Keeping Northwest California wild since 1977

April 9, 2012

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RE: Highway 197/199 STAA Access Project – Need for Supplemental Environmental Analysis

Dear Responsible Officials,

We are writing on behalf of the Environmental Protection Information Center ("EPIC"), a nonprofit organization based in Humboldt County whose mission is to protect and restore ancient forests, watersheds, coastal estuaries, and native species in Northern California. EPIC is opposed to the California Department of Transportation's ("Caltrans") proposed Highway 197/199 STAA Access Project because it will cause irreparable harm to the forests, watersheds and wildlife of our region.

EPIC asserts that Caltrans must undertake supplemental environmental analysis pursuant to the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act (CEQA") for the Highway 197/199 Project because of new information that was not analyzed in the previous documentation for the project. On April 4, 2012, the U.S. District Court for the Northern District of California ruled against Caltrans' STAA project slated for Highway 101 through Richardson Grove State Park. The court ordered Caltrans to correct its factual errors and analysis, and prepare a new detailed analysis that considers potential harm to the roots of each individual redwood tree in the project's path. This new information about Caltrans' deficient analysis of the STAA project through Richardson Grove State Park is directly applicable to the Highway 197/199 project because old-growth redwood trees will be impacted and because the two projects are related, warranting a cumulative impact analysis that takes both

of the projects into account. The court's order is attached to this letter.

Because Caltrans is standing in the shoes of a federal agency, Caltrans has a "continuing obligation" to gather and evaluate new information relevant to the environmental impact of its actions under NEPA. *See Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-24 (9th Cir. 1980) (citing 42 U.S.C. 4332(2)(A), (B); *Essex County Preservation Ass'n v. Campbell*, 536 F.2d 956, 960-61 (1st Cir. 1976); *Society for Animal Rights, Inc. v. Schlesinger*, 512 F.2d 915, 917-18 (D.C. Cir. 1975)). As the Ninth Circuit has explained, "an agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a "hard look" at the environmental effects of [its] planned action, even after a proposal has received initial approval." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557-58 (9th Cir. 2000) (*quoting Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 373-74 (1989)). New circumstances and information that come to light after a decision require the agency to issue supplemental NEPA analysis in an EA or an EIS under the CEQ regulations if this information is relevant to environmental concerns and bears on the proposed action or its impacts. *See* 40 C.F.R. § 1502.9(c)(1)(ii)); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372 (1989); *see also Sierra Club v. Bosworth*, 465 F.Supp.2d 931 (N.D. Cal. 2006).

CEQA also requires supplemental review, as this new information illustrates the potential for adverse environmental effects that have not been disclosed, analyzed and subject to public review. *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 392 (1988). Moreover, because CEQA has a substantive requirement, in the absence of a statement of overriding considerations, that all significant adverse impacts must be eliminated or mitigated to a level of insignificance, supplemental environmental is necessary to document that these all of these impacts and analysis are fully disclosed and mitigated.

Sincerely,

Gary Graham Hughes
Executive Director

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