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**RE: EUREKA AND SHELTER COVE FISHING COMMUNITY  
SUSTAINABILITY PLANS: CALIFORNIA COASTAL ACT & PROTECTION  
OF SHELTER COVE SURFING RESOURCES**

Dear Dr. Richmond, Mr. Pontadelli, Mr. Bates, Mr. Tyburczy, Mr. Crider, Mr. Marks, Mr. Seemann, Ms. Dettmer, Ms. Bense-Kang, and Ms. Savage:

As a Humboldt County resident who has owned a commercial salmon troller, worked as a commercial fisherman in the early 1980's and been a lifelong saltwater sport fisherman, I can fully appreciate the potential economic benefits the Eureka and Shelter Cove Fishing Community Sustainability Plan ("Plan") being cooperatively developed by you and your organizations for our local fishing industry. There is much to like about the plan concept.

The Shelter Cove breakwater will undoubtedly become a subject of discussion in the course of the Plan's development, most likely in the identification of potential infrastructure improvements.

What remains of a rock reef located immediately south of the breakwater is known by surfers and locals as First Reef. A second reef south of First Reef lies seaward of the mouth of Deadman's Gulch; it is known as Second, or Deadman's, Reef. Waves formed when ocean swells pass over these reefs have been regularly ridden by generations of surfers who live locally or may have traveled from as far north as Crescent City and as far south as Fort Bragg. The quality of waves, relative isolation and beautiful natural setting attracts surfers from San Diego to Washington State and points in between seeking to enjoy the Shelter Cove surfing experience.

My primary purpose in writing this letter is to bring to your attention the history of public efforts to protect these surf breaks so that Plan developers understand from the outset that these reefs are protected as coastal dependent public trust resources by the State Coastal Conservation Act and policy interpretations based on California court rulings since the Act was passed in 1976.

#### BACKGROUND

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Construction of the breakwater, as it is currently configured, was partially completed in the mid-1970s by the marina owner Mario Machi then completed in the early 1980s by the Harbor District; it has been periodically reinforced and repaired since then. Much of the original breakwater was constructed from rock taken from First Reef's intertidal area. Removal of this rock irreparably harmed First Reef's surf break, substantially diminishing wave quality so that its waves are only suitable as a beginner's or older person's break. Still, First Reef remains

the Shelter Cove "family" break ridden by generations of surfing families.

In May 1977, the Humboldt Bay Harbor, Recreation and Conservation District wrote a Negative Declaration for completing construction of the breakwater and subsequently initiated application for a number of required regulatory permits<sup>1</sup>. The proposed source of rocks was Second Reef's intertidal area accessible by a loader.

As a result of minimal, some contend inadequate, public noticing of the Negative Declaration's Initial Study and Draft public comment periods and no outreach to the surfing community, the Harbor District's Initial Study received virtually no input from the surfing community addressing the lack of a description of environmental impacts on the quality of waves formed by the reef and opposing the project. The deficient but uncontested Negative Declaration was adopted (May 1977) and received by the State Clearing House shortly thereafter<sup>2</sup>.

A Coastal Development Permit was approved by the Coastal Commission's North Coast District Office in December 1978, as was assignment of the older 1874 permit, originally in Mario Machi's name, to the Harbor District<sup>3</sup>. The older permit allowed the taking of rock from Deadman's Reef in the intertidal area; the newer one did not.

By then news of the proposed project and permitting activity had become widely known within the surfing community and opposition was quickly developing. Surfers opposed the North Coast District's decision to approve the two CDP applications and were organizing a grassroots campaign to oppose the remaining Army Corp of Engineers ("ACOE") and State Lands Commission ("SLC") permit applications. They contended that the proposed rock removal would result in a serious deterioration of the quality of Deadman's waves and thus detrimentally effect the public's recreational use of a public trust resource. Over the next several months literally hundreds of North Coast surfers and their supporters mailed messages of opposition on post cards to regulatory agencies and signed petitions presented to them; representatives of local and statewide surfing organizations testified at numerous permitting agency public hearings and, submitted written comments, collected and compiled scientific data that bolstered their position, and hired an independent coastal engineer specializing in wave dynamics to perform an impartial impact analysis<sup>4</sup>.

Permitting agencies that received oral testimony and comments included the Army Corp of Engineers, North Coast District Coastal Commission staff, the State Coastal Commission, and the

State Lands Commission. Unfortunately these regulatory agencies' decisions were significantly influenced by the applicant's Negative Declaration, flawed as it was by the absence of input from the surfing community, carried legal weight. (Once the CEQA document was certified, the document could not legally be reopened for the purpose of taking into account significant impacts not previously identified during the document's Public Comment process.) Moreover, no legal precedent for protecting surfing resources under the Coastal Act existed.

That precedent would be set by the lawsuit that soon followed.

In late January or February 1979, after exhausting all procedural options to stop the project through the Coastal Commission permitting process - including losing a State Coastal Commission appeal of the North Coast District approval of the CDP<sup>5</sup> - project opponents sued the Coastal Commission and HBHRCD for not complying with the Coastal Act (the 1979 CDP) and approving assignment of an invalid permit (the 1974 CDP).

An out of court settlement in late 1979 allowed the Harbor District to remove a much smaller number of specifically identified rocks from a significantly reduced area below mean higher high tide than had originally been proposed. In return, the Harbor District agreed to the following: (1) Amendment of the 1978 CDP with these and other conditions (approved January 17 by NCD, adopted February 14 by the State Coastal Commission); (2) amendment of the Harbor District's Negative Declaration by the SLC with addition of conditions identical to those in the amended CDP (dated February 25, 1980); (3) invalidation of the 1974 CDP; amendment of the SLC permit (dated February 28, 1980) by addition of the same conditions as those added to the Negative Declaration.

Shortly after the permit conflict was resolved one of the opposition leaders, Thomas Pratte, moved south to his hometown Huntington Beach and within a year of moving had organized the nascent Surfrider Foundation. In ensuing years Surfrider fought several breakwater projects in successful lawsuits that established surf breaks as public trust resources protected by the Coastal Act from uses that compromised the quality of waves they produced. The 1979 Deadman's suit outcome laid precedent-setting groundwork<sup>6</sup>.

Provisions in the Harbor District's 1983 CDP<sup>7</sup> for breakwater repair work further defines state policy protecting Deadman's reef as a coastal dependent public trust resource and its recreational use under the Coastal Act.<sup>8</sup>

One of the surfing public's points of contention in the 1979 - 1980 permit conflict was that suitable rock for the project

could be obtained from local quarries and trucked to the breakwater site at a not unreasonable cost, thus providing a practical alternative to a damaging use of the reef resource. The alternative was dismissed by the Harbor District as infeasible logistically and from a cost perspective. It is important, therefore, to point out that the 1983 CDP required rock used to repair the breakwater to come from local quarries. The most recent permitted repair of storm-related damage to the breakwater<sup>9</sup> used locally quarried rock trucked to the rehabilitation site (at a cost within the range of what had been originally estimated by surfing advocates in 1979). More about the CDP for this work follows.

In 2005, the Humboldt Bay Harbor, Recreation and Conservation District began applying for permits for several Shelter Cove harbor repair and construction projects, including breakwater "rehabilitation". Of the three action alternatives proposed in the CEQA document's Initial Study circulated for public comment, the preferred Alternative - #3 - would have not only repaired the breakwater, but would have extended it significantly. Work in the next preferred alternative - #1 - would not alter the breakwater's footprint.

All three of the action alternatives specified the breakwater was to be rebuilt with off-site sourced quarried rocks; this reflected policy changes and judicial rulings made since 1980.

Extension of the footprint was opposed by surfers who were concerned the extension would negatively impact the quality of First Reef waves and waves that occasionally formed by large swells at a break called The Rock (or Wash Rock), which lies in deeper water and closer to the breakwater. Concerns centered on the effects of the extension of wave refraction and deposition of sediment in the shadow of the breakwater. As a result of further analysis and public input from the surfing community, Alternative #1 - no extension - was designated the Preferred Alternative in the Harbor District's Final Environmental Impact Report<sup>10</sup> and was the basis for the conditions of the required Coastal Commission permit. That permit also specified that "new" rock for the breakwater repair project would be trucked in from local quarries, and sand deposits which collected inside the area protected by the breakwater could be periodically dredged so long as deposition was restricted to specified sites where there wouldn't be any negative impact on surf breaks.

It is important to point out that in suits brought by Surfrider over the past three decades the courts have consistently ruled against proponents of proposed development projects (notably breakwaters and groins) built near surf breaks and shown to

violate the Coastal Act because they would have a negative effect on the quality of waves formed by the break.

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PARTICIPATION OF THE SURFING COMMUNITY IN PLAN DEVELOPMENT

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In order to build stakeholder consensus around the Plan, it will be important for planners to be mindful of the concerns of surfers about negative impacts on Shelter Cove surf breaks, knowledgeable about past conflicts and acquainted with the current legal and policy constraints placed on activities that can be shown to be a threat to existing surf breaks.

If development activities proposed for enhancing the Shelter Cove fisheries are designed with the surfing community's active participation in the planning and design process and concerns are satisfactorily addressed, your plan will likely win the endorsement of the surfing community. In ending, I recommend that a representative of the surfing community have a seat at the table in any stakeholder process established to proactively collect public input to the planning process.

Sincerely yours,

Jud Ellinwood

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<sup>1</sup> Army Corp of Engineers Section 404 permit, assignment and amendment of existing State Lands Commission Permit PRC 1856.9

<sup>2</sup> SCH (State Clearing House) No. 77062142.

<sup>3</sup> Assignment of a 1974 Coastal Development Permit (NCR-74-C-174) and a new CDP (No. NCR-78-C-306) approved December 1978.

<sup>4</sup> Thomas Pratte, a leader of the opposition and an HSU Oceanography graduate, led a crew of Oceanography undergraduate volunteers that mapped the location of the reef rocks in the intertidal zone, measured their size and measured water depths over the rocks at all mean tide heights. An expert witness, Dr. James "Kimo" Walker, a coastal engineer specializing in the study of wave dynamics, was flown in from Hawaii to conduct an independent on-site assessment and present his findings as testimony to the State Lands Commission. His analysis supported the contention of project opponents. Details of testimony oral and written comments before the State Lands Commission are in the SLC's July 17 meeting minutes.

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<sup>5</sup> Appeal denied At the State Coastal Commission's January 16, 1979 meeting in Los Angeles.

<sup>6</sup> ***Excerpts from Findings and Declarations in the amended 1978 CDP:***

F. Surfing Resources: Section 30220 of the Coastal Act provides:

"Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses."

...In past permits, testimony on this application, and in hearings on this project before other agencies, Shelter Cove has been identified as an important surfing area. A large part of this surfing takes place over Dead Man's Reef, the borrow site for rock used in the construction of the breakwater and other project improvements...

F.3. "If additional rocks are required for completion of the project, they will be obtained from sources other than Dead Man's Reef and Point No Pass."

F.4. "Those portions of the reef unaffected by the rock removal will be maintained and protected as a surfing resource as required by the policies of Chapter 3 of the Coastal Act."

<sup>7</sup> No. 1-83-65A, granted April 14.

<sup>8</sup> ***Excerpts From Findings and Declarations in the 1983 CDP:***

F. Surfing Resources - Section 30220 of the Coastal Act provides: "Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses."

In testimony at the original permit hearings and in subsequent hearings on the appeal and before other agencies, Shelter Cove has been identified as an important surfing area. A large part of this surfing takes place over Dead Man's Reef, the borrow site for rock used in the construction of the breakwater and other project improvements. The project as proposed ensures that surfing resources at Dead Man's Reef will not be affected by the proposed amendment in that the rocks needed for breakwater repair and rock slope protection **will be imported from inland locations and will not be borrowed from Dead Man's Reef**[emphasis mine-JE].

<sup>9</sup> CDP No. 1-07-010, signed September 7, 2009.

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<sup>10</sup> Final Environmental Impact Report SCH No 2005042024. The Moffat and Nicol report – “Shelter Cove Breakwater Rehabilitation Project. 2006.”, which is appended to the 2009 CDP’s application, is a great source of background information – maps, historical information and analysis. Moffat and Nicols, a coastal engineering consulting firm, was hired to analyze the merits of the three project Alternatives identified in the Draft Initial Study and make a recommendation. They selected Alternative #1 over #3 because the cost of #3 was considerably higher, the additional benefits minimal and expansion of the footprint would result in the project being designated an “improvement” project as opposed to a “rehabilitation” project. **The Moffat and Nicol report concluded this would have required much more regulatory scrutiny and predictably result in more opposition during a more contentious and elongated public comment process** [Emphasis mine – JE].