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Re: Richardson Grove Operational Improvement Project – Draft Environmental Impact Report/ Environmental Assessment and Programmatic Section 4(f) Evaluation

Dear Ms. Floyd and Ms. Harmon,

Please consider the following comments on the proposed Richardson Grove Operational Improvement Project. I have reviewed the draft EIR/EA/4(f) evaluation and believe fundamental and fatal flaws exist. Context and feasible alternatives are missing, and a real analysis would reveal that this project is unnecessary and unwarranted. These and other issues are discussed below.

The purpose and need is narrowly defined, violating CEQA and NEPA and skewing the environmental analysis

As a threshold concern, I believe the purpose and need of the project is erroneous and ill defined, creating a fundamental problem that pervades the entire environmental analysis. The purpose and need statement of any environmental analysis is its most basic and primary component, forming both the foundation and framework for virtually everything else that follows. “The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 CFR § 1502.13 (emphasis added). According to the U.S. Department of Transportation, this statement “serves as the cornerstone for the alternatives analysis ... Care should be taken that the purpose and need

statement is not so narrowly drafted that it unreasonably points to a single solution.” FHWA 2003. <http://www.environment.fhwa.dot.gov/guidebook/Gjoint.asp>.

This guidance echoes federal requirements and rulings of the courts. For example, the Code of Federal Regulations requires that “Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” 40 CFR § 1502.2 (emphasis added). Courts have found that:

One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence) ... If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role.” *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664 (7th Cir. 1997); (see also, *Alaska Wilderness Recreation and Tourism Association v. Morrison*, 67 F.3d723 (9th Cir. 1995). (emphasis added).

Unfortunately, this is exactly the case here. Caltrans asserts that the “purpose of the proposed project is to adjust the roadway alignment so that two STAA trucks passing in opposite directions could be accommodated.” This defined purpose is so narrowly cast that it necessarily limits the resulting alternatives and analysis, thereby affecting the entirety of the EIR/EA.

While this may seem like a mere issue of semantics, the consequences are actually profound and cannot be overstated. For example, given the background and setting described and documents referenced by Caltrans, the underlying purpose and need described is not to accommodate STAA trucks on this particular section of this particular highway, but rather to improve the movement of goods into and out of the North Coast. 40 CFR § 1502.13. Improving the movement of goods could be accomplished through other means than the proposed action, but because Caltrans has crafted such a restrictive purpose and need, they have incorrectly identified the preferred alternative as the only viable solution. In other words, viable alternatives to improve the movement of goods into and out of Humboldt County exist, and these could very well cause less environment impacts – and could avoid impacts to Richardson Grove State Park altogether. However, Caltrans never considers such alternatives or gives them a “hard look” – as is required and deserved.

Caltrans provides a textbook example of a problematic purpose and need statement, crafting one that does not identify the causal need for the project but instead points to a single solution. Caltrans’ stated purpose and need is overtly restrictive, and serves only to justify decisions it has already made. This creates a fundamental and fatal flaw, skewing the entire environmental analysis and violating one of the most basic aspects of NEPA.

The analysis of project alternatives is incomplete and inadequate

While the purpose and need statement form the foundation and framework for both CEQA and NEPA analyses, the alternatives analysis establishes their hearts. The alternatives section is “the

core of an EIR,” and should “offer substantial environmental advantages over the project proposal.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564, 566). The lead agency must analyze a reasonable range of alternatives within a “rule of reason.” Caltrans fails to meet this standard in several ways.

First, the draft EIR/EA/4(f) fails to analyze a range of alternatives that are prudent, reasonable and feasible. When looking at the root purpose and need of the project— i.e. to improve the movement of goods – a range of potential solutions are available that Caltrans does not discuss or consider. And indeed, Caltrans is already proposing and pursuing three such alternatives – any and all of which would accommodate STAA trucks into and out of the North Coast.

Specifically, right now Caltrans is seeking to widen/realign Highway 299, Highway 199, and a different section of Highway 101 (north of Arcata). While I neither endorse nor sanctify any of these actions, it must be acknowledged that each and every one of them – singularly or together – would allow STAA trucks into and out of the North Coast.

Caltrans uses the same justification in each of the four distinct proposals, saying the projects are needed to accommodate STAA trucks. For example, in this draft EIR/EA/4(f), Caltrans states:

Northwestern California is one of the few remaining areas of the State that STAA trucks are not permitted. As these STAA vehicles have become the “national standard,” areas that do not have access for these trucks are at an economic disadvantage because truck cargos must be unloaded and transferred to shorter trucks coming into and out of the county, which results in making goods movement more expensive and less timely. In addition, many local businesses must maintain higher inventories due to erratic deliveries and damage during transfers. Local companies with major freight needs have relocated out of the area or gone out of business in part due to transportation problems.

However, in a glaring omission, the draft EIR/EIS/4(f) completely ignores the fact that any of the other proposals exist. It is as if Caltrans has somehow forgotten or simply failed to disclose to the public that STAA traffic would have access to the North Coast if any one or more of the four projects is completed. And by doing so, Caltrans fails to answer absolutely critical questions.

For example, is it necessary to complete all of the proposed projects, or even more than one? If the proposal for Highway 299 is approved and STAA trucks gain access on it, do STAA trucks still need access through Richardson Grove? After all, compared to Richardson Grove, Highway 299 is closer to the companies that Caltrans says need STAA access – and Highway 299 provides a faster, more direct route to Interstate 5, which is a more logical route to distribute goods. If both the Highway 299 and Richardson Grove projects are completed, how many of the “disadvantaged” companies would use Highway 101 instead taking Highway 299 directly to or from I-5? Any? A few? More than the number of businesses that would likely be adversely affected by the proposed project through Richardson Grove? Could impacts to irreplaceable

cultural resources, an ancient redwood grove and a state park be avoided if one or more of these other projects are approved? What are the cumulative effects of all four STAA proposals?

Both CEQA and NEPA intend for important questions like these to be analyzed and considered. But here, the other projects are never mentioned in the alternatives analysis or anywhere in the EIR/EA, for that matter. Caltrans acts as if each project exists in isolation or a vacuum. By doing so, Caltrans fails to give the context or facts needed to evaluate the proposal – and also fails to identify or assess reasonable alternatives to it. I believe the other three proposals are feasible and prudent alternatives to the proposed project and should be considered and evaluated as such.

4(f) determination fatally flawed

As Caltrans notes in the EIR/EA, “[t]he Secretary [of Transportation] may approve a transportation program or project . . . requiring the use of publicly owned land of a public park, only if . . . there are no feasible and prudent alternatives to using that land . . .” However, as discussed above, there are feasible and prudent alternatives to the proposal through Richardson Grove State Park. I believe that since those alternatives exist, federal law precludes the proposed project. 49 USC §303.

An EIS is necessary

Caltrans first attempted to get approval for this project under a negative declaration under CEQA. Only after much public persuasion and comment did Caltrans decided to prepare an EIR instead – but for reasons that are completely unknown and unclear, Caltrans elected to prepare an EA instead of a full Environmental Impact Statement under NEPA. Caltrans is proposing a project that clearly passes the threshold to prepare an EIS, and neither the EA nor its record support a Finding of No Significant Impact.

Whether you are a tourist visiting for the first time or a long-term resident returning home, driving through Richardson Grove State Park marks an unmistakable and defining entryway to the North Coast. At this point, the highway takes on a rural and very special feel to it, winding its way through magnificent ancient redwood trees. Although this was once the case for much of Highway 101 between San Francisco and Crescent City, it is now exceedingly rare, special, and nearly lost. Indeed, “rural” highways are becoming increasingly scarce throughout the state and nation.

At one point in the EIR/EA, Caltrans notes that “[w]hat distinguishes this segment of Route 101 from other highways is the way in which the roadway is threaded through the redwood forest, with trees very close to the edge of the pavement. The distinctive aesthetic experience of driving along this segment of Route 101 is important to the area residents and travelers . . .” While Caltrans tries to downplay the aesthetic impacts of the project proposal, if approved, it would fundamentally change the overall look and feel of the area as well as the experience one has on this unique stretch of highway.

I believe the proposed project would cause significant impacts to parklands [4(f) resources] and to the aesthetics of this rural highway – both short-term and permanent. According to federal law, in determining significance, officials must consider: “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.” 40 CFR §1508.27 (b) (3). Richardson Grove State Park is a national treasure. I believe proposed alterations to the park and the highway clearly pass the threshold of significance, triggering the requirement to prepare an EIS.

Caltrans also notes that an archeological site would be adversely impacted by the proposed project, perhaps even partially or completely destroyed. The site is described as “a shallow, dispersed lithic scatter that appears to date to 3,500 – 1,500 Before Present.” Harm to this cultural resource – and other cultural values of Richardson Grove State Park, is another reason Caltrans must complete an EIS.

Further, Caltrans “determined that the project ‘May Affect, and is likely to Adversely Affect’ Marbled Murrelet.” The marbled murrelet is continuing to decline in number and could go extinct in California during the next 50 years unless all measures are taken to protect it. The fact that the project is likely to adversely affect one of the most imperiled and iconic creatures of the North Coast persuasively argues for preparation of an EIS.

I am also concerned that the proposed project would damage the ancient redwoods of Richardson Grove and will eventually cause tree mortality along the highway. Although Caltrans does not propose to cut any ancient trees at this time, the construction and realignment project would break and otherwise harm the roots of the ancient redwoods, which are shallow and intertwined with other trees. Realignment is also likely to increase driving speeds along this stretch of highway and lead to more collisions with large redwoods. These impacts would be significant, and the required examination of the effects warrants preparation of an EIS.

Thank you for considering my comments. I trust that Caltrans will uphold its public trust duties and withdraw the EIR/EA/4(f) evaluation for Richardson Grove.

Sincerely,

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