



GARBERVILLE SANITARY DISTRICT

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February 10, 2020

Ed Voice
PO Box 572
Nice, CA 95464

**SUBJECT: RESPONSE TO PROTEST
GSD PETITIONS FOR CHANGE IN PLACE OF USE ON LICENSE 3404 AND PERMIT
20789 (APPLICATIONS 9686 and 29981) OF GARBERVILLE SANITARY DISTRICT,
SOUTH FORK EEL RIVER IN HUMBOLDT COUNTY**

Dear Mr. Voice:

The Garberville Sanitary District received a protest filed by Ed Voice and Family for the petitions for change in place of use on License 3404 and Permit 20789. In accordance with Water Code sections 1700 et seq. and from California Code of Regulations, title 23, sections 796 and 745 et seq., the District is providing an answer to the allegations contained in the protest. The District has reviewed the protest to determine what the protestant's objections are to the approval of the petition and the basis for these objections.

For environmental protests: Any protest based on an allegation that the proposed appropriation would not be in the public interest, would adversely affect public trust uses, or would have adverse environmental impact must be accompanied by a statement of facts supporting the allegation. No such statement of fact was provided in the protest that identified or documented specific impacts on issues such as plants, animals or fish affected, erosion, pollution, or aesthetics, etc. from the proposed action of changing GSD's place of use to include a small portion of the Southern Humboldt Community Park (SHCP). The only complaint appears to be that the extensive CEQA analysis was completed "piecemeal". There seems to be no specific environmental issue identified or any impact, the comments appear to only address the environmental process used as opposed to the outcome of the process.

The following California Environmental Quality Act analyses have been performed for the proposed project and/or the project site, these documents have been prepared, and actions taken by the agency with jurisdiction:

- Notice of Determination filed by the Garberville Sanitary District for Final Mitigated Negative Declaration for Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary & Place of Use dated Sept 2013 on September 24, 2013.
- Notice of Determination filed by HLAFCo for Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary & Place of Use filed on July 17, 2014.
- Notice of Determination filed by State Water Resources Control Board - Division of Water Rights for Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary & Place of Use filed on October 11, 2013.
- Southern Humboldt Community Park Final Environmental Impact Report (EIR) (SCH#2010092037), November 2016
- Southern Humboldt Community Park Draft EIR (SCH#2010092037), April 2016

- BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA Adopted RESOLUTION NO. 17-35 on April 25, 2017: RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED SOUTHERN HUMBOLDT COMMUNITY PARK PROJECT, AND ADOPTING THE ASSOCIATED MITIGATION AND IMPLEMENTATION MEASURES, THE MITIGATION MONITORING AND REPORTING PROGRAM, THE FINDINGS OF FACT AND A STATEMENT OF OVERRIDING CONSIDERATIONS (CASE NUMBERS GPA-10-02, ZR-10-02, CUP-10-04, SP-10-10 ASSESSOR PARCEL NUMBERS: 222-091-014 AND 222-241-009
- Notice of Determination filed by the County of Humboldt for the Final EIR.
- Humboldt LAFCo Notice of Determination dated Sept. 23, 2019 for the Addendum to CEQA Initial Study/Mitigated Negative Declaration dated Sept 2019 filed on September 23, 2019. This Addendum was prepared by HLAFCo and “evaluates whether proposed minor modifications to GSD’s jurisdictional boundary and Place of Use (POU) would result in any new or substantially more adverse significant effects or require any new mitigation measures not identified in the 2013 IS/MND.”

The deadlines for filing a challenge to the actions have expired for these Notices of Determination. Public comments were received and considered numerous times throughout these CEQA processes prior to each lead or responsible agency’s action. There were no challenges filed for any of these CEQA actions. You provided public comments into each of those public environmental review processes and had the opportunity to challenge the lead agency’s decision at that time.

HLAFCo’s 2019 Addendum to CEQA Initial Study/Mitigated Negative Declaration dated Sept 2019, states in part, *“As verified in this Addendum, the 2013 IS/MND analyses and the conclusions remain current and valid. The proposed service extension would not cause new significant effects not identified in the 2013 IS/MND nor increase the level of environmental effect to substantial or significant, and, hence, no new mitigation measures would be necessary to reduce significant effects. No change has occurred with respect to circumstances surrounding the proposed project that would cause new or substantially more severe significant environmental effects than were identified in the 2013 IS/MND. In addition, no new information has become available that shows that the project would cause new or substantially more severe significant environmental effects which have not already been analyzed in the 2013 IS/MND. Therefore, no further environmental review is required beyond this Addendum.”*

The District fully agrees with HLAFCo’s conclusion.

In an effort to fully answer the concerns the protestant raises, the District is providing the following detailed explanation for each of the 11 numbered “COMMENTS” in the protest. Each numbered comment is copied directly from the memo from the protestant with the District’s response to follow.

COMMENT 1

1. Nothing included in the SHCP Final EIR addressed, analyzed or mitigated the existence of past or future water service from GSD. In fact, it’s stated in the addendum, page 16: *“However, the 2016 EIR did not consider potential connection to GSD for potable water supply”*. Items included in this addendum have been cherry picked and “piecemealed” only using selected parts of the SHCP EIR, then cobbled together using selected parts of the GSD Annexation IS/MND. for which this addendum was created and embellished.

The Addendum to the Annexation IS/MND was prepared by HLAFCo and *“evaluates whether proposed minor modifications to GSD’s jurisdictional boundary and Place of Use (POU) would result in any new or substantially more adverse significant effects or require any new mitigation measures not identified in the 2013 IS/MND”*. It references and incorporates the analysis from the Park’s DEIR and FEIR prepared by the County of Humboldt. HLAFCo’s conclusion was *“As verified in this Addendum, the 2013 IS/MND analyses and the conclusions remain current and valid. The proposed service extension*

would not cause new significant effects not identified in the 2013 IS/MND nor increase the level of environmental effect to substantial or significant, and, hence, no new mitigation measures would be necessary to reduce significant effects. No change has occurred with respect to circumstances surrounding the proposed project that would cause new or substantially more severe significant environmental effects than were identified in the 2013 IS/MND. In addition, no new information has become available that shows that the project would cause new or substantially more severe significant environmental effects which have not already been analyzed in the 2013 IS/MND. Therefore, no further environmental review is required beyond this Addendum.”

Humboldt County Planning and Building Department Supervising Planner for Long Range Planning Michael Richardson responded to HLAFCo’s Notice of Filing: Garberville Sanitary District Water Service Extension in an email on August 16, 2019. Mr. Richardson states in part:

“My understanding is the project involves all the following components:

In GSD’s 2018 Water Capacity Study, GSD accounted for the connection of SHCP to their system at a level of 2,000 cubic feet per month (approximately 15,000 gallons per month) from their existing water diversion from the South Fork Eel River. In the past, the GSD has documented their plans to connect the SHCP to the GSD system once they had completed the environmental review of General Plan Amendment, Zone Reclassification, Conditional Use Permit and Special Permit for the SHCP project.

GSD & SHCP will execute an agreement prior to the connection being installed clearly laying out the conditions of service. The agreement will state that the meter will be turned off should the conditions be violated. Resolution 19-02 was adopted by the GSD Board in June, 2019 which describes all the conditions of approval for the connection that will be made part of the agreement between the SHCP and the GSD.

The GSD’s IS/MND for their 2012 Boundary Change application and the GSD’s 2018 Water Capacity Study document that the GSD has set aside sufficient quantity of water from their existing sources to provide the amount of water to the SHCP specified in the proposed agreement between GSD and the SHCP.

The GSD will not need to cultivate any additional water sources nor water treatment or distribution infrastructure for the proposed connection. To connect the GSD service to the SHCP waterline infrastructure GSD will require installation of a meter adjacent to the existing 8" water main directly upslope from the SHCP site and connection to the existing SHCP waterline at Tooby Ranch Road on the SHCP property. There will be minimal ground disturbing activities needed to establish this connection and it will all be within the existing road right of way of Tooby Ranch Road.

If my understanding of the project as presented above is correct, **the proposed new water service provision from GSD to the SHCP is of such a minor nature that it does not raise any major issues for our agency.**”

GSD, the County Planning Department, and HLAFCo all agree that the existing CEQA analysis is sufficient and that there are no major issues that need to be resolved prior to GSD extending water service to SHCP.

COMMENT 2

2. Just because the GSD included the SHCP project in GSD Annexation IS/MND as an informational item only, i.e. "Other Projects in the Garberville Area", does not mean it addressed, studied or analyzed under CEQA, because it was not. In fact, as of June 18, 2019, GSD has now increased the area to be served with this new water service connection (Place of Use) within the SHCP property, compared to what was only mentioned in the GSD Annexation IS/MND. GSD has increased the area of use by more than 3 times and added more access and use of water for non-residential and non-domestic use in those new designated areas within the SHCP property boundary, that are only intended for private commercial events, public assembly, fundraisers, concerts, festivals, new private development and now allowing 800 to 5000 visitors a day per event. How were these changes analyzed under CEQA in the GSD Annexation IS/MND? Answer: They were not.

The water allocation analysis in the Addendum was based upon the limitations stipulated in the Water Service Agreement (WSA) that was prepared by the District's Legal Counsel, approved and signed by both parties, and will be recorded against the Park property's title. The Annexation IS/MND analyzed the same volume of water to the same property as part of that analysis. The WSA clearly details the locations, type of use, and monthly quantity of water allowed to be used at the SHCP before the water service is turned off. This agreement has been executed by the GSD Board of Directors and the SHCP Board of Directors and is fully enforceable in court should that become necessary. The Addendum was based upon this exact information and fully evaluated these "changes" in so far as they reflect existing conditions specified in the WSA.

The types of uses that the water is allowed to be used for are stipulated in the WSA and do not include the range of projects listed in comment # 2. WSA paragraph 5 states in part, *"shall be used for residential purposes only at the existing facilities and for public recreation drinking fountain uses, as described in Section 1 of this Agreement, and shall not be used to serve future development on the SHCP Property. Any proposed water usage for future development purposes on the SHCP Property will be evaluated by the District based upon the District's available water supply at such time as SHCP requests any expanded uses and shall require subsequent written approval by the District, the County of Humboldt, annexation into the jurisdictional boundary by Humboldt LAFCo, and all governmental agencies and regulatory bodies having authority over such usage. SHCP expressly acknowledges that nothing in this Agreement shall constitute the District's express or implied consent or ability to provide water service to any structures or areas on the SHCP Property other than those existing structures identified in Section 2 of this Agreement. Water service shall not be extended to other structures on or portions of the SHCP Property without the prior written approval of GSD, which can be granted or denied in GSD's exclusive discretion."* It is very clear that the GSD water can't be used for future development on the parcel, even within the area proposed for service, without additional approvals.

Regardless of the "area" served which was clearly delineated on Exhibit "A" page 18, the allocation for the 2,000 cubic feet per month was analyzed in the 2013 Annexation IS/MND and again in the 2019 Addendum. The District has the authority to divert up to 80 million gallons per year from the river. The SHCP's 24,000 cubic feet (180,000 gallons) per year is 0.2% of this total and thus is inconsequential.

COMMENT 3

3. In the SHCP Final EIR response to comments, it was made abundantly clear, the only use and source of water intended for use on the SHCP property came from the SHCP's own private onsite water sources, "adequate supply of potable water", it did NOT include a water source from GSD.

The District has acknowledged that it would have been ideal if the SHCP FEIR had listed the District as one of the possible potable water suppliers. The Addendum was prepared because the DEIR and FEIR did not list GSD as a potable water supply for the Park's project.

COMMENT 4

4. As Jennie Short stated, addressing the GSD Board on June 18, 2019; she acknowledges the elephant in the room: ***"The fact that GSD as a water source was not included in the Park's EIR was unfortunate and that would have been ideal if that had been done."***

See response to Comment 3 above.

COMMENT 5

5. As explained from the SHCP FEIR Response to Comments to the DEIR (SCH# 2010092037), in part they state and confirm the following:

(a) Re: LETTER B3 Humboldt Local Agency Formation Commission B3-1

"The commenter correctly describes much of the history of the potential annexation of the project site into the Garberville Sanitary District (GSD). However, since the site was excluded from the 2014 annexation process by GSD, the project applicant has moved on to address the park's water needs. The applicant completed a water supply and demand analysis, which showed there are adequate water supplies within the control of the applicant to develop the project. Further, the project includes a proposal for the use of an upland well as part of the overall water supply strategy. Water withdrawn from this well would not affect flows on the South Fork Eel River, which would be the case for water supplied from GSD. Thus, the proposed system of providing water from a range of sources available to the applicant is more environmentally beneficial, and annexation to GSD is not necessary."

(b) Re: LETTER B4 Garberville Sanitary District B4-1

"The commenter states that the project should not provide potable water to the public unless the project site is annexed to the Garberville Sanitary District (GSD), which would provide potable water. As discussed in Section 4.17, Utilities and Service Systems, of the DEIR, the project would have adequate supplies of potable water; thus, annexation to GSD is not necessary. The commenter repeats the flow mitigation measures included in the DEIR as a possible condition for future GSD water use. Since these mitigations are already included in Mitigation Measure BIO-5, there is no need for the project to connect to GSD to follow these diversion limits. Lastly, the commenter presents a concern about future connection to the GSD sewer system. The project does not include a proposal to connect to the GSD sewer system."

(c) Re: LETTER C6 Saxton & Associates C6-21

"Annexation to GSD has not been proposed as part of the project and was not included as a mitigation measure because it was found that adequate water could be provided to the site without annexation. If annexation were to occur at a future date, further environmental review may be required. See the responses to Comments B3-1 and B4-1 regarding annexation to GSD and comments submitted by the Humboldt Local Agency Formation Commission (LAFCo) and GSD."

As you state in #4, the District has acknowledged that the FEIR did not state that potable water would come from the Garberville Sanitary District. That is why HLAFCo prepared the Addendum to the Annexation IS/MND and referenced the analyses from the DEIR and FEIR prepared by the County of Humboldt. HLAFCo's conclusion was *"As verified in this Addendum, the 2013 IS/MND analyses and the conclusions remain current and valid. The proposed service extension would not cause new significant effects not identified in the 2013 IS/MND nor increase the level of environmental effect to substantial or significant, and, hence, no new mitigation measures would be necessary to reduce significant effects. No change has occurred with respect to circumstances surrounding the proposed project that would cause new or substantially more severe significant environmental effects than were identified in the 2013 IS/MND. In addition, no new information has become available that shows that the project would cause new or substantially more severe significant environmental effects which have not already been analyzed in the 2013 IS/MND. Therefore, no further environmental review is required beyond this Addendum."*

The District agrees with HLAFCO's conclusion and has forward the completed CEQA documents to the SWRCB-DWR for their use on this petition. **The bottom line for CEQA is that ultimately it will be up to the SWRCB to determine if our CEQA is sufficient to inform their decision on the petition as a responsible agency. If they concur with HLAFCo, the County, and GSD, then they will file their own Notice of Determination as a responsible agency prior to taking their final action of approving the petition and amending the permit and license's place of use.**

COMMENT 6

6. As stated, there was no review, study, mitigation or findings that disclosed or discussed using a metered water connection from GSD in conjunction or included within the SHCP EIR project or property. And or what direct or indirect effect it would have on the environment. Nor does the Final SHCP CEQA EIR disclose, discuss or analyze the past or future existence of potable water provided by either the Garberville Water Company (past) or GSD (future) and was NOT considered by the Planning Commission or Humboldt County Board of Supervisors through the Humboldt County

General Plan Amendment process. By what method did the GSD Board surmise that this new water connection was included in the Parks EIR? Answer, they did not.

The District never stated that the FEIR contained the water connection analysis. The FEIR does not need to analyze it because the Addendum was prepared to perform this analysis. The Addendum incorporates the analysis within the DEIR and FEIR for water demand and evaluates that water demand within the framework of the Annexation IS/MND and metered connection from the District. Michael Richardson's quote above provides context for why the County requires no addendum to the FEIR.

COMMENT 7

7. Included in the addendum (Exhibit "E") every one of those 25 pages of mitigation measures are from the SHCP EIR (SCH# 2010092037), not the GSD IS/MND Annexation (SCH # 2012032025). If that is not "piecemealing". I don't know what is.

The Addendum was prepared to incorporate the analysis in the DEIR and FEIR for water demand and evaluate it within the framework of the Annexation IS/MND. The mitigation measures for the Annexation IS/MND were already in the original document being addended.

COMMENT 8

8. The SHCP was excluded from the GSD Annexation IS/MND process, from which this addendum was conceived and created. But yet GSD is now using this same GSD Annexation CEQA IS/MND the SHCP was excluded from to now be included without being annexed 6 years after the fact, with no rhyme or reason, other than they did not include this same information into the SHCP EIR.

The SHCP was not proposed for Annexation in the IS/MND, but the water demand allocation for the future connection of the SHCP once the SHCP had completed their CEQA documents **was** included in the IS/MND. The impacts of this water allocation to SHCP were analyzed in the Garberville Sanitary District Final Recirculated Initial Study/Mitigated Negative Declaration dated Sept 2013 and reconfirmed in the addendum completed by HLAFCo. HLAFCo's Addendum states in part "*In 2013, GSD completed an IS/MND to support the addition of areas that were being served by the Garberville Water Company system, purchased by GSD in 2004, to GSD's jurisdictional boundary and POU. The 2013 IS/MND included a discussion of historical water service to SHCP by means of an existing meter located on an adjacent parcel and stated that GSD would consider future extension of water service to the park. As such, water service to SHCP was included as part of the cumulative impact analysis for the IS/MND which takes into consideration anticipated future projects. Water supply to the park was also included in GSD's total water allocation that was used for analysis in the 2013 IS/MND.*"

COMMENT 9

9. If GSD and Humboldt LAFCo are going to "piecemeal" this addendum by using two different CEQA documents from two different projects with two different lead agencies and combine them into one, where is the addendum to the SHCP EIR (SCH# 2010092037)! Answer, they did not require one.

You are correct; the County of Humboldt did not require an addendum to the FEIR because it is not necessary. See quote from Michael Richardson in comment 1 answer.

COMMENT 10

10. And I would like to dispute what was stated by GSD in their opening remarks (first paragraph page 1) and cover letter submitted with this Change Petition, where it states, in part:

"At one time this property was a GSD water customer, but was not within our Place of Use. Service to the property was discontinued and we would now like to reinstate it."

Please see Attachment 1, included in my protest packet. It includes detailed information of the extent of what GSD is referring to as a ***"one time...GSD water customer"***. In fact, the truth is the SHCP illegally tied into a nearby potable waterline, without notifying GSD of its connection and water use. The reason they were originally included in the GSD Annexation process was to be included into the GSD jurisdictional boundary, place of use and have a legal water connection from GSD. However, for reasons that are not abundantly clear or were never publicly disclosed, GSD excluded the SHCP from the Annexation process (as stated above from item 5(a)), and remained outside the GSD SWRCB-DWR POU and jurisdictional boundary with no legal water connection.

Regardless of the convoluted history of the connection, the District considers the SHCP to be an historic water customer as they have paid bills and received water from the District in the past. If the waterline serving their lands had not been leaking, then they would have continued to receive water from the District and they would have been included in the previous annexation and change in place of use from 2013.

COMMENT 11

11. As stated in the Response to Comments, Garberville Sanitary District Annexation Project SCH # 2012032025 (see Attachment 2), it states, in part from item 1:

"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."

And item 2:

“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.”

The key words in this characterization are ***“discussed”*** and ***“potential”***, not addressed, analyzed, studied or mitigated. The question(s) should be; did the SHCP expand or increase its scope, sheer size, development and increased water demand where the SHCP NOP or GSD Annexation IS/MND left off (2010/2013) as stated in item 2? Answer, YES, by a considerable amount!

And since the SHCP DEIR/FEIR expanded its project beyond what was denoted during the SHCP NOP (2010) and again to GSD in 2013 by the lead agency (Humboldt County), were these new impacts and effects to the environment addressed, analyzed, studied or mitigated in conjunction with the GSD Annexation IS/MND? Answer, NO!

And why is that, because as stated in item 1, ***“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.”***

So, besides piecemealing this Addendum together between the GSD Annexation IS/MND and SHCP EIR, what was ***“considered”***? Answer, nothing. Because nothing was addressed, analyzed, studied or mitigated under CEQA for the SHCP to have and use potable water from GSD. And as we know, this Addendum did not include or authorize the SHCP property be annexed into the GSD jurisdictional boundary by the Humboldt LAFCo Commission.

The answer to whether SHCP increased its scope or water demand from the District is that it has NOT changed since the 2013 Annexation IS/MND. The same 2,000 cubic feet per month is being allocated in the WSA that was analyzed under the Annexation IS/MND and reiterated in the 2019 Addendum and the 2018 Water Capacity Analysis report. The “Final Mitigated Negative Declaration for Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary & Place of Use dated Sept 2013” did not include a specific area within the SHCP parcel that the 2,000 cubic feet per month would be utilized. The Addendum prepared by HLAFCo did analyze the specific area (see Exhibit “A” on page 18 of the CEQA Addendum) and the specific proposed uses for the potable District water.

HLAFCo’s Addendum states in part *“In 2013, GSD completed an IS/MND to support the addition of areas that were being served by the Garberville Water Company system, purchased by GSD in 2004, to GSD’s jurisdictional boundary and POU. The 2013 IS/MND included a discussion of historical water service to SHCP by means of an existing meter located on an adjacent parcel and stated that GSD would consider future extension of water service to the park. As such, water service to SHCP was included as part of the cumulative impact analysis for the IS/MND which takes into consideration anticipated future projects. Water supply to the park was also included in GSD’s total water allocation that was used for analysis in the 2013 IS/MND.”*

HLAFCo filed the Notice of Determination on Sept. 23, 2019. There were no challenges filed for any of these CEQA actions. You provided public comments into each of those public environmental review processes and had the opportunity to challenge the agency’s decision after the Notice of Determination was filed. You did not challenge that action and now it is final.

The “out-of-area service connection” has already been approved by the HLAFCo when we received unanimous approval to provide water service to this property during the September 18, 2019

Commission meeting. You had the opportunity to file a reconsideration request and did not do so. The District is now petitioning to add the same area approved by HLAFCo to the Place of Use for the appropriate water license and permit.

In closing, I believe that this letter supplies the needed answers for your protest issues to be sufficiently resolved. The District along with HLAFCo and Humboldt County all agree that the CEQA process used is sufficient and no challenges to the actions were filed. If you have questions or need further information please contact Jennie Short at jmshort@garbervillesd.org or by phone at (707) 223-4567. All mailed correspondence should be sent to Garberville Sanitary District, Attn: Jennie Short, P.O. Box 211, Garberville, CA 95542.

Respectfully,



Ralph Emerson
GSD General Manager

JMS

Cc: State Water Resources Control Board
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