an area within existing developed areas. Notably, for the purposes of the analysis in the IS/MND, it is immaterial that GSD has been providing service that is arguably unauthorized because it is outside of its jurisdictional boundary and permitted POU; CEQA is only concerned about environmental conditions associated with such existing service (*Riverwatch v. County of San Diego* [1999] 76 Cal. App. 4th 1428, 1442-1453; *Fat v. County of Sacramento* [2002] 97 Cal. App. 4th 1270, 1280-1281[ongoing operation of unpermitted airport]). See our response to Comment 12 for a discussion about appropriate baseline to conduct the CEQA analysis.

8. *Request to include the Rivercrest Mutual Water System into the proposed GSD boundary.*

In the future, GSD could consider the potential for serving the areas associated with the Rivercrest Mutual Water System. This subdivision is not an area that GSD currently serves and expansion into new areas of service is not within the bounds of this project's purpose. If the Rivercrest Mutual Water System desires to pursue consolidation with GSD for service, those properties would need to approach the District with further details on the proposed consolidation, at which time the District could evaluate the viability for such a consolidation. Any future consolidation would require another CEQA analysis and approval by LAFCo for the services and the SWRCB to change the POU.

9. *Inclusion of APN's 032-063-001 and APN 032-151-004 into the proposed jurisdictional boundary.*

These two APNs are very steep and adjacent to the Eel River. These parcels are not currently served, and services are not expected to be extended to these areas. These areas were not included in the public review of the IS/MND. In discussions with GSD staff Jennie Short, it was concluded that these parcels do not have any future potential for service and should not be annexed into the GSD boundary.

10. *Use of existing property lines as much as feasible for boundaries, instead of "pockets" of service within a parcel. Approval of "pockets" could be approved by the Humboldt LAFCo as "outside agency services."*

As discussed during GSD Board of Director meetings, GSD is aware that areas currently served that are not included as part of this project could be approved as "outside agency services" and understands that LAFCo may choose to approve these "pockets" using those policies instead of annexing the areas into the Jurisdictional Boundary. Because all areas served with water must be within the SWRCB POU, the District prefers to annex those areas so that the Jurisdictional Boundary and POU are consistent with each other.

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11. *The Humboldt LAFCo resolution regarding the Kimtu Meadows Subdivision will have to be amended if connections along Leino Lane and Sprowel Creek Road were to be transferred to the Kimtu line for service.*

The IS/MND acknowledges on page 6 that the LAFCo resolution will need to be amended. GSD anticipates the Humboldt LAFCo will address Humboldt LAFCo Resolution 10-06 during the processing of the annexation application.

12. *The project baseline should be when the GSD acquired the Garberville Water Company in 2004.*

This comment incorrectly contends that the environmental baseline was established when the GSD acquired the GWC. For the purposes of CEQA, the environmental setting, or baseline conditions for a project are determined to be the conditions existing at the time the environmental analysis is commenced when preparing an Initial Study or when the Notice of Preparation is published for an EIR. In this case, the environmental setting was established during the preparation of the Initial Study in 2012. To the extent the commenter objects to GSD's acquisition of GWC in 2004, the time for challenging the action under CEQA has passed. The statute of limitations for such a challenge is either 30 days after a notice of determination is filed or 180 days after the public agency decision or commencement of the project (Pub. Resources Code, § 21167; CEQA Guidelines, § 15112). In either case, the statute of limitations for a legal challenge of the GSD decision to acquire the GWC has expired.

13. *Preparation of an EIR or Programmatic EIR is to evaluate project impacts and to address future discretionary actions that has the potential to impact surface and groundwater. Specific areas of impact analysis for an EIR include: cumulative impacts, agriculture and forestry resources, biological resources, hydrology and water quality, and growth inducing impacts.*

The goal of the project is to update the current boundary and SWRCB POU with the areas of historical water service provided by GSD or GWC. As a result, there will be APNs included into to the GSD boundary that may be further developed under the current land use designation and zoning. However, this project proposes water or sewer services in areas currently receiving water or sewer service, areas approved for development, and/or areas with existing development.

The potential development of areas within the annexation area was discussed in the IS/MND on pages 27 through 29. Due to the nature of the project, the impact analysis was focused on the potential impacts from the development of vacant or underused parcels. In this regard, the Final IS/MND analyzes impacts from potential development based on the zoning and land use, regardless of existing water or sewer services. It was determined that the project impacts are less than significant with mitigation incorporated.

New development would be subject to the standard development application and development review requirements and procedures required by Humboldt County and state and federal agencies. All discretionary development applications (conditional use permits, tentative subdivision applications, etc.), as well as all routine ministerial applications (building permits, business license applications, etc.) in the proposed annexation area would continue to be subject to all established County development review procedures, including review by the County's Planning and Building Department for compliance with all applicable County-adopted General Plan, zoning, and other

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applicable policies and regulations pertaining to development. To address impacts from unknown potential development, mitigation measures were included in the Final IS/MND to ensure that GSD maintains sufficient water supplies.

The Final IS/MND also uses the appropriate standard to determine environmental impacts. The significance of the impacts on "human beings" discussion pertains to a question from the environmental checklist under the "Mandatory Findings of Significance," *"Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?"* It is unclear how this was interpreted to represent the basis for the entire project analysis.

Not only was an EIR requested by some of the comments, but also a programmatic EIR. Program EIRs are prepared to address a series of actions by a plan or project, such as, a phased development or General Plan. In this case, no other subsequent project by GSD is anticipated. GSD does expect responsible agencies (Humboldt LAFCo and SWRCB), as defined by CEQA, to rely on the impact analysis in order take action on permit applications. Furthermore, the comment does not describe the other discretionary actions that will result from the project. CEQA does not require analysis of speculative or unknown projects.

Please call me at 441-8855 if you wish to amend any part of this response.

Sincerely,

**SHN Consulting Engineers & Geologists, Inc.**



Rosalind Litzky  
Environmental Planner  
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RRL:lms