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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TED SOUZA, an individual; **FRIENDS OF DEL NORTE**; **ENVIRONMENTAL PROTECTION INFORMATION CENTER**, a non-profit corporation; and **CENTER FOR BIOLOGICAL DIVERSITY**, a non-profit corporation,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF TRANSPORTATION; **MALCOLM DOUGHERTY**, in his official capacity as Director of the State of California Department of Transportation; the **NATIONAL MARINE FISHERIES SERVICE**; and **SAMUEL D. RAUCH III**, in his official capacity as Acting Assistant Administrator for Fisheries,

Defendants.

Case No. _____

COMPLAINT FOR VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT

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Plaintiffs TED SOUZA, FRIENDS OF DEL NORTE, ENVIRONMENTAL PROTECTION INFORMATION CENTER, and CENTER FOR BIOLOGICAL DIVERSITY, challenge final agency actions taken by Defendants CALIFORNIA DEPARTMENT OF TRANSPORTATION, MALCOLM DOUGHERTY, NATIONAL MARINE FISHERIES SERVICE, and SAMUEL D. ROACH III to approve and authorize a project captioned as "197/199 Safe STAA Access Project," as in violation of law, and allege on information and belief, except as indicated, as follows:

I. INTRODUCTION

1. This is a case of a road versus a river. Defendant California Department of Transportation ("Caltrans") plans to perform major roadwork along the pristine and ecologically important Smith River, in northwestern California. Neither Caltrans nor Defendant National Marine Fisheries Service ("NMFS") have come close to meeting their respective legal obligations to adequately analyze the proposed roadwork's environmental impact.

/ / /

2. Located in Del Norte County, the Smith River is the last major undammed river in California. The Smith River flows freely and naturally, for its entire length – the only major river system in California to do so. The Tolowa people named the river "Hiouchi," which means "Blue Queen," and the river's waters remain exceptionally clear and emerald-green.

Approximately 300 miles of the Smith River are designated wild and scenic, under the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 *et seq.*, more than any other river in our Nation.

3. While the Smith River and its basin are important and irreplaceable habitat for numerous animal and plant species, the clean, free-flowing river is a particularly important habitat of anadromous salmonid species.

4. The Smith River has been designated "critical habitat" under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1533, for the Southern Oregon Northern California Coast Evolutionary Significant Unit of coho salmon ("SONCC coho"), which the Federal government has listed as threatened with extinction under the ESA. More specifically, according to a recent study by NMFS, the Smith River supports a "functionally independent population" of SONCC coho that faces a "***high risk of extinction***," unless a number of stresses and threats currently facing the fish are not ameliorated; threats related to erosion, road runoff and other effects of roads and road building being high on the list of such stresses and threats. In fact, the study concluded that the Smith River population of SONCC coho "is likely below the depensation threshold (325 spawners)." In layman's terms, a depensation threshold refers to the tipping point of a population, a situation in which, because of low population numbers, a

population is not able to recover and replace individual animals that are lost from the population. In other words, the Smith River population of SONCC coho is so small that any loss of fish from the population substantially increases the likelihood that the population will collapse and disappear forever.

5. The Smith River has also been designated as an essential fish habitat ("EFH") for both coho and Chinook salmon under the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act"), 16 U.S.C. §§ 1801 *et seq*. In addition to coho and Chinook salmon, the Smith River and its watershed are home to many other animal species listed by the Federal government and/or California State government, including listed cutthroat trout, threatened green sturgeon, steelhead trout, and numerous reptiles, amphibians, mammals, and invertebrates.

6. Reflecting the invaluableness of the ecology of the Smith River and it environs, in 1990, the Smith River National Recreation Area was established to ensure the protection of the Smith River and the ecological diversity supported by its crystal clear waters and the lush coastal redwood forests along its shores and its surrounding hills. When Congressman Doug Bosco introduced legislation to establish the recreation area, he referred to the Smith River as "the Crown Jewel of California's Wild and Scenic Rivers." The U.S. Department of Agriculture and U.S. Department of the Interior designated the river a "key watershed" in the aquatic conservation strategy of their Northwest Forest Plan.

7. Within this pristine, fragile, and irreplaceable ecological context, Caltrans seeks to engage in major roadwork as part of its project to create a network of roads through coastal Northwestern California, along which large trucks, referred to as "STAA trucks," would be given unrestricted access along rural roads from Oregon to the San Francisco Bay ("NW California STAA Network").[1] Specifically, what Caltrans has named the "197/199 Safe STAA Access Project" (the "197/199 Project" or "Project") calls for major roadwork at seven locations along U.S. Highway 199 ("US 199") and California State Route 197 ("SR 197") (collectively, "Project Locations"). The five Project Locations along US 199 are within the narrow and windy Smith River Canyon, right above the Smith River. The two Project Locations along SR 197 are on the Smith River's bank, as the river leaves the mountains and expands into its estuary, the spawning grounds of the Smith River's highly vulnerable population of SONCC coho and an area of profound environmental sensitivity.

8. Caltrans claims the proposed work at these locations will improve safety. These claims are dubious at best. Indeed, there are substantial questions whether, in fact, the Project will significantly increase the risk of not only ecologically disastrous but also deadly accidents along SR 197 and US 199. In reality, the sole purpose of the Project is to reclassify these windy rural roads as routes on which large STAA trucks are allowed to pass without restriction, so that

[1] Another part of this project is the Richardson Grove Project, concerning which this Court, in a related action, *Bair et al. v. Caltrans,* No. 10-4360 WHA (N.D. Cal.), invalidated Caltrans' environmental assessment.

Caltrans can meet its long-term goal of a creating an alternate route to I-5 for large STAA trucks traveling North from, or South to, the San Francisco Bay.

9. US 199 and SR 197 are wholly inappropriate to be made part of an alternative route for large truck traffic. US 199 hugs the walls of the twisty and steep Smith River Canyon, through which the Smith River flows before turning North towards its estuary above Crescent City. SR 197 follows the river North as it expands into its estuary, an area where the river widens and its banks are covered in coastal redwood forests. The Project's goal is to make this twisty narrow road above one of the most unique and precious rivers in the U.S. a route for large trucks hauling everything from beer to petroleum, hay, and toxic chemicals.

10. Based on the Project's setting alone – along one of the crown jewels of the National Wild and Scenic River system, the only undammed river in California, designated critical habitat for a unique population of threatened SONCC coho salmon facing a high risk of extinction, designated essential fish habitat for both coho and Chinook salmon, and a major source of water and recreation for local residents and visitors alike – Caltrans, generally, and NMFS, specifically with reference to the SONCC coho and their critical habitat, should have taken a close and hard look at the Project's likely environmental consequences. This hard look

was furthermore required by the very substantial risks of severe environmental harm posed by the Project, and the more specific threats it posed to threatened SONCC coho, their critical habitat, and the essential habitat of coho and Chinook salmon. It was definitely required as a result of the Smith River's designation as a Wild and Scenic River.

11. However, when Caltrans approved the Project on April 10, 2013, it did so not after completion of an environmental impact statement ("EIS"), as required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*., but rather only after an environmental assessment ("EA") based on which it adopted a finding of no significant impact ("FONSI," collectively with the EA prepared regarding the Project, "EA/FONSI"). The EA prepared by Caltrans was woefully inadequate in multiple ways. Furthermore, Caltrans' analysis of the Project's anticipated impact on the Smith River's SONCC coho, their critical habitat in the river, and the EFH of coho and Chinook salmon ("Pacific Salmon EFH"), memorialized in its Revised Biological Assessment for Impacts to Coho Salmon (*Oncorhynchus kisutch*), Designated Critical Habitat, and Essential Fish Habitat Assessment for 197/199 Safe STAA Access Projects ("Revised Coho BA/EFHA") under the ESA and Magnuson-Stevens Act, was also inadequate in multiple ways, including, without limitation, its failure to look at the anticipated impact of the Project as a whole, but rather on a Project Location by Project Location basis.

12. Further, because the Project calls for acquisition of, and impact on, lands within the Six River National Forest and the Smith River National Recreation Area, Caltrans was required to meet the requirements of Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 (also codified at 28 U.S. § 138), which are aimed at protecting America's parks, recreation areas, wildlife refuges, and other public lands or areas with historical significance from ill-conceived road building projects; Caltrans failed to meet these statutory requirements. Because the Project is anticipated to have impacts on the Smith River, a river designated under the Wild and Scenic Rivers Act, Caltrans was required under Section 7 of the Act, 16 U.S.C. §1278, to take actions to protect the river that it failed to fulfill.

13. For its part, NMFS failed in its job to protect the Smith River's unique population of threatened SONCC coho from extinction. Though Caltrans' Revised Coho BA/EFHA stated explicitly that the Project was likely to adversely impact SONCC coho critical habitat, NMFS took final agency action and issued a "concurrence" in Caltrans' (non-existent) finding of no likely adverse impact on this habitat, and failed to issue a biological opinion ("BiOp") as legally required. NMFS' action also failed in its obligations by accepting and adopting the flawed grounds on which Caltrans reached other conclusions in the Revised Coho BA/EFHA.

14. In these various ways and others, both Caltrans and NMFS acted in a manner that was arbitrary, capricious, an abuse of discretion, and/or in violation of the law, in contravention of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, *et seq*.

15. This action challenges Caltrans' approvals for the 197/199 Project and NMFS consultation and letter of concurrence concerning the Project's effects on listed SONCC coho, green sturgeon, and designated SONCC critical habitat issued on May 7, 2012.

16. Federal law prohibits Caltrans from placing at risk the profoundly precious, rare, and irreplaceable natural resources of the Smith River and its surrounding environs for the benefit of immense truck traffic in such a haphazard, arbitrary, and capricious way. Federal law requires NMFS to take far more care in protecting threatened anadromous fish species. Accordingly, Plaintiffs hereby challenge Caltrans' approval of the 197/199 Project, Caltrans adoption of the EA/FONSI, and NMFS' final agency action of "concurrence" with the findings thereof under all applicable law. Plaintiffs seek an order by this Court enjoining Caltrans from taking any further action on the 197/199 Project until it and NMFS meet all applicable legal requirements. Unless this Court enjoins Caltrans from taking any further action on the 197/199 Project, the wild and scenic Smith River, the plants and animals that depend up on it – including its near extinct population of SONCC coho – and the river's other associated beneficial uses face injury beyond saving. Absent an immediate injunction, the last truly pristine river in California could be forever damaged.

II. PARTIES

A. Plaintiffs

17. Plaintiff **TED SOUZA** ("Souza") is an individual residing in Gasquet, California. Gasquet has a population of 660 people and is located within the Smith River National Recreation Area at the juncture of the Smith River and its North Fork. US 199 runs through Gasquet, and the Project calls for significant roadwork to be done nearby. Souza, a World War II veteran, flew B-17s with the Army Air Corps. Mr. Souza was born and raised in Oakland, California. For many years after the war, Souza worked at the Naval Air Station in Alameda as a civilian. During the 1950's, Souza began going up the Smith River to fish. As a result of these trips, Souza fell in love with the area. In the early 1970's, Souza relocated permanently to Gasquet with his wife. For the next approximately fifteen years, Souza made a living as a commercial fisherman. Souza no longer commercially fishes but is still an avid recreational fisherman both in the nearby Smith River and off the Crescent City harbor, where he still keeps a boat. Souza not only uses and enjoys the Smith River, and the natural resources that depend on it, as a recreational fisherman for steelhead, salmon and other species, but also as someone that appreciates and enjoys natural beauty in its pristine and natural state. As a resident of Gasquet, Souza also depends on the Smith River to fulfill his water needs, including drinking water needs. Based on his concern that the Project will negatively affect the Smith River, its natural environs, and thus his ability to use enjoy them, Souza submitted comments to Caltrans on the Draft Environmental Assessment of the Project ("Draft EA").

18. Plaintiff **FRIENDS OF DEL NORTE** ("Friends") is a non-profit public interest group established in 1973 in Crescent City and Gasquet, California, designed to protect the local environment and educate our citizenry on the benefits of planning for living in a pristine setting. For forty years, Friends has volunteered resources to foster public dialogue about natural resources throughout the region, by attending federal, state, and local meetings and public hearings working to influence elected leaders in planning for a healthy future in Del Norte County and its bioregion. In part through monitoring local planning issues, Friends' two hundred local and northern California members have tirelessly worked to protect the pristine

qualities of the wild and scenic Smith River and its salmon and steelhead fisheries habitat, the scenic corridors of Highways 199 and 101, ancient redwood forests, the Lake Earl Coastal Lagoon, and the wild Pacific coastline. Friends believes that, without deliberate attention and care, these great natural treasures will be compromised or degraded over time and lost to future generations. Friends is proud of its record of success in helping to foster the 40,000 acre expansion of Redwood National and State Parks, the 180,000 acre Siskiyou Wilderness Area, the Smith River National Recreation Area in the Six Rivers National Forest, long-term protection of the Point St. George Heritage Area through acquisition by Del Norte County, better management of Lake Earl Coastal Lagoon resulting in higher biodiversity, and participation at the stakeholder level to successfully promote the creation of the Marine Life Protection Act for Del Norte, Humboldt, and Mendocino counties. Over the years, Friends has worked to protect the scenic qualities of our local highways and to plan the Cushing Creek realignment project on Highway 101 to save old growth redwood trees bordering this scenic highway. Friends will continue to work with federal, state, and local agencies in planning to protect our natural resources. Friends actively participated in the review and comment process for the 197/199 Project being challenged herein.

19. Plaintiff **ENVIRONMENTAL PROTECTION INFORMATION CENTER** ("EPIC") is a non-profit public interest organization formed to promote environmental values and environmental protection. EPIC is located in California and has approximately 2,000 members, who live throughout California. EPIC is beneficially interested in the aesthetic enjoyment and continued productivity of land, forest, and other water resources, in the preservation of wildlife and protected species including the Marbled Murrelet, the Northern Spotted Owl, and anadromous salmonids at self-perpetuating population levels, in protection of old growth redwoods and Douglas fir, watersheds, and other natural resources and our environment. Members of EPIC travel throughout California for personal, aesthetic, and recreational pursuits, including hiking, bird watching, and enjoying California's incredible beauty. Members of EPIC regularly visit and enjoy northern California natural resources, including the remarkably beautiful and majestic wild and scenic Smith River and parks and

lands along it and within the Highways 197 and 199 corridors. EPIC members depend for their livelihood, health, culture, and well-being on the viability of vegetation and land throughout California. EPIC's members rely upon water from throughout California. Members of EPIC also observe, study, recreate, gather, or otherwise enjoy the unique biologic, scientific, and aesthetic benefits of the Smith River and Patrick Creek, and the corridors and lands accessed by Highways 197, 199, and 101. EPIC members experience these benefits as important and unique State and public resources. EPIC fully participated in the review and comment process for the 197/199 Project in an effort to protect these important resources.

20. Plaintiff **CENTER FOR BIOLOGICAL DIVERSITY** ("CBD") is a non-profit, public interest corporation with more than 42,000 members. CBD has offices in Joshua Tree, San Francisco, and Los Angeles, California; as well as offices in Arizona, New Mexico, Oregon, Vermont, and Washington, D.C. CBD is actively involved in wildlife and habitat protection issues throughout the United States and has members throughout our country, thousands of whom reside in California. CBD's members and staff include individuals with educational, scientific, spiritual, recreational, and other interests in protection of natural resources, including the Marbled Murrelet, the Northern Spotted Owl, and protected salmonid species. CBD's members and staff enjoy the biological, recreational, and aesthetic values of the public lands and parks, where protected species such as the Northern Spotted Owl live, and rivers which provide refuge for protected salmon species such as the coho, Chinook, and steelhead. CBD's members and staff have participated in efforts to protect and preserve the habitat essential to the continued survival of these species. CBD brings this action on its own behalf and on behalf of its adversely affected members and staff. CBD fully participated in the review and comment process for the 197/199 Project in an effort to protect these important resources.

21. Friends, EPIC, and CBD are collectively referred to herein as "Organizational Plaintiffs." The Organizational Plaintiffs and Plaintiff Souza are collectively referred to herein as "Plaintiffs."

22. Plaintiffs sue on behalf of themselves, and in the case of Organizational Plaintiffs, their members and their supporters. Organizational Plaintiffs are comprised of residents of the State of California who are united by common interests of law and fact. Each Plaintiff is an "interested person" in the aesthetic enjoyment and protection of California's public and protected lands, including the wild and scenic Smith River, state and county parks, and fish and wildlife species at self-perpetuating population levels, in the protection of our environment, and in the protection of water and air quality.

23. Plaintiffs, as well as members of the Organizational Plaintiffs, are committed to taking all possible steps to preserve the unique and precious resources which would be impacted by this Project, including the wild and scenic Smith River, the Smith River National Recreation Area, the Smith River's unique and near-extinct population of SONCC coho, the critical habitat of those SONCC coho and the Pacific Salmon EFH of the Smith River. These Plaintiffs and the Organizational Plaintiffs' members are informed and believe the Project would cause irreparable harm to precious ecological resources provided by the wild and scenic Smith River, including critical habitat for its SONCC coho and other listed species, community water sources, world class sport fishing, and remarkable scenic and aesthetic values. Moreover, these Plaintiffs and the Organizational Plaintiffs' members are informed and believe the Project would otherwise adversely impact the quality of human life by taking private property, decreasing existing buffers between highway right-of-ways and adjacent homes and businesses, and increasing the risk of accidents and fatal traffic accidents along US 199 and SR 197, along which many live, work, and/or travel. Plaintiffs have standing to sue and have exhausted any and all administrative remedies prior to filing this Complaint. The above-described health, recreational, scientific, cultural, inspirational, educational, aesthetic, and other interests of Plaintiffs will be adversely and irreparably injured by Defendants. These are actual, concrete injuries to Plaintiffs and their members that would be redressed by the relief sought herein. Plaintiffs have no adequate remedy at law.

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B. Defendants

24. Defendant **CALIFORNIA DEPARTMENT OF TRANSPORTATION** ("Caltrans") is a public and state agency within the State of California. Caltrans is the lead agency for the 197/199 Project under NEPA and is the action agency under Section 7 of the ESA. Caltrans is using federal funding from the Federal Highway Administration ("FHWA") for the 197/199 Project. Caltrans has executed a Memorandum of Understanding Between the Federal Highway Administration and the California Department of Transportation ("Caltrans/FHWA MOU") under which FHWA assigned to and Caltrans assumed the delegation of authority, pursuant to 23 U.S.C. § 327, to provide environmental review, consultation, or other such action pertaining to the review or approval of a specific project such as 197/199 as required by federal environmental laws, including NEPA, 42 U.S.C. § 4331 *et seq*., Section 7 of the ESA, 16 U.S.C. § 1536, Section 4(f) of the Department of Transportation Act of 1966, codified at 23 U.S.C. § 138 and 49 U.S.C. § 303, Section 7 of the Wild and Scenic Rivers Act, 16 U.S.C. § 1278, and the implementing regulations of these statutes. Pursuant to the Caltrans/FHWA MOU, Caltrans is the agency which prepared and adopted the EA/FONSI for the 197/199 Project as well as the Revised Coho BA/EFHA under the ESA and Magnuson-Stevens Act. Caltrans issued the Revised Coho BA/EFHA on March 29, 2012. Caltrans approved the 197/199 Project and adopted the final EA/FONSI on April 10, 2013. Caltrans caused to be published a Federal Register Notice on April 24, 2013, giving notice of its decisions. Subsequently on June 6, 2013, Caltrans issued a Project Report, purporting to be a Project approval.

25. Defendant **MALCOLM DOUGHERTY** is the Director of the State of California Department of Transportation. As Director, Mr. Dougherty is responsible for maintenance and operations of roadways comprising the California state highway system. Mr. Dougherty is sued in his official capacity. References herein to Caltrans shall be understood to including Mr. Dougherty in his official capacity.

26. Defendant **NATIONAL MARINE FISHERIES SERVICES** ("NMFS") is a Federal agency, a division of the National Oceanic and Atmospheric Administration ("NOAA")

and the Department of Commerce. NMFS is responsible for the stewardship and management of the nation's living marine resources and their habitat within the United States' Exclusive Economic Zone, which extends seaward 200 nautical miles from the coastline (about 370 kilometers), including the anadromous fish species in their habitats in the rivers and streams of the United States. In consultation processes under Section 7 of the ESA that concern anadromous fish and/or their river and stream habitats, NMFS occupies the role as the consulting agency. NMFS also is the agency with which other agencies consult concerning impacts to EFH under the Magnuson-Stevens Act. Accordingly, NFMS was the consulting agency with which Caltrans consulted concerning the Project's anticipated effects on SONCC coho and SONCC coho critical habitat under Section 7 of the ESA and was the consulting agency with which Caltrans consulted concerning the Project's anticipated effects on Pacific Salmon EFH under the Magnuson-Stevens Act. On May 7, 2012, NMFS took final agency action and issued a letter of concurrence in response to its review of the Revised Coho BA/EFHA.

27. Defendant **SAMUEL D. RAUCH III** is the Acting Assistant Administrator for Fisheries for NOAA. As Acting Assistant Administrator for Fisheries for NOAA, Mr. Rauch oversees the management and conservation of marine fisheries and the protection of marine mammals, sea turtles, and coastal fisheries habitat within the United States exclusive economic zone. Mr. Rauch is sued in his official capacity. References herein to NMFS shall be understood to include Mr. Rauch in his official capacity.

III. JURISDICTION

28. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States. This Court also has jurisdiction to review Caltrans' actions in this case pursuant to 23 U.S.C. § 327(d) and the Caltrans/FHWA MOU. As stated in the Caltrans/FHWA MOU, Caltrans has consented to and accepted the exclusive jurisdiction of the Federal courts for any matter arising out of or relating to action for compliance, and/or enforcement of any of the responsibilities assigned by the FHWA and assumed by Caltrans, including compliance with the APA, 5 U.S.C. §§ 701 *et. seq.*, NEPA, 42 U.S.C. § 4331 *et seq.*,

16 U.S.C. § 1536, Section 4(f) of the Department of Transportation Act of 1966, codified at 23 U.S.C. § 138 and 49 U.S.C. § 303, Section 7 of the Wild and Scenic Rivers Act, 16 U.S.C. § 1278, and implementing regulations of these statutes. The State of California has consented to federal jurisdiction and waived any claim of sovereign immunity pursuant to California Streets and Highways Code § 820.1. NMFS has a duty as a consulting agency to comply with Section 7 of the ESA, 16 U.S.C. § 1536, and took final agency action on May 7, 2012 by issuing a letter of concurrence to Caltrans.

29. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201. Final agency action exists that is subject to this Court's review under the Administrative Procedure Act, 5 U.S.C. § 702 ("APA"). This Court may grant declaratory relief, and additional relief, including an injunction, pursuant to 28 U.S.C. §§ 2201 and 2202, and 5 U.S.C. § 705 and § 706(2)(A) & (D).

IV. VENUE

30. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claims at issue in this action occurred in this judicial district. The 197/199 Project is located within this judicial district. Plaintiffs reside and have offices in this judicial district and certain of their organizational members reside within this judicial district.

V. INTRADISTRICT ASSIGNMENT

31. This action substantially arises out of actions planned to be taken in the county of Del Norte. Thus, under Civil L.R. 3-2(d) this action is to be assigned to the San Francisco Division or the Oakland Division.

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VI. FACTUAL BACKGROUND

A. The Narrow and Windy Smith River Canyon and Heavily Wooded Areas Along US 199 and SR 197

32. The Smith River is the most pristine river in California. It is one of the crown jewels of the National Wild and Scenic River system. Approximately 300 miles of the Smith River are designated wild and scenic, more than any other river in our nation. The emerald-green Smith River flows freely and naturally, without a single dam, for its entire length – the only major river system in California to do so. The Smith River is characterized by exceptionally clear water, a vigorous anadromous fishery, and steep, forested mountains, themselves home to numerous species. The Smith River has, in particular, been designated as "Critical Habitat" under the ESA for SONCC coho and as "Essential Fish Habitat" for both coho and Chinook salmon under the Magnuson-Stevens Act. These features make the Smith River profoundly important to both animals and humans.

1. The Smith River, Its Tributaries, and Their Environments Are an Extremely Important, Fragile, and Rare Habitat for Numerous Listed Species

33. The Smith River, its tributaries, and their environs are home to numerous fishes, birds, amphibians, reptiles, invertebrates, and mammals many of which are listed by the Federal and/or California State governments as endangered, threatened, or of concern ("Special Status Animals").

34. Looking only at the "Biological Study Area" or "BSA," an area defined by Caltrans in relation to the Project in the EA/FONSI that includes only "the Middle Fork and Main Stem of the Smith River within the project vicinity," the EA/FONSI, identifies ***over 20 Special Status Animals in the path of the Project***. The Revised Coho BA/EFHA, additionally identifies the listed Western yellow billed cuckoo as present.

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Special Status Animals Identified by Caltrans as in the Path of the Project

FISH	BIRDS	MAMMALS	AMPHIBIANS/ REPTILES	INVERTEBRATES
• Coho salmon—S. OR/N. CA Coast ESU • Coastal cutthroat trout • Chinook salmon— S. OR & N. CA Coastal ESU[2] • Green sturgeon • Pacific lamprey	• Bald eagle • American peregrine falcon • Northern goshawk • Osprey • Marbled murrelet • Northern spotted owl	• Pacific fisher • American marten • Silver-haired bat	• Del Norte salamander • Western tailed frog • Western pond turtle • Northern red-legged frog • Foothill yellow-legged frog • Southern torrent salamander	• Pristine pyrg (snail)

35. The Smith River and its tributaries contain wild coho that are part of the Southern Oregon Northern California Coast Evolutionary Significant Unit ("SONC") ESU. 50 C.F.R. § 223.102(c)(11). On May 6, 1997, NMFS listed coho in the SONCC ESU as threatened with extinction under the ESA. 62 Fed. Reg. 24,588 (May 6, 1997); *see also* 70 Fed. Reg. 37,160 (June 28, 2005). On May 5, 1999, NMFS designated critical habitat for the SONCC coho ESU. 64 Fed. Reg. 24,049 (May 5, 1999). Critical habitat for the SONCC coho ESU includes the Smith River and its tributaries below longstanding, naturally impassable barriers. 50 C.F.R. § 226.210(b).

36. For each of these Special Status Animals, the Smith River is an important habitat, and each depends, in particular, on the Smith River's phenomenal water quality for their health and survival. The Smith River is particularly recognized as a key habitat for protected anadromous fishes, including the threatened coho and Chinook salmon, listed cutthroat trout, as well as steelhead trout. In fact, the Smith River is designated as "Critical Habitat" for threatened coho salmon under the ESA and "Essential Fish Habitat" for both Chinook and coho salmon under the Magnuson-Stevens Act. Furthermore, according to a recent NMFS study, the Smith

[2] The abbreviation "ESU" stands for "evolutionarily significant units." It is a term for a population of organisms that is considered distinct for purposes of conservation, including special status designations under the Federal and California Endangered Species Acts.

River supports a functionally independent population of coho salmon that is facing a "high risk of extinction."

2. The Smith River Is "Critical Habitat" for A Unique Population of Threatened SONCC Coho Facing A "High Risk of Extinction"

37. ESA § 3(5)(A), 16 U.S.C. § 1532(5)(A), in its relevant section defines "critical habitat" of a threatened or endangered species as "(i) the specific areas within the geographical area occupied by the species . . . on which are found those ***physical or biological features (I) essential to the conservation of the species*** and (II) which may require special management considerations or protection . . . " (emphasis added). "Conservation" in this context means both survival of the threatened or endangered species as well as its recovery.

38. In 1999, NMFS designated areas including the Smith River basin, particularly areas in which the Project calls for work to occur, as critical habit for the SONCC coho. 64 Fed. Reg. 24049; 16 C.F.R. §§ 226.210-226.211.

39. In doing so, the "primary constituent elements" or "PCEs" of this habitat that are "essential for the conservation of" SONCC coho in their various life states were defined, in 16 C.F.R. § 226.211(c), as follows:

a. Freshwater spawning sites with water quantity and quality conditions and substrate supporting spawning, incubation, and larval development;

b. Freshwater rearing sites with:

i. Water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility;

ii. Water quality and forage supporting juvenile development; and

iii. Natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.

c. Freshwater migration corridors free of obstruction and excessive predation with water quantity and quality conditions and natural cover

such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival.

d. Estuarine areas free of obstruction and excessive predation with:

i. Water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;

ii. Natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels; and

iii. Juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

40. A species qualifies as "threatened" if it is "likely to become an endangered species within the foreseeable future through all or a significant portion of its range." 16 U.S.C. § 1532(20). The SONCC coho that inhabit the Smith River basin are recognized as a distinct population, and that population is at a far greater risk of extinction than even this threatened listing would indicate.

41. According to the NMFS Draft Recovery Plan for the Southern Oregon Northern California Coast Evolutionary Significant Unit of Coho Salmon, January 2012 ("NMFS 2012 Draft SONCC Coho Recovery Plan"), the Smith River Coho salmon population "is a 'Functionally Independent' population within the Central Coastal diversity stratum, meaning that it [is] sufficiently large to be historically viable-in isolation and has demographics and extinction risk that [are] minimally influenced by immigrants from adjacent populations."

42. Recent spawn surveys "suggest that the total population size [of Coho salmon] for the Smith River basin may be less than the moderate-risk threshold for this population and at a level that puts it at ***high risk of extinction***." (emphasis added) More specifically, "[r]ecent spawning surveys in the Smith River watershed indicate that this population is ***likely below the depensation threshold*** (325 spawners). ***Therefore, it is at high risk of extinction*** based on the

criteria established by Williams et al. (2008). . . . As a core population, the recovery target for the Smith River population is to be at low risk of extinction and have more than 6,800 spawners annually." (Emphasis added).

43. According the NOAA ESA Listing Criteria Memo, "depensation" refers to phenomenon wherein certain factors "tend to *decrease* population growth rates at low levels of abundance." (Emphasis added). It continues:

> For example, it can be more difficult for individuals to find mates at low levels of abundance. The gene pool tends to be smaller at low levels of abundance, which can result in a loss of average fitness. Also, at low levels of abundance, a species is likely to be composed of one or only a few populations, making the species more vulnerable to catastrophic events such as floods or droughts. When depensatory factors prevail, even with the elimination of anthropogenic factors, ***the species tends toward extinction***. The abundance level below which depensatory factors prevail is called the ***depensatory threshold*** (in cases where there is no abundance level below which depensatory factors prevail, the depensatory threshold is zero).

(Emphasis added).

44. The NMFS 2012 Draft SONCC Coho Recovery Plan identifies **impaired water quality** as the only "stress" ranked as "high" for Smith River's Coho salmon population during four of the coho's five life stages identified by the Recovery Plan: fry, juvenile, smolt, and adult. The Recovery Plan identifies **road runoff** as a source of such impaired water quality.

45. Roads have the dubious distinction of being a "high" "threat" for all five of the life stages of the Smith River's Coho salmon population identified by the Recovery Plan.

/ / /

	Threats	Egg	Fry	Juvenile	Smolt	Adult	Overall Threat Rank
1	Roads	High	High	High	High	High	High
2	Channelization/Diking	Low	High	High	High	High	High
3	Road-Stream Crossing Barriers	Medium	Medium	Medium	Medium	Medium	High
4	Agricultural Practices	Low	High	High	High	Medium	High
5	Urban/Residential/Industrial	Medium	Medium	Medium	Medium	Medium	Medium
6	Hatcheries	Medium	Medium	Medium	Medium	Medium	Medium
7	Timber Harvest	Medium	Medium	Medium	Medium	Medium	Medium
8	High Intensity Fire	Medium	Medium	Low	Low	Medium	Medium
9	Climate Change	Low	Low	Medium	Medium	Medium	Medium
10	Invasive Non-Native/Alien Species	Low	Medium	Medium	Medium	Low	Medium
11	Fishing and Collecting	-	-	-	-	Medium	Medium
12	Dams/Diversion	Low	Low	Low	Low	Low	Low
13	Mining/Gravel Extraction	Low	Low	Low	Low	Low	Low

46. Specifically as to US 199, the NMFS 2012 Draft SONCC Coho Recovery Plan states:

> The proximity of Highway 199 to stream channels beyond the urban center has also resulted in substantial sediment deposits, which are attributed to causing some of the reaches to go dry in the summer and potential passage problems in other times of the year. Erosion and the associated sediment delivery to streams affect multiple life stages, including the egg life stage, because fine sediment can smother eggs. Fry, juveniles and adults are adversely affected by road-related sedimentation due to the decreases in pool quality and quantity and the simplification of spawning and rearing habitat. When sediment builds up, the channel widens and becomes shallower, pools fill, and gravel is buried, making streams less favorable for spawning and rearing.

47. Elsewhere the Recovery Plan states: "Excluding the coastal plain, 90 percent of the basin has high or extreme erosion potential (CDFG 1980), as evidenced by the high number of landslides and debris torrents found throughout the watershed." Sedimentation related to these geomorphologic factors creates problems in the river, particularly in its estuary, with the following results: "pools are filled, gravels cemented, and stream habitat simplified, creating

stress for both adults and juveniles through decreases in available spawning and rearing habitat. Salmon eggs and fry are particularly susceptible to any introduction of fine sediment because it can smother redds [salmon nests] and kill eggs by depriving them of oxygen."

48. According to other recent NOAA studies: ***Road runoff from highways appears to contain one or more unidentified compounds shown to be highly toxic to coho salmon*** and perhaps other salmon as well. Researchers at NOAA's Northwest Fisheries Science Center determined that such compounds in road runoff are the cause of "pre-spawn mortality," the die-off of female spawners before they can lay their eggs. The study found, in fact, ***that in some streams 90% of female spawners were dying in streams after a rainfall***. Other studies have shown that ***65% of coho embryos[3] exposed to this toxic stormwater had severe physical abnormalities***, such as malformed fins, bleeding on the brain, and swelling around the heart. Such malformed fish typically die at an early age.

49. Studies have identified road runoff as a major source of "polycyclic aromatic hydrocarbons" or "PAHs" (also referred to as "polyaromatic compounds" or "PACs") in the environment, especially water bodies in vicinity of highways and roads, as a result *inter alia* of exhaust from the combustion of fossil fuels, leaching from the road surface materials (particularly asphalt), oil and fuel spills (small and large), and tire wear.

50. Roads pose another problem to the survival of the Smith River's extremely vulnerable coho salmon population: road-stream crossing barriers create what the NMFS 2012 Draft SONCC Coho Recovery Plan describes as a "high threat to the population." The Recovery Plan identifies the Upper Smith River basin as the location where most road-stream crossing barriers exist, including 6 locations on SR 197 and another 6 on US 199.

51. While SONCC coho are known to inhabit areas throughout the Smith River, including areas of the river in the vicinity of each of the Project Locations, and the work in each of these locations, as well as the work called for by the Project, as a whole, is of the type known

[3] Coho embryos are also referred to as "alevin." The alevin stage is the next stage in the salmon's life after the egg stage. The alevin is a newly hatched salmon. It has a big yolk sac hanging from its head. In this yolk sac there are protein, vitamins, minerals, and sugars that give the salmon its nutrients.

to have adverse impacts on SONCC coho and their habitat, Caltrans arbitrarily and capriciously only conducted a survey for SONCC coho in the vicinity of one of the seven Project Locations, the Patrick Creek Narrows Location No. 2. That snorkel survey conducted by Caltrans in July 2010 ***found hundreds of juvenile SONCC coho present in one area of the Smith River where the Project calls for work to occur***. Just downstream from two of the other Project Locations, Ruby 1 and Ruby 2, where the Project calls for major roadwork to be done, are the main spawning grounds of the Smith River population of SONCC coho. At the other four Project Locations where Caltrans conducted no survey, the Project calls for major work immediately above the banks of the Smith River, including extensive excavation of steep hillsides and tree removals. This major work will be above areas that are very important locations for SONCC coho at various life-stages, especially the juvenile stage.

52. The Project is likely to result in an adverse modification of this critical habitat and the SONCC coho that depend upon it for their survival by *inter alia* causing short-term and long-term increases of sedimentation of the Smith River, causing short-term and long-term increases of PAH-laden and/or otherwise toxic road runoff into the Smith River, and causing long-term increases of toxic spills into the Smith River that are traffic accident related. Caltrans arbitrarily and capriciously failed to analyze these and other direct and indirect impacts on the Smith River population of SONCC coho or the fish's critical habitat in the river and its estuary, either individually or cumulatively with the other threats and stresses facing this endangered population of SONCC coho, including without limitation those identified in the NMFS 2012 Draft SONCC Coho Recovery Plan or those identified in the report discussed immediately below.

3. The Smith River Is Designated as "Essential Fish Habitat" for Coho and Chinook Salmon Under the Magnuson-Stevens Act

53. The Smith River, including areas in which the Project calls for roadwork to occur, has also been designated as "Essential Fish Habitat" for coho and Chinook salmon under the Magnuson-Stevens Act since 2000 ("Pacific Salmon EFH").

54. The Magnuson-Stevens Act, 16 U.S.C. § 1802(10), defines "Essential Fish Habitat" or "EFH" as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The Magnuson-Stevens Act requires regional fishery management councils to include within their fishery management plans identification of habitats that meet this definition.

55. According to the 1999 document in which the Pacific Fishery Management Council's ("PFMC") decision to designate the Smith River as EFF for coho and Chinook salmon ("1999 PFMC Salmon EFH Report"), the following criteria was used in reaching this decision: "EFH for the Pacific coast salmon fishery means those waters and substrate necessary for salmon production needed to support a long-term sustainable salmon fishery and salmon contributions to a healthy ecosystem."

56. The PFMC, in the 1999 PFMC Salmon EFH Report, further made clear that "[a]ny reasonable attempt to encourage the conservation of EFH must take into account actions that occur outside of EFH, such as upstream and upslope activities that may have an adverse effect on EFH." It further identified "habitat alterations" among "major contributors to the decline of salmon in the region." In fact, the PFMC recognized that, in comparison with efforts to reducing ocean fishing pressure, preservation and conservation of salmon habitat, including the Smith River, is of primary importance in protecting coho and Chinook salmon stocks, noting *inter alia* "[o]cean survival by adults, for example, is of little value if appropriate tributary habitat is not available for spawning and early life history survival of offspring." The PFMC further specifically identified the importance of preserving the health of undammed coho and Chinook habitat, including the Smith River, given the pervasiveness of dams in other watersheds identified as Pacific Salmon EFH and the detrimental role dams have had in reducing salmon populations.

57. The 1999 PFMC Salmon EFH Report furthermore identified several other sources of impact to salmon, including (a) **compaction of soils and the creation of impervious surfaces *as the result of road building***; (b) ***road run-off and vehicle fuel spills***; (c) **removal/alteration of riparian vegetation *as the result of road building***; (d) **alteration of**

amounts or rates of woody debris input *as the result of road building*; (e) **decrease/increase in sediment delivery *as the result of road building***; and (f) **streambank or shoreline alteration**.

58. The 1999 PFMC Salmon EFH Report identified *inter alia* the following impacts on coho and Chinook salmon associated with habitat alterations that result from road building:

- Alteration of water quality related to increased water temperature;
- Alteration of water quality related to decreased water temperature;
- Alteration of water quality related to dissolved oxygen changes;
- Alteration of water quality related to nutrient changes;
- Alteration of water quality related to sedimentation caused by either surface erosion and/or mass failures/landslides;
- Alteration of stream habitat related to changes in substrate;
- Alteration of stream habitat related to changes in pool frequency and quality;
- Alteration of stream habitat related to changes in off-channel habitat;
- Loss of production of "large wood" from alteration of riparian forests;
- Loss of "production of food organisms and organic matter" from alteration of riparian forests;
- Loss of "shading" from alteration of riparian forests;
- Loss of "vegetative rooting systems and streambank integrity" from alteration of riparian forests;
- Chemical contamination; and
- Chemical contamination inside of an estuary."

59. As discussed herein, the Project is likely to result in alterations of Pacific Salmon EFH in the Smith River, including as identified in the 1999 PFMC Salmon EFH Report. However, Caltrans failed to adequately evaluate and address these alterations or any conservation mechanisms to be taken in relation thereto.

4. The Health and Scenic Character of the Smith River Is Also Very Important to the Residents of the Area and Its Visitors

60. In addition to providing critical and essential habitat for various animals, including, in particular, anadromous fishes, the health of the Smith River is also fundamentally important to the human residents of the area and its visitors.

61. The Smith River is the domestic drinking water supply for community of Crescent City. Because of its purity, the Smith River needs little processing other than percolation through the river's sand bank. Gasquet, Hiouchi, and other towns along the Smith River also completely rely on its ultra-pure water.

62. The Smith River's natural fishery is one of its greatest assets, with more than 175 miles of anadromous fish habitat. The Smith River has exceptional runs of salmon and steelhead, beginning in late October until late April or May, which attract anglers from around the world.

63. The fishing is not easy, but rewards are great. Thus, the Smith River is the prized destination of anglers, boaters, and others seeking to enjoy its natural beauty. The Smith River's unique position makes it a freshwater enthusiast's Mecca. As the longest undammed river system in California and a major spawning area for up-swimming fish, a fisherman looking to land a world-class salmon or steelhead travels to the Smith River. The state's largest recorded Chinook salmon was caught in the Smith River, along with the second biggest steelhead. Kayakers find rapids from Class I to V and compete in world-class competitions. For those who do not want to haul a boat or pole around, they can swim or snorkel in one of the river's turquoise pools.

64. The Smith River Scenic Byway is one segment of the National Scenic Byways program. The majority of the Byway follows the Middle Fork of the Smith River. The Smith River National Scenic Byway along Highway 199 passes through four miles of impressive redwood forests, winds 27 miles along the Middle Fork of the awesome river for which it is named, and then continues into the State of Oregon. The Byway presents spectacular views of rugged canyons, turbulent rapids, and the confluence of the South and Middle Forks of the

Smith River, as well as historic and picturesque recreation sites such as Patrick Creek Campground. Together with several other roadways, US 199 is part of the "Mystic Corridor" connecting Crater Lake National Park in Oregon to the redwoods and the California coast near Crescent City.

65. The Smith River along US 199 is part of the Smith River National Recreation Area, established in 1990 as the "heart" of one of the largest wild and scenic rivers in the United States, to ensure the preservation, protection, enhancement, and interpretation of the Smith River's wild and scenic river, ecological diversity, and recreation opportunities. As the largest single undammed Wild and Scenic River system in the United States, the Smith River National Recreation Area plays a major role in preserving the quality and quantity of freshwater fisheries habitat. Management emphasis for the Middle Fork of the Smith River along US 199 is on maintaining wildlife values and providing a full range of recreation uses, with particular emphasis on the scenic and recreation values associated with the Smith River, old growth redwoods, and US 199.

66. US 199 follows the course of the Middle Fork of the Smith River. The Smith River canyon along US 199 is narrow, steep, and windy, covered in many places by sheer rock or forest. US 199 clings to the Smith River canyon's sides with numerous sharp and blind corners, with turn-outs used by visitors. Between the small rural communities of Hiouchi and Gasquet, US 199 winds precariously above the Smith River, with narrow curves and traffic lanes. Just past the southern confluence of the Middle and South Forks, the Smith River leaves the National Recreation area and flows through Redwood National and State Parks, along SR 197, offering stunning view of giant redwoods and great summer floating in Class 1 and 2 waters. SR 197 follows the main stem of the Smith River to the junction with Highway 101 north of Crescent City.

67. SR 197, which is also known as North Bank Road, threads through an area blanketed by large old growth redwoods, and Douglas firs, along the Smith River's Main Fork as the river widens into its estuary. SR 197 is only 7 miles long, beginning with an intersection at US 199 in Jedediah Smith Redwoods State Park. Moving northward, the road quickly exits

the park, roughly paralleling the Smith River located to the west side of the road. The road then follows the river northward and then northwestward, with several local roads meeting SR 197 in the evergreen forest area. There are more than 70 private driveways which enter SR 197. The road meets its northern terminus at U.S. Route 101 just south of the Oregon border.

68. SR 197 borders the beautiful and popular Ruby Van Deventer County Park, located on the Smith River and just downstream from an important and popular fishing area. It provides exceptional recreational and camping opportunities, and is relied on during fishing season as a prime location for boat trailer parking and drift boat take-out. A sign advises those exiting the Park to SR 197 to "use extreme caution entering highway."

B. The 197/199 Project Will Involve Extensive Construction, Endangering the Smith River, the SONCC Coho, and the Other Fish and Animals It Supports

69. Caltrans proposes extensive construction activities at seven locations for its 197/199 Project along the Smith River – two locations on SR 197 at the edge of the Smith River estuary and spawning grounds of the SONCC coho and five locations on US 199 in the Smith River Canyon – solely for the purpose of permitting large STAA trucks to access these routes. So-called "STAA trucks" are truck-and-trailer combinations that are longer than the "California legal" truck-and-trailer combination. Caltrans used a computer modeling software program called "Autoturn" to determine which locations needed to be addressed to permit STAA access. Autoturn was also used to determine approval of "exceptions to mandatory design standards," which constitute Caltrans' decision to deviate from standards for minimum curve radius, minimum paved shoulder width, horizontal clearance requirements to a fixed object, minimum stopping horizontal and vertical sight distances, and superelevation limits, as prescribed by Caltrans' Highway Design Manual.

70. The work called for by the Project is extensive and destructive to the natural environment; however, even if done, neither US 199 nor SR 197 would be safe as a major trucking route for these large trucks. Indeed, the Project's plans are rife with these "exceptions to mandatory design standards."

71. Caltrans proposes work at each of the seven Project Locations. While Caltrans has improperly analyzed the impacts of the work at each of these Project Locations, separately, it has stated that if the work at any one of these Project Locations cannot move forward, the entire project likely cannot proceed. In other words, the work at the various Project Locations are successive, interdependent steps that make up the Project as a whole; thus, there impacts must be analyzed as whole in making the determinations required under NEPA, the ESA, and the Magnuson-Stevens Act. However, Caltrans failed to do this analysis. In fact, while the descriptions of proposed work at each of the Project Locations contain non-exhaustive descriptions of the impacts that various components of the work would have a particular location, neither the EA/FONSI nor the Revised Coho BA/EFHA discussed any of these impacts flowing from any of the Project Locations, except in the context of the work called for at the Patrick Creek Narrows No. 2 location. Rather, Caltrans erroneously determined that, because the work at these other Project Locations would not involve in-stream work, the work at these locations would have no impact on SONCC coho, their habitat, or the habitat of Chinook habitat and/or other animals, without analyzing any of these other sources of impacts either individually, in combination with the impacts of other components of the Project as a whole, or cumulatively with other human activities. In fact, all of the construction and demolition work called for in connection with the Project, separately, collectively, and cumulatively with other human activity, would result in both short and long-terms impacts on the Smith River and the organisms on which it depends, including, without limitation sedimentation impacts and PAH-laden and/or otherwise toxic road runoff impacts. These impacts pose a significant and real risk of pushing the Smith River's unique population of threatened SONCC coho over the edge to extinctions.

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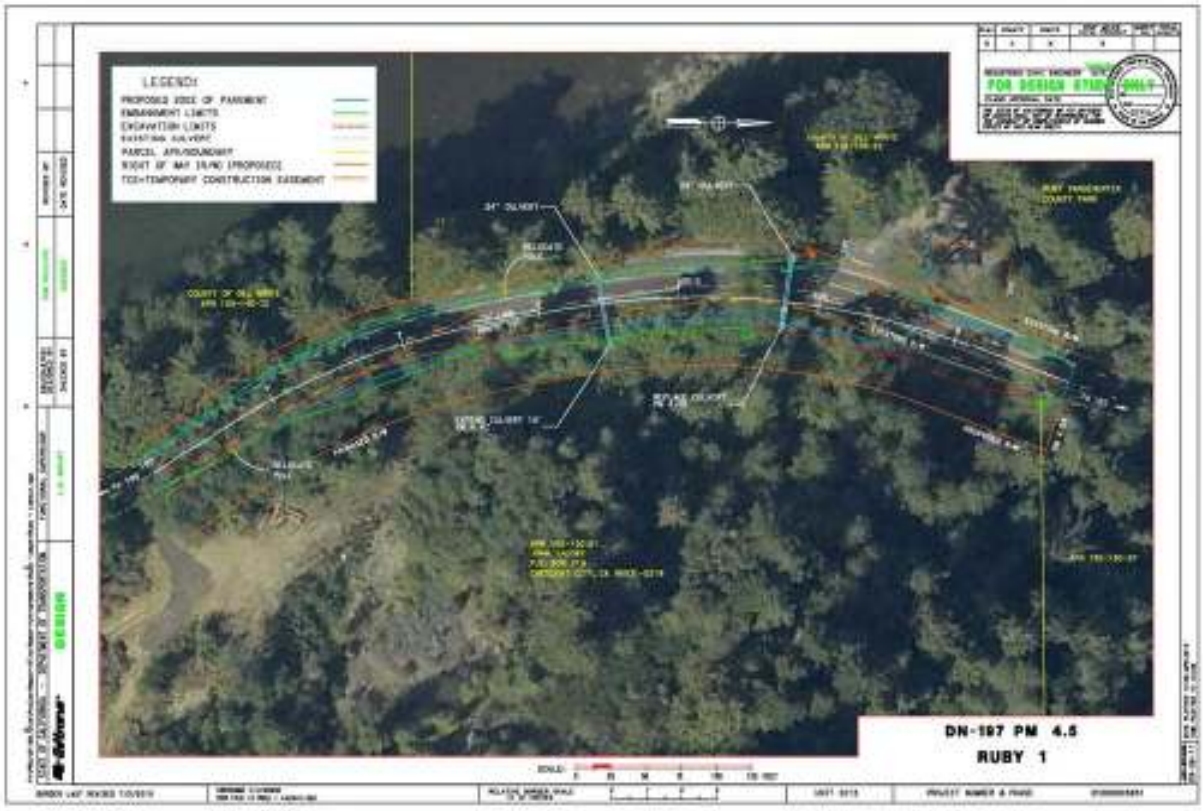
72. On SR 197, Caltrans proposes extensive construction activities at two locations, known respectively as **Ruby 1** and **Ruby 2,** at the edge and just up-stream of the Smith River estuary, critical spawning grounds of SONCC coho and other fishes.

1. Ruby 1

73. **Ruby 1** is located at mile post marker (PM) 4.5 on S.R. 197, along the Ruby Vandeventer County State Park. Ruby 1 is within the Smith River floodplain only 8 miles from the Pacific Ocean, at the edge of the Smith River estuary, in which SONCC coho spawning activity is concentrated, and immediately upstream. The roadway at this location practically abuts the Smith River. Caltrans proposes to widen the roadway, install new asphalt which contains PAHs and other toxic material, extend and replace culverts that drain the roadway directly to the Smith River, construct drainage, and adjust the road bed elevation. Caltrans also will reconstruct the entrance to the County Park to match the new roadway, though no additional turn lanes are proposed in either direction. Caltrans estimates that 130 cubic yards ("CYs") of "excess material" would be generated by the work to be done at Ruby 1 and the

disturbance of almost a third of an acre of soil, with sedimentation impacts attendant of both. Caltrans will remove six very substantial trees from the Project area.



74. The Project calls for new asphalt, which contain PAHs and other toxic materials, to be laid on the roadway to increase its elevation. It further requires the asphalt to be "open graded," as opposed to "dense" or "gap" graded, to increase traction. The increased roughness of open-graded asphalt would result in increased tire wear in the location, and thus long-term, consistent increases of toxic and PAH-laden tire debris production in this area, which road runoff would carry into the Smith River and SONCC coho spawning grounds. Open graded asphalt has larger "voids" than traditional asphalt, which provide channels that allow for the rapid drainage of road runoff from the road surface. This facilitates the rapid transmission from the roadway to the river and into SONCC coho spawning grounds of PAH-laden and/or otherwise toxic compounds from exhaust dust, spilled vehicle oil, etc. that have been deposited on the roadway, as well as from the asphalt itself as a result of leaching. Furthermore, according to a 2003 report by Caltrans, open graded asphalt is also known to be susceptible to

rutting, transverse cracking, reflection cracking, bleeding, raveling, and fatigue tracking, all of which increase the likelihood of transmission of PAH-laden and/or otherwise toxic asphalt debris from the roadway to the Smith River and into these spawning grounds for SONCC coho and other fishes. Open graded asphalt is moreover known to be particularly susceptible to degradation as the result of interaction between the surface and studded tires, further increasing the likelihood of transmission of PAH-laden and/or otherwise toxic debris from the roadway to the Smith River and into the spawning grounds of SONCC coho and other fishes.

75. Commonly, a sealant is applied to open-graded asphalt, and asphalt sealants are known to be significant sources of PAH-laden and/or otherwise toxic road runoff. Neither the EA/FONSI nor Revised Coho BA/EFHA, however, provide any information concerning whether the new surface would be sealed or with what material. Thus, it is not possible to know whether a sealant containing high levels of PAHs and/or other toxic materials would be used.

76. The work at Ruby 1 would also increase the total expanse of roadway in this area; thus increasing the amount of PAH-laden and/or otherwise toxic road runoff generated in the area. Spawning and embryonic SONCC coho, as well as other spawning and embryonic fishes, are in greatest numbers during the winter months when road runoff is most likely to occur, increasing the likelihood of an exposure pathway between such vulnerable fish and PAH-laden and/or otherwise toxic road runoff resulting from the work proposed at this Project Location.

77. The culvert work called for by the Project at Ruby 1 would involve two culverts that drain the roadway directly into the Smith River and the spawning grounds of SONCC coho and other fishes. The improved culverts would therefore facilitate the transmission of this PAH-laden and/or otherwise toxic road runoff and sediment into the Smith River and the spawning grounds. Furthermore, by Caltrans' admission, construction work related to replacement of the culverts would also result increased sedimentation, which would immediately lead to detrimental effects on the spawning grounds of SONCC coho and other fishes immediately downstream from the Project Location. Furthermore, Caltrans plans to use an air spade, also referred to as a pneumatic excavator, to remove soil as part of the work, which

would likely result in significant amounts of fine sediment becoming airborne and deposited in spawning grounds for SONCC coho and other fishes. Caltrans further admits that its culvert work in this location runs the risk of heavy metal contamination of the Smith River and the alteration of water PH as the result of contact between water and concrete.

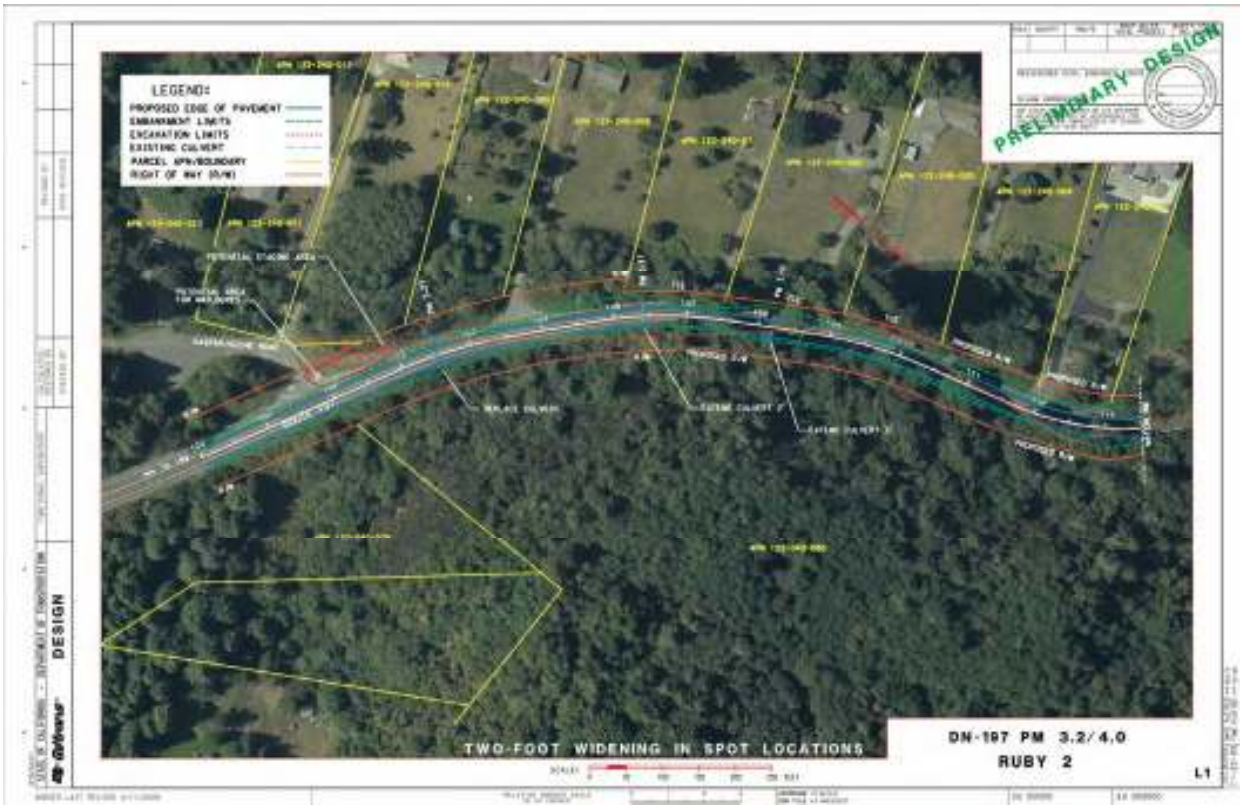
78. Caltrans estimates that 130 CYs of "excess material" would be generated by the work to be done at Ruby 1 and the disturbance of almost a third of an acre of soil, with sedimentation impacts attendant of both. For example, the disturbed soil would be more susceptible to erosion, increasing both short and long-term sedimentation the Smith River downstream of the Project Location. Caltrans further estimates that an additional 0.09 acre of impervious surface would be created, with the various impacts attendant therewith, including *inter alia* those described in the 1999 PFMC Salmon EFH Report.

79. Project work called for at Ruby 1 would also involve removal of six substantial trees from the area, decreasing the soil stability of the area. With reduced soil stability, there would be increased sediment-laden storm runoff into nearby spawning grounds for SONCC coho and other fishes, eliminating the contaminant filtration capability that these trees presently perform on road runoff. This would further increase the amount of PAH-laden and/or otherwise toxic road runoff that would enter the Smith River and nearby SONCC coho spawning grounds, and otherwise reduce the habitat benefit salmonid species and other animals gain from these trees, including *inter alia* those described in the 1999 PFMC Salmon EFH Report.

2. Ruby 2

80. **Ruby 2** is located at PM 3.2 to 4.0, in the Smith River floodplain. The roadway at some places in this location is separated from the winter channel of the Smith River by only a narrow strip of trees. Here, Caltrans proposes to widen the road, extend or replace culverts, reconstruct eight private driveway entrances, and adjust the road's super elevation. The roadwork here would involve the use of asphalt, which contains PAHs and other toxic materials. It would further involve, like Ruby 1, the placement of an open graded asphalt concrete surface. Caltrans estimates that work at the Ruby 2 location would involve excavation of approximately 200-350 CYs, importation of approximately 600 CYs of unidentified material, and the

disturbance of almost three-fourths of an acre of soil, with the sedimentation impacts attendant therewith. PAH-laden and otherwise toxic road runoff and erosion-based sediment likely will enter the Smith River and spawning grounds of SONCC coho and other fishes from four culverts located in the area of the Ruby 2 work, one of which drains directly into the Main Fork of the Smith River. The Project calls for work to be done on all four culverts, which Caltrans acknowledges may require a clear water diversion and/or dewatering during the work. Caltrans intends to remove 15 trees, including at least one old growth redwood, as well as six substantial stumps.



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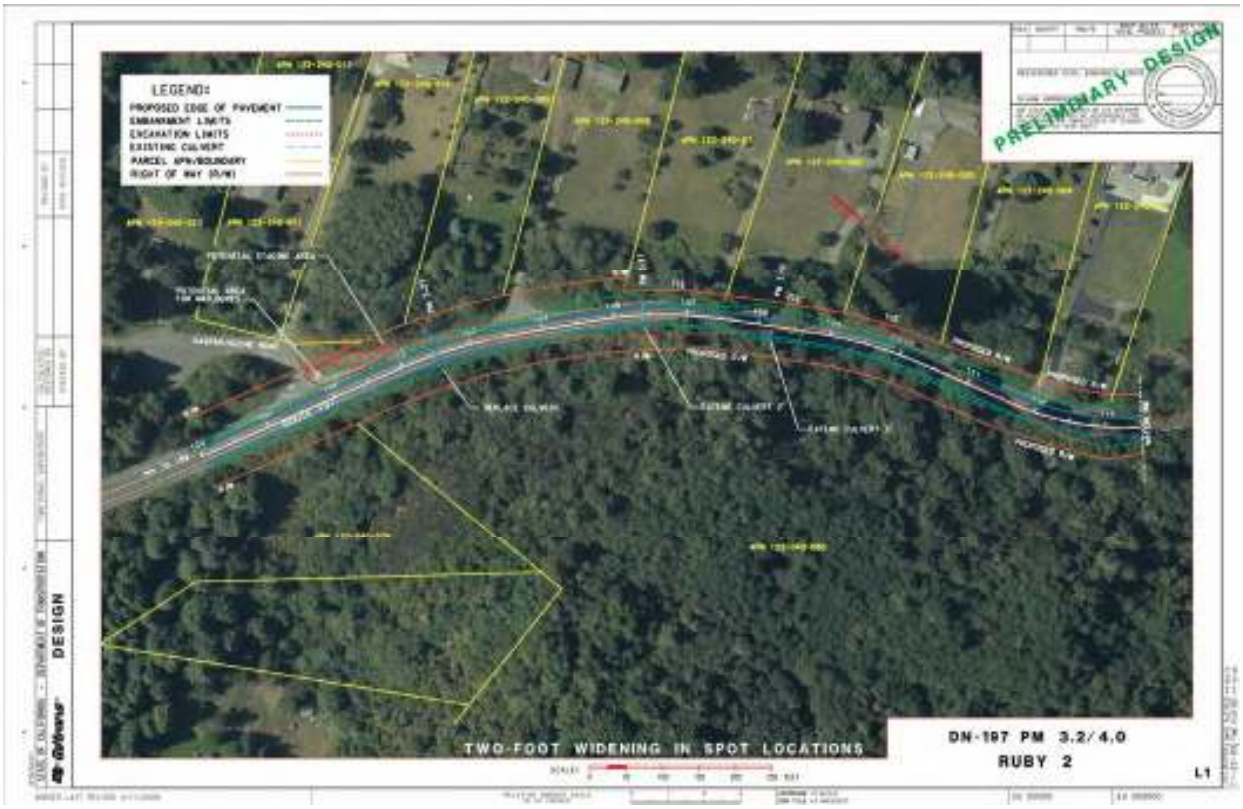


81. The roadwork here would involve the use of asphalt, which contains PAHs and other toxic materials. It would further involve, like Ruby 1, the placement of an open graded asphalt concrete surface. Thus, the same long-term PAH-laden and/or otherwise toxic road runoff impacts as identified above concerning the use of these materials at Rudy 1 would also occur in connection with Rudy 2. Again, neither the EA/FONSI nor Revised Coho BA/EFHA indicates whether any sealants would be used on the road surface here, and, if so, what chemicals such sealant would contain. The work at Ruby 2 would also increase the total expanse of roadway in this area; thus increasing the amount of PAH-laden and/or otherwise toxic road runoff generated in the area and causing the other adverse effects thereof on fish habitat identified *inter alia* 1999 PFMC Salmon EFH Report. Approximately .09 acre of new impervious surface would be created at this Project Location.

82. As in Ruby 1, Caltrans plans to use an air spade, with the sedimentation impacts attendant therewith.

83. This work would also include removal of 15 trees, including at least one old growth redwood marked for cutting, as well as six substantial stumps, with the various impacts attendant therewith described above in connection with the proposed work at Ruby 1.

84. Transmission of this PAH-laden and otherwise toxic road runoff and erosion-based sediment into the Smith River and spawning grounds of SONCC coho and other fishes would be facilitated by four culverts located in the area of the Ruby 2 work, one of which drains directly into the Main Fork of the Smith River. The Project calls for work to be done on all four culverts, which Caltrans acknowledges may require a clear water diversion and/or dewatering during the work.

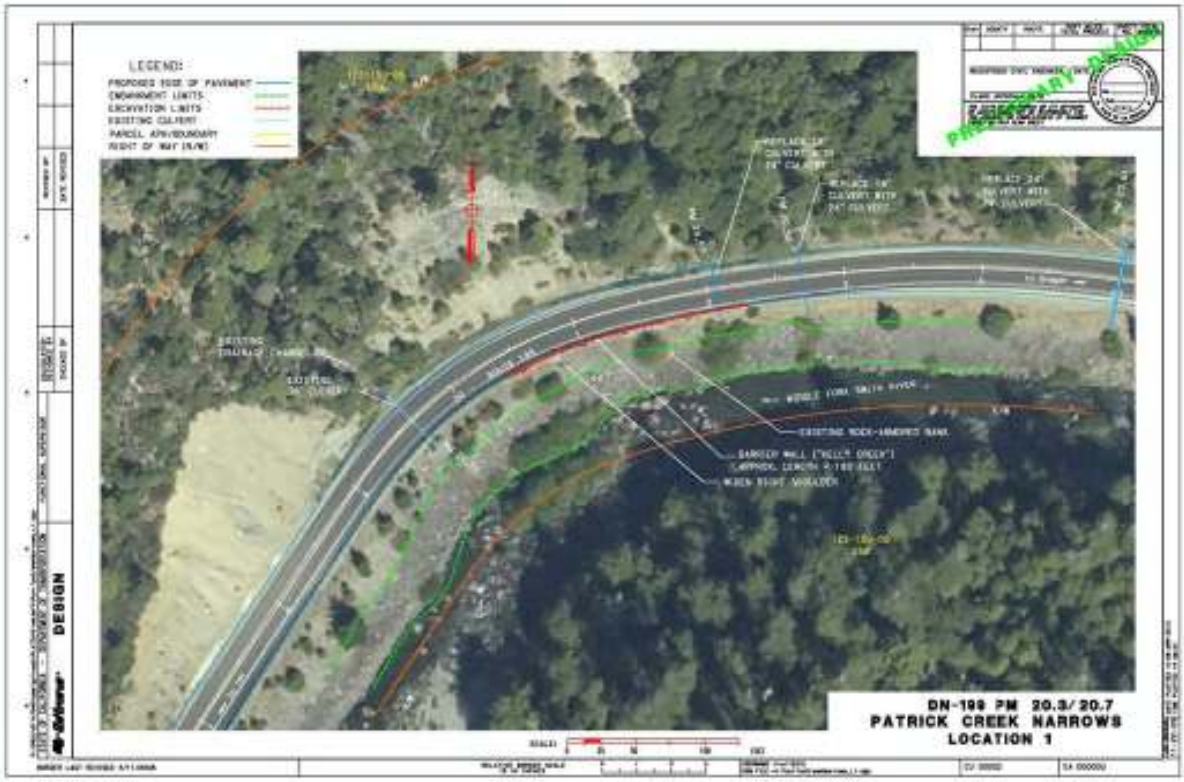
3. Roadwork Planned on US 199

85. On US 199, Caltrans proposes work at five locations – **Patrick Creek Narrows #1, The Narrows, Patrick Creek Narrows # 2, Patrick Creek Narrows # 3**, and **Washington Curve** – all right above the Smith River, within the narrow and winding Smith River Canyon.

/ / /

a. Patrick Creek Narrows #1

86. Patrick Creek Narrows # 1 is located at PM 20.3 to 20.7, at a location where US 199 hugs a narrow strip of land between a steep hillside and the bank of the Smith River, not far from where Kelly Creek enters the river. Here, Caltrans proposes to widen the roadway, change its super elevation, install a 190 feet long by 5 feet high retaining wall right above the Smith River, replace existing metal beam guardrail, and replace culverts.



87. The work here calls for grinding of existing asphalt concrete, which would create PAH-laden asphalt dust that would be deposited by the wind directly into the Smith River and/or which would be washed by rain into the Smith River. The work further calls for laying down both new standard PAH-laden and/or otherwise toxic asphalt, as well as an open graded asphalt concrete layer, with the attendant PAH-laden and/or otherwise toxic road runoff impacts discussed above in the context of Ruby 1. (As in the case of the other Project Locations, neither the EA/FONSI nor the Revised Coho BA/EFHA provides information concerning what if any sealants would be used here.) The work here would also increase the total expanse of roadway in this area, which would have impacts including without limitation those described above in

connection with the proposed increases in impervious surface proposed in connection with the work at Ruby 1. Specifically, Caltrans estimates that .06 acre of new impervious surface would be created at this location.

88. This work at this location would also include removal of 18 trees, which would have impacts including, without limitation, those described above in connection with the proposed tree removals in the work at Ruby 1.

89. The work also calls for "shoulder backing," which is known formally as "Imported Material (Shoulder Backing)," which involves application of a granular material on the outside edges of the pavement. Shoulder backing frequently involves the use of ground up asphalt and a sealant, both of which could be laden with PAHs and/or other toxic materials, thus likely resulting in leaching of such chemicals in the Smith River below. (However, neither the EA/FONSI nor the Revised Coho BA/EFHA provides information concerning what materials would be used for shoulder backing). Work at this location also calls for the compaction of soil under the areas in which the work would be done, which would have impacts, including those identified 1999 PFMC Salmon EFH Report.

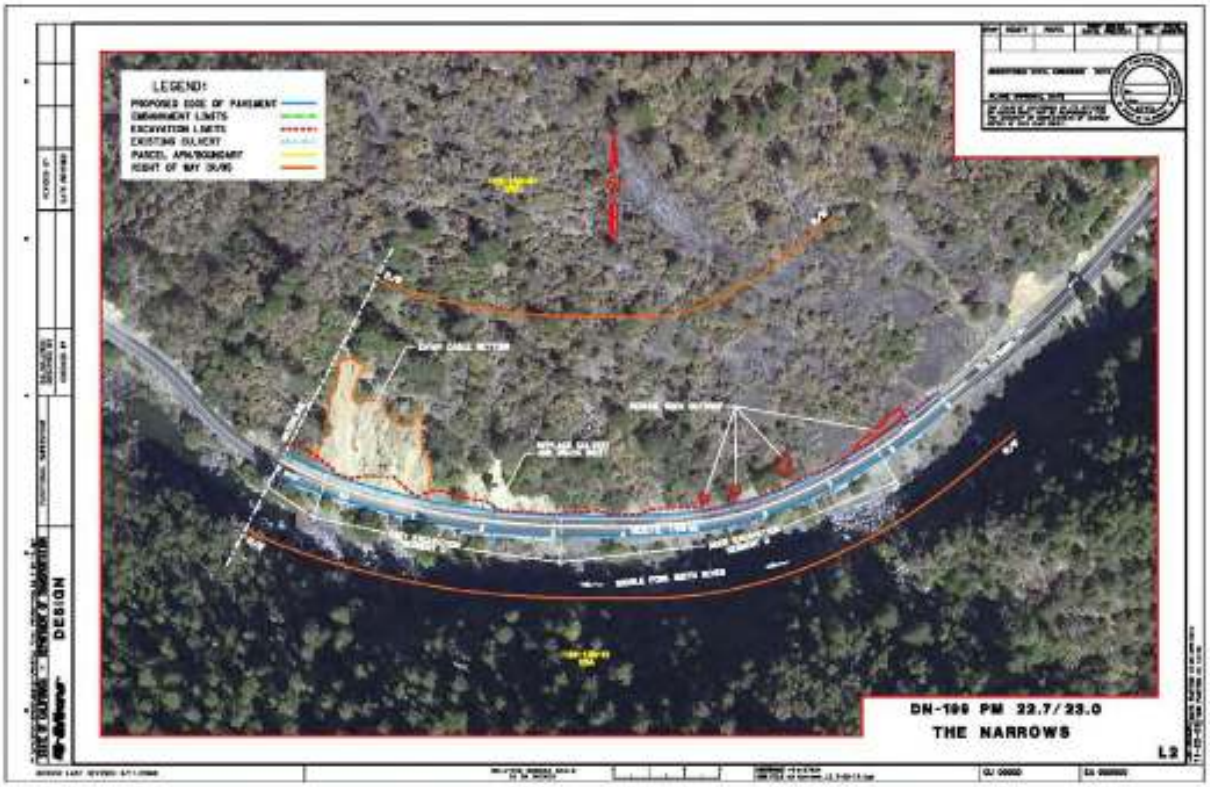
90. The work would also involve the placement of thirty-five piles drilled into the ground approximately 35 feet from what Caltrans defines as then ordinary high water line. Caltrans estimates that one-fourth acre of soil would be displaced. Both of these components would cause sediment related impacts discussed herein.

91. Caltrans acknowledges that the culvert work at this location may require Caltrans to engage in dewatering and/or diversion, with the water flow impacts attendant therewith, including those identified 1999 PFMC Salmon EFH Report.

b. <u>The Narrows</u>

92. The Narrows is located at PM 22.7 to 23.0 between a steep slope and the Smith River. Caltrans proposes to widen the roadway, construct and replace new culverts and drainage inlets, and create a 2-foot wide drainage ditch. Caltrans further intends to excavate into the existing cut slope up to 70 feet high, with an average of 25 feet. After excavation,

Caltrans proposes to stabilize the slope with rock bolting, cable drape, and blasting of outcrops of overhanging or loose rock above the excavation area.



93. During the slope excavation process, Caltrans proposed to use both mechanical digging and blasting techniques in the slope above the Smith River. In total, Caltrans estimates 5,500 CY of materials will be removed from the site. The blasting would create risks of debris flying into the Smith River and the excavation work more generally would result in sedimentation impacts on the Smith River and the organisms that depend on it, including without limitation those discussed herein. Caltrans estimates that the work called for at this location would result in up to 0.4 acre of disturbed soil, causing sedimentation impacts to the Smith River and the organisms that depend on it, including, without limitation, those discussed herein.

94. Caltrans intends to add cable drape or use rock bolting to reduce the amount of rocks falling over time into the roadway from the newly excavated slope. However, no measures are proposed to reduce the long terms erosion of such areas or address the long-term resulting increases in sedimentation of the Smith River below and the impacts thereof on the Smith River and the organisms that depend on it.

95. The work here would, again, involve the applications of both a standard layer of hot mix asphalt and a new layer of open-graded asphalt, along with an increase of the total amount of impervious surfaces, with the attendant increased toxic runoff impacts on the Smith River and the organisms that depend on it, including without limitation those discussed herein. Caltrans further estimates that up to 0.2 acre of new impervious surface would be created as part of the work at this location with impacts on the Smith River and the organisms that depend on it.

96. The drainage work called for by the Project would include the construction of a new paved drainage ditch and the additional culverts draining directly into the Smith River, all of which will expedite and facilitate the transmission of PAH-laden and/or otherwise toxic road runoff and sediment into the Smith River and also alter water flow dynamics, all of resulting in impacts on the Smith River and the organisms that depend on it.

97. This work at this location would also include removal of 46 trees, resulting in impacts on the Smith River and the organisms that depend on it.

c. Patrick Creek Narrows #2

98. Patrick Creek Narrows # 2 is located at PM 23.9 to 24.2, where US 199 traverses a narrow strip of land between a steep slope and the Smith River and then crosses the river to its South bank. According to the Revised Coho BA/EFHA, the Smith River in this location "provides high quality habitat for salmonid immigration, rearing, and emigration." As mentioned elsewhere herein, Caltrans capriciously and arbitrarily chose only to conduct an analysis of the Project's impact on critical SONCC coho habitat and essential coho and Chinook salmon habitat at this one location, rather than on the river as whole or even at the other six locations where the Project calls for work to be done. Thus, the absence from the environmental documents of any mention of the quality of the fish habitat in the vicinity of other Project Locations does not reflect the poor quality thereof – in fact, it is all designated critical and essential fish habitat – but rather Caltrans' failure to analyze the impact of the Project in these locations.

99. Caltrans intends to tear down an existing functional bridge at this location and build a new bridge at a location downstream. Caltrans further proposes to realign the roadway to allow 12-foot lanes and 8-foot shoulders. Caltrans would further engage in extensive excavation and would install three retaining walls: (a) a 153 feet long by 20 feet tall soldier pile retaining wall south of the new bridge; (b) a 175 feet by 10 feet tall concrete retaining wall on the north end of the location; and (c) a 130 feet long and 4 feet tall retaining wall to replace an existing metal beam guard railing. Caltrans also proposes to install new culverts.

/ / /

100. The work here would involve excavation of 20,000 CY from the slopes above the road, resulting in the new exposure of approximately 1 acre of land. To excavate this quantity of earth, Caltrans would engage in significant blasting work, with resulting risks of rocks and dust entering into the Smith River below, as well as mechanical excavation with its attendant dust risks. The excavation work and the massive increase in new exposure resulting therefrom, more generally, would result in sedimentation impacts on the Smith River and the organisms that depend on it.

101. Caltrans acknowledges that, because of the soil morphology of the area, there would be a risk of continuous rock falls in the future as a result of its planned slope excavation. It therefore proposes the use of a wire-mesh drape incorporation of a rock-fall catchment area at roadway level. However, Caltrans does not address the similarly increased risk of soil erosion in these areas and the attendant sedimentation of the Smith River or propose measures to address those impacts.

102. In addition to the massive excavation work called for in the area, the Project calls for two very large construction projects literally right above the Smith River: demolition of the existing bridge, and construction of a new bridge.

103. Demolition would involve *inter alia* cutting the existing footings of the old bridge along the banks of the Smith River. In some places, the contractor would excavate three feet below ground to make the cut and back fill in the cut areas, resulting erosion and sedimentation impacts on the Smith River and the organisms that depend on it. The demolition work would also create substantial risks of particulate debris of all sizes falling into the Smith River below resulting in impacts on the Smith River and the organisms that depend on it. A demolition platform would also be place above the river for five months resulting in the shading of approximately 10,000 square feet of river habitat, resulting in impacts on the Smith River and the organisms that depend on it.

104. Construction of the new bridge would involve *inter alia* placement of several large concrete piers on the banks of the Smith River, the footings of which would be substantially below the level of the river at its peak flow level in the winter months, meaning the disturbed soil would be below the water line and subject to erosion, resulting sedimentation impacts on the Smith River and the organisms that depend on it. These footings would be placed by drilling large holes from a temporary 40 feet by 40 feet drilling platform into the soil and rock of the riverbank, which would then be filled with concrete and steel. Caltrans acknowledges that the drilling platform may be installed below what Caltrans defines as the ordinary high water line of the river and that installation of the drilling platform in this area may require rock cutting, chipping, excavation, and pouring concrete pads below where Caltrans acknowledges the river commonly flows, resulting sedimentation impacts on the Smith River and the organisms that depend on it.

105. The work may also require the construction of crane platform of 40 feet by 40 feet along the river's bank, with presumably the same installation requirements and resulting in the same sedimentation impacts on the Smith River and the organisms that depend on it.

106. Construction of the new bridge would also involve the construction of a 150' long retaining wall just above the Smith River, which would, in turn require the installation of another drilling pad on the banks of the river, again, with presumably the same installation requirements, resulting in the same sedimentation impacts on the Smith River and the organisms that depend on it. From this platform numerous holes in the bank of the river would be drilled and filled with concrete, a wall constructed, and backfill placed behind the wall, resulting in sedimentation impacts on the Smith River and the organisms that depend on it.

107. Construction of the abutments of the bridge would involve excavation that Caltrans anticipates could extend below the water table, resulting in sedimentation impacts on the Smith River and the organisms that depend on it.

108. The work here calls for 108 trees to be removed as part of the work in this area, including two old growth Douglas firs, resulting in impacts on the Smith River and the organisms that depend on it.

109. The bridge construction and demolition work would involve blasting, including within 5 feet for what Caltrans defines as the summer flow level of the Smith River, which is substantially below the level of the river in wetter months, resulting in sedimentation impacts on the Smith River and the organisms that depend on it. Other construction methods to be used include the use of hydraulic hammers, pneumatic hammers, air spades, and other excavation techniques. The noise created by this work would further result in impacts on the Smith River, including in particular coho salmon and similar fish, which studies have shown experience mortal impacts from noise pollution.

110. The work in this area would also involve the replacement of culverts, requiring significant construction activity above the Smith River, which would also result in sedimentation impacts on the Smith River and the organisms that depend on it.

111. In total, Caltrans estimates approximately 3 acres of soil would be disturbed by the work called for in this location resulting in sedimentation impacts on the Smith River and the organisms that depend on it.

112. Work called for on the roadway would include grinding the existing asphalt, the addition of a layer of open-graded asphalt, and shoulder backing, resulting in impacts on the Smith River and the organisms that depend on it. The EA/FONSI and Revised Coho BA/EFHA contain the same omissions concerning materials to be used for these activities as they do for the other Project locations. The work would also include compaction of soils in the areas of new shoulders and an overall increase in impervious surface by 0.25 acre, resulting in sedimentation impacts on the Smith River and the organisms that depend on it.

d. Patrick Creek Narrows # 3

113. Patrick Creek Narrows # 3 is located at PM 25.5 to 25.75 above the Smith River. Here Caltrans proposes to widen the roadway, eliminate an "S" curve, install a 180 feet by 15 feet tall soldier pile retaining wall on the riverside of the road, replace culverts that empty out 10 feet above what Caltrans defines as the live channel Smith River, and replace existing, and install new, drainage inlets from the roadway to the culverts that facilitate transmission of PAH-laden and/or otherwise toxic road runoff from the roadway to the river.

114. Construction of the retaining wall would involve *inter alia* drilling numerous deep holes above the river with a drilling rig, placement of the concrete and steel beams in those holes, excavation of soil in front of the wall (on its riverside), and excavation and fill behind the wall, resulting in sedimentation impacts on the Smith River and the organisms that depend on it. Caltrans estimates that work in the Project Location would result in the almost a third of an acre of disturbed soil, resulting in sedimentation impacts on the Smith River and the organisms that depend on it.

115. It would further involve the placement of treated lumber between the created piles, which, in turn, may leach toxic chemicals in the river below, resulting in impacts on the Smith River and the organisms that depend on it.

116. The work on the roadway here would involve, as in other locations, grinding of the asphalt, laying asphalt in the newly constructed shoulders, the application of open graded asphalt and shoulder backing, resulting in impacts on the Smith River and the organisms that depend on it. The EA/FONSI and Revised Coho BA/EFHA contain the same omissions concerning materials to be used for these activities as they do for the other Project locations. The work would also include compaction of soils in the areas of new shoulders and an overall increase in impervious surfaces by 0.16 acre, resulting in sedimentation impacts on the Smith River and the organisms that depend on it.

117. Caltrans acknowledges that the culvert work may require diversion and dewatering, resulting in impacts on the Smith River and the organisms that depend on it, including without limitation those discussed elsewhere herein.

e. <u>Washington Curve</u>

118. Washington Curve is located at PM 26.5 above a bend of the Smith River. Caltrans proposes to widen the roadway and excavate of a new cut slope and to replace a culvert and drainage inlet.

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119. The excavation calls for removal of approximated at 23,00 CY of soil, with the disturbance of approximately 1.4 acres of soil, resulting in sedimentation impacts on the Smith River and the organisms that depend on it. The slope excavation work calls for rip excavation as well as the use of hydraulic hoe rams and rock splitters as necessary.

120. Caltrans anticipates that ¾ of the excavated area would be rock and plans to leave an 8' wide unpaved area below the excavated slope to intercept and contain predicted rockfall. The plans call for the slope to be excavated to a cut slope ratio of 3/4:1, approximately a 45-degree angle. The Project calls for no measures to be taken below, beyond seeding of the exposed soil, to address the erosion of the remaining 1/4 of the excavated slope that is soil or the resulting sedimentation impacts on the Smith River and the organisms that depend on it.

121. The work on the roadway here would involve as in other locations, the application of open graded asphalt, resulting in impacts on the Smith River and the organisms that depend on it, including without limitation those discussed elsewhere herein. The EA/FONSI and Revised Coho BA/EFHA contain the same omissions concerning the question of sealants as they do for the other Project locations. Approximately .16 of new impervious

surface would be created, resulting in impacts on the Smith River and the organisms that depend on it.

122. The work here calls for 138 trees to be removed as part of the work in this area, including two old growth Douglas firs, resulting in impacts on the Smith River and the organisms that depend on it.

C. The 197/199 Project's Larger Setting: Caltrans' Project To Create a Large Truck Network Throughout Northern California

123. While Caltrans chose to analyze the environmental impact of the 197/199 Project as separate free-standing project – and, in practice, actually analyzed the impact of the work at each of the seven Project Locations separately from one another in contravention of legal requirements – the 197/199 Project is actually part of a larger effort being pursued by Caltrans to establish an STAA truck network throughout Northwestern California, of which The 197/199 Project is but one of several components being implemented and/or pursued ("NW California STAA Network"). Creation of this NW California STAA Network would pose the likelihood of increased STAA truck traffic on rural Northwestern California routes, including US 199 and SR 197.

124. Caltrans is seeking to create this network by attempting a series of "fixes" along Routes 101, 299, and 197/199. Caltrans made changes near Big Lagoon, in Humboldt County, which enabled the STAA designation of Route 101 between Eureka and Crescent City. Caltrans is near completion of changes on Route 299, which links Redding at Interstate 5 in Northern California, to Arcata at Route 101. These changes would enable STAA access to and from Interstate 5 in Northern California. Caltrans attempted a proposed project in Richardson Grove State Park on Route 101 near the Humboldt/Mendocino county line. The Richardson Grove project proposed, among other things, cutting the roots of ancient redwood trees with the state park. The Richardson Grove project has been stopped by federal court litigation for failure to provide adequate NEPA review.

125. If Caltrans is permitted to continue developing its NW California STAA Network, in a piecemeal fashion, the effort would pose significant and unexamined cumulative

effects. These cumulative effects would include an increase of large truck traffic throughout Northwestern California, on roadways that often pass through the middle of small communities like Hiouchi and Gasquet and which are not entirely safe for these vehicles in conjunction with other traffic. Given the amazing natural beauty and relatively unspoiled quality of Northwestern California, much of this proposed NW California STAA Network would all pass through irreplaceable environmentally sensitive areas like the Smith River Canyon and Richardson Grove State Park, which are wholly inappropriate locations through which to run major arteries for freight. The cumulative impacts of the proposed NW California STAA Network on the health, safety, and welfare of the people of Northwestern California and its other environmental impacts are not examined in the EA/FONSI of the 197/199 Project or in any other analogous document examining the environmental impacts of the NM California STAA Network as a whole.

126. In the vicinity of the 197/199 Project, creation of the NW California STAA Network, including opening SR 197 and US 199 to STAA truck traffic, would result in an increase in truck traffic down US 199 through the Smith River Canyon and SR 197 toward the Smith River Estuary. This increased truck traffic would occur during the winter, when river waters are highest, when salmon spawning and hatching activity is greatest, and when rains in the area are heaviest.

127. Specifically, a NW California STAA Network that, through US 199, linked Interstate 5, North of the California border, with the San Francisco Bay Area to the South would effectively reroute trucks seeking to avoid winter storms and chain restrictions from inland Interstate 5 to this coastal route. Truckers on Interstate 5 are often required during winter months to chain their trucks and trailers due to snow or to stop from passing until conditions improve. Such a delay can happen as many as seven different times on a trip from the middle of Oregon to the middle of California. In particular, trucks are frequently prevented from going over the Siskiyou Summit near the Oregon/California border – the highest point on Interstate 5 and approximately 50 miles southeast from the intersection of US 199 and Interstate 5.

128. The 197/199 Project would create a new STAA bypass down the Smith River Canyon on US 199/SR 197 to US 101. All told, the bypass would by only 44 miles longer than the 420 mile trip using Interstate 5 from Grants Pass to San Francisco. In light of the many hours that can be lost by truckers dealing with closures and chain-up requirements at the Siskiyou Summit and other locations along Interstate 5, the proposed change in status of US 199/SR 197, combined with the opening of an STAA route from Crescent City to San Francisco, would add a viable and likely choice for truckers seeking to avoid chaining, closures, and snowy conditions. This change would result in increased amounts of truck traffic on US 199/SR 197 during the winter when rains are heaviest, the rains providing an increased medium for transmission of PAH-laden and/or otherwise toxic road runoff in the Smith River and an increased risk of accidents – and attendant impacts – as the result of decreased visibility and road traction.

129. The winter is also the period during which there are the highest numbers of spawning and recently hatched threatened SONCC coho and Chinook salmon or alevin in the Smith River. These literally are the futures of these fish populations, which, in the case of the SONCC coho population of the Smith River, is facing a high risk of extinction.

130. The combination of these factors substantially increases the Project's probable impact on SONCC coho and Chinook salmon, other fish species, the critical habit of SONCC coho, and the Pacific Salmon EFH. These impacts would include *inter alia* an increased likelihood of contact between spawning salmon, alevins, and other fish and PAH-laden and/or otherwise toxic road runoff, which are known to be particularly toxic to spawning coho and recently hatched fish. It would also increase the likelihood of contact between spawning salmon, alevins, and other fish and toxic spills from accidents involving large trucks on SR 197/US 199, including motor fuel spills, which contain high levels of PAHs. According to the NMFS 2012 Draft SONCC Coho Recovery Plan, impaired water quality resulting from roads in the Smith River Basin presents a high risk to survival of Smith River SONCC coho population, and reducing pollutants in the Smith River watershed is among the recovery actions recommended by the Plan. Neither the EA/FONSI nor the Revised Coho BA/EFHA analyze

these impacts and they are incompatible with the NMFS 2012 Draft SONCC Coho Recovery Plan's strategy for saving the Smith River's unique population of SONCC coho from extinction.

D. The 197/199 Project's Other Impacts upon the Environment

131. In addition to the foregoing described environmental impacts, the Project would also have other impacts on the human environment, including without limitation the following:

132. The Smith River provides unique and remarkable fishing and recreational opportunities. The Project would impact fishing at various locations, including at Ruby Van Deventer County Park on Highway 197, at Patrick's Creek Narrows # 1, PM 20.5 where two prime recorded fishing holes are located just 50 and 100 yards downstream, and just above the Narrows Project at a popular frequently used fishing spot. More generally, the Project's impact on water quality and its deleterious impacts to fish, some of which are described elsewhere herein, would impact fishing opportunities in the Smith River. For example, spills of chemical, fuels, oil, or any number of other things on this roadway could be deadly to fish spawning in the Smith River and their offspring, and the increase in truck traffic increases the incidence of these accidents. Furthermore, increases in PAH-laden and/or otherwise toxic road runoff would have similar deadly effects on spawning fish and their offspring, as would various other impacts of the Project including increased sedimentation, changes in water flow, changes in shading, changes in riparian vegetation, etc.

133. The Project would cause substantial impacts on the quality of human life, by taking private property, decreasing existing buffers between highway right-of-ways and adjacent homes and businesses, increasing the risk of fatal traffic due to increased heavy truck traffic, increasing risk of toxic spills into the Smith River corridor from increased heavy truck traffic (threatening community water sources, world class sport fishing, and critical habitat for listed species), and degrading scenic values.

134. Caltrans failed to address safety hazards in areas with highest accident rate (between Gasquet and Hiouchi), for which no improvements are proposed to mitigate effects. The Project fails to address the increased risk of truck cargo spills from increase in truck traffic,

threatening the only water supply for Gasquet and Crescent City and polluting of the pristine wild and scenic Smith River.

135. The Project would create an increase of heavy truck traffic on roads that local residents and businesses depend on for daily access, and on US 199, which is also a significant Scenic Byway that attracts many visitors annually for bird watching, sightseeing, camping, river rafting, boating and sport fishing – activities that would be disrupted by additional heavy truck traffic. The Project would also result in increasing numbers of large trucks traveling the roadway that bisects the small communities of Hiouchi and Gasquet.

136. The Project would result in an increase in heavy truck use on a roadway whose main value is in providing access to environmental and recreation resources along the scenic Smith River Canyon, as well as access to the redwood forests that comprise one of California's two UNESCO World Heritage sites (the other being Yosemite). Enjoyment of these scenic drives and the natural resources that surround them would be marred by driver concerns about long heavy trucks careening around curves in areas that would still have considerable variability in lane widths, shoulder widths, and sight distances. There is already a documented history of truck accidents on US 199, including fatalities and diesel spills threatening the Smith River. The existing roadway is so narrow and twisting that the improvements Caltrans has proposed at seven locations along the roadway to allow STAA truck access cannot all meet Caltrans' engineering design guidelines and would require mandatory design exceptions.

137. The Project conflicts with adopted plans and policies pertaining to the protection of scenic, recreational, and biological resources in the Smith River corridor, such as the Smith River National Recreation Area Management Plan, the NMFS 2012 Draft SONCC Coho Recovery Plan, and/or the1999 PFMC Salmon EFH Report. The Smith River National Recreation Area Management Plan states: "the management emphasis for the middle Fork-Hwy 199 management area shall be on maintaining wildlife values and providing for a full range of recreation uses, with particular emphasis on the scenic and recreation values association with the Smith River, old growth redwoods, and California state highway 199." Designation of US 199 as part of the STAA truck network would not be consistent with this management priority

or those outlined in the NMFS 2012 Draft SONCC Coho Recovery Plan and/or the1999 PFMC Salmon EFH Report.

138. Caltrans' own Route Concept Report prepared in 1989, long after the passage of the Surface Transportation Act of 1982 allowing 53' truck trailers, acknowledges "the geophysical constraints of the relatively narrow, steep and rocky Smith River Canyon." The Report concludes that environmental concerns and ecological sensitivities make SR 199 "a poor candidate for extensive upgrading." That Report recommended leaving SR 199 "basically a 2-lane conventional highway, with passing lanes." The Report recommended developing additional passing lanes as necessary only to maintain acceptable level of service. Finally, the Report concluded: "This Route Concept should serve as a guide for long range planning of improvements to US 199. It would protect the State's investment in the Route, while recognizing environmental and financial constraints which would not allow the programming of extensive improvements for this highway."

139. The Project's roadway features would adversely affect the safety of other roadway users. Improvements likely would tend to increase traffic speed. Given outstanding narrow conditions, increased traffic speed would increase propensity of run-off incidents and increase the width of recovery area needed to avoid crashes. Changes in speed characteristics from the Project would cause greater crash incidents, resulting in the various impacts attendant therewith. Exceptions to design standards involve significant compromise to design standards.

140. There is no evidence that Caltrans has considered the actual distribution of speeds driven at the pinch points and their approaches. Moreover, Caltrans has seriously understated traffic and truck volumes on US 199. Caltrans has relied on understated estimates of both overall traffic and truck traffic, currently and in the future.

141. There are substantial questions whether the Project would threaten the pristine Smith River and the endangered and threatened species that depend upon it, particularly given *inter alia* the amount of Project earth and rock excavation and road work which would occur within the Smith River protected corridors, the ongoing and potentially increased hazards from

the introduction of STAA trucks onto Routes 197 and 199, and the increased PAH-laden and/or otherwise toxic road runoff that would result from the Project.

142. There are substantial questions whether the 197/199 Project would substantially increase large truck traffic along Routes 197 and 199, especially when viewed in context with Caltrans' project to create a NW California STAA Network.

143. There are substantial questions whether the 197/199 Project would have a significant and negative affect on public safety, particularly because of the existing narrow conditions on SR 197 and US 199, and Caltrans' decision to not make changes to locations along US 199 known to be the site of frequent accidents.

144. There are substantial questions whether the 197/199 Project would have a significant negative effect on old growth trees, including Douglas Fir trees that are slated for removal. This issue is problematic when viewed cumulatively with the impacts of other components of Caltrans' project to create a NW California STAA Network.

145. The 197/199 Project was, and remains, highly controversial, with hundreds of people opposing the Project, advocating changes, and urging that Caltrans adhere to safety measures and protect the Smith River and the critical and essential habitat it provides.

VII. IN DESIGNING AND/OR ANALYZING THE PROJECT AND ITS IMPACTS, CALTRANS AND NMFS FAILED TO COMPLY WITH THE ESA, THE MAGNUSON-STEVENS ACT, THE WILD AND SCENIC RIVERS ACT, NEPA, AND THE DEPARTMENT OF TRANSPORTATION ACT

146. As result of several factors, including, without limitation, the setting of this Project – along one of the most beautiful and ecologically important rivers in California and within a National Recreation Area and National Forest – a number of Federal laws required that Caltrans and/or NMFS employ a heightened level of care in designing and analyzing the Project and its impacts. These statutes include the ESA, the Magnuson-Stevens Act, the Wild and Scenic Rivers Act, NEPA, and the Department of Transportation Act.

147. Neither Caltrans nor NMFS came close to meeting the heightened level of care required by any of these laws.

A. NMFS Failed to Comply with Section 7 of the ESA in Its Consultation With Caltrans Concerning the Project's Impacts on Threatened SONCC Coho, Green Sturgeon, and Designated SONCC Critical Habitat

148. In 1997, NMFS listed SONCC coho as threatened with extinction under the ESA, and reaffirmed that listing in 2005. Since time immemorial, SONCC coho have been born, matured, and then returned to spawn in the Smith River and its tributaries. Thus, in 1999 NMFS designated the Smith River and its tributaries as critical habitat for the SONCC coho ESU. All of the Project Locations are within the area designated as SONCC critical habitat, as well as the remainder of the Smith River downstream of the Project Locations.

149. In 2004, the green sturgeon Pacific-northern Distinct Population Segment ("DPS") was listed by NMFS as a species of concern. 69 Fed. Reg. 73 (April 15, 2004). These fish are known to visit the Smith River, including areas in which the Project calls for work to occur as well as the remainder of the Smith River downstream of the Project Locations. A green sturgeon four feet long was observed in Patrick Creek, which is in the immediate vicinity of several of the Project Locations.

150. Section 7(a)(2) of the ESA commands all federal agencies and, as in this case, State agencies that have assumed the applicable obligations of a federal agency, to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species . . . " 16 U.S.C. § 1536(a)(2). An adverse modification of critical habitat includes modifications that threaten not just the survival of a threatened or endangered species but also its recovery.

151. The ESA and its implementing regulations require action agencies to consult with the appropriate federal fish and wildlife agency, which is referred to as the consulting agency, whenever their actions "may affect" an endangered or threatened species. *See* 50 C.F.R. § 402.14(a). Pursuant to the Caltrans/FHWA MOU, Caltrans was the agency which prepared the Revised Coho BA/EFHA, March 29, 2012. As the terms are used in the context of Section 7 of the ESA, in the context of the Revised Coho BA/EFHA, Caltrans is the "action agency" and NMFS is the "consulting agency."

152. The first step in this process is for the action agency – again, Caltrans here – to "conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action." 16 U.S.C. § 1536(c); *see also* 50 C.F.R. § 402.02 ("*Biological assessment* refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation potential effects of the action on such species and habitat.")

153. In this context "action" includes those "***directly or indirectly*** causing modifications to the land, water, or air." 50 C.F.R. § 402.02 (emphasis added). Furthermore, "action area" in this context "means ***all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action***." 50 C.F.R. § 402.02 (emphasis added).

154. If the action agency – Caltrans – determines in its biological assessment that its action is "likely to adversely affect" a protected species or its critical habitat, it must engage in formal consultation. Formal consultation requires that the consulting agency - again, NMFS in this case – issue a biological opinion determining whether the action is likely to jeopardize the listed species and describing, if necessary, reasonable and prudent alternatives that will avoid a likelihood of jeopardy. *See* 16 U.S.C. § 1536(b)(3)(A).

155. In contrast, if the action agency determines that an action is "not likely to adversely affect" the species, it may attempt informal consultation. *See* 50 C.F.R. § 402.13 (a). This does not end the consultation process. The consulting agency must issue a written concurrence in the determination or may suggest modifications that the action agency could take to avoid the likelihood of adverse effects to the listed species. *See* 50 C.F.R. § 402.13(b). If no such concurrence is reached, the regulations require that formal consultation be undertaken. *See* 50 C.F.R. § 402.14.

156. In fulfilling their respective roles in this process, both the action agency and the consulting agency are required by the ESA to "use the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2).

157. Both Caltrans and NMFS failed to properly fulfill their respective roles in this process. Caltrans failed to adequately conduct its biological assessment; and ***NMFS failed to prepare a biological opinion despite the fact that Caltrans explicitly found the Project was likely to adversely affect SONCC coho critical habitat*****,** once Caltrans made this finding, it automatically triggered an obligation by NMFS to prepare a biological opinion. Instead, NMFS "concurred" as if Caltrans had made a finding of no likely adverse impact on such habitat. In fact, Caltrans never made such a finding. Furthermore, Caltrans' biological assessment of the Project's anticipated impacts on SONCC coho and green sturgeon was so inadequate that NMFS' concurrence in Caltrans' findings that the Project would not likely have an adverse impact these species was also arbitrary and capricious.

158. The most egregious shortcoming of Caltrans' Revised Coho BA/EFHA – which NMFS arbitrarily and capriciously accepted – was its failure to analyze the Project's impact, as a whole, on SONCC coho, SONCC coho critical habitat, and green sturgeon. Rather, Caltrans separately analyzed the impact of the work to be conducted at each Project Location, in isolation from any impacts of work in the other Project Locations. Caltrans essentially created artificial *sub-projects*, and analyzed whether each of these *sub-projects* was likely to adversely impact SONCC coho, SONCC coho critical habitat, or green sturgeon. NMFS arbitrarily and capriciously accepted Caltrans' findings of no likely adverse effects on SONCC coho, SONCC coho critical habitat, and green sturgeon based on this limited and inadequate analysis.

159. Indeed, if one closely reads the Revised Coho BA/EFHA that NMFS accepted, it becomes clear that Caltrans engaged in the following simplistic (and wholly improper) two-step process. If work at a particular Project Location did not call for work to be done in the stream bed, Caltrans stopped its analysis there concerning the impact of such work and determined solely on this basis that the work in that Project Location would not likely have an adverse impact on SONCC coho, SONCC coho critical habitat, or green sturgeon. This was case for ***six of the seven*** Project Location. Only if the work called for at a particular Project Location involved work in the stream-bed did Caltrans do any further analysis of the Project's likely impact on SONCC coho, SONCC coho critical habitat, or green sturgeon; and then Caltrans

limited its analysis only to impacts in the immediate area of the Project Location rather than the entire area of the Project, let alone "all areas to be affected directly or indirectly by the [Project]." 50 C.F.R. § 402.02. Furthermore, Caltrans' analysis was limited only to the impact of the work to be done at that particular Project Location, without consideration of the impacts of the work to be done at any other Project Location, let alone cumulatively with the effects of other State or Federal actions or other human activity, such as other road building activity in the Smith River basin or any of the other threats/stresses identified in the NMFS 2012 Draft SONCC Coho Recovery Plan.

160. Thus, because the only location where the Project called for work to be done within the streambed of the Smith River was at the Patrick Creek Narrows Location No. 2, NMFS Caltrans effectively limited its analysis of the Project's impact on SONCC coho, SONCC coho critical habitat, and green sturgeon to work to be done at the Patrick Creek Narrows Location No. 2 on fish located at Patrick Creek Narrows Location No. 2. NMFS, in turn, arbitrarily and capriciously accepted this approach, effectively limiting its consultation with Caltrans accordingly. For example, the only snorkel surveys done by Caltrans to determine the number of SONCC coho and green sturgeon present in the action area were done in the vicinity of Patrick Creek Narrows Location No. 2.

161. It was arbitrary and capricious for NMFS to limit its consultation to the effects of the work to be done at Patrick Creek Narrows Location No. 2 in isolation from the effects of the work to be done at other Project Locations, as well as cumulatively with the effects of other State and Federal actions and other human activities. It was also arbitrary and capricious for NFMS to accept, as the basis for such a limitation, Caltrans' determination that the work at these other Locations would have no impacts on these near extinct species and critical habitat solely on the ground that the Project did not call for in-stream work to be conducted in those Locations.

162. Furthermore, even if it was proper for NMFS to effectively limit its consultation with Caltrans to the effects of work called for by just one seventh of the Project, it was also arbitrary and capricious for NMFS to geographically limit its consultation with Caltrans to the

effects the work would have only in the immediate vicinity of Patrick Creek Narrows Location No. 2. A river runs through this location, SONCC coho and green sturgeon live throughout that river, and throughout the river is critical habitat for SONCC coho. It is arbitrary and capricious to presume that the effects of work done in one location in the river would be limited to just that location and thus to limit the analysis to the impacts that are likely to occur there. A river efficiently transports the negative effects of work done in the vicinity of one location on the river to other locations throughout the river.

163. As mentioned, apparently based solely on the fact that the Project did not call for work done be done in the streambed at any Location other than at Patrick Creek Narrows Location No. 2, Caltrans determined that the work at these other Locations was not likely to adversely affect SONCC coho, green sturgeon, or SONCC coho critical habitat. NMFS' concurrence in this approach ignored the requirement that the effects of the Project, as a whole, as well as cumulatively with other human activity, be analyzed. It also sanctioned Caltrans' failure to even consider whether the work at these Locations would individually result in the types of threats and/or stresses to SONCC coho or SONCC coho critical habitat that the NMFS 2012 Draft SONCC Coho Recovery Plan, the 1999 PFMC Salmon EFH Report, and/or recent studies by NMFS and others have specifically identified as being associated with road building and/or road runoff.

164. To a lesser extent, the same is true as to NMFS' concurrence in Caltrans' limited analysis of work called for at Patrick Creek Narrows Location No. 2 – which, again, was the only portion of the Project work analyzed by Caltrans for its impacts on SONCC coho, green sturgeon, or SONCC coho critical habitat. Caltrans failed to analyze what the impact of the work called for by Project at this Location would be in combination with the impacts of other work called for by the Project or cumulatively with other human activity and improperly limit the area analyzed for potential impacts to only the immediate vicinity of Patrick Creek Narrows Location No. 2. Caltrans similarly failed to evaluate whether the work at this Location would individually result in many of the types of threats and/or stresses to SONCC coho or SONCC coho critical habitat that the NMFS 2012 Draft SONCC Coho Recovery Plan, the 1999 PFMC

Salmon EFH Report, and/or recent studies by NMFS and others have specifically identified as being associated with road building and/or road runoff. NMFS arbitrarily and capriciously concurred in this analysis.

165. Thus – in addition to effectively only analyzing one seventh of the work called for by the Project and doing so in isolation from the impacts of other activities and limiting that analysis to probable impacts in only one Location in the immediate vicinity of the work analyzed – among the many deficiencies of NMFS' concurrence in Caltrans' biological assessment of whether the Project would likely adversely affect SONCC coho, green sturgeon, or SONCC coho critical habitat was that the assessment: (a) failed to adequately gather and analyze data concerning the extent that the Project was likely to increase PAH-laden and/or otherwise toxic road runoff – including without limitation from increased truck traffic of US 199 and/or SR 197 – and the effects such increased toxic road runoff would have on SONCC coho, green sturgeon, or the critical habitat of SONCC coho; (b) failed to adequately gather and analyze data concerning the extent that the Project was likely to result in long- or short-term increases in sedimentation in various areas of the Smith River, including without limitation its estuary, and the effect such sedimentation would have on SONCC coho, green sturgeon, and/or the critical habitat of SONCC coho; (c) failed to adequately gather and analyze data concerning the extent that the Project was likely to result in long-term increases of accidents on US 199 or SR 197, causing increased toxic spills, including without limitation of petroleum products and other contaminants, into the Smith River and/or the effects such spills would have on SONCC coho, green sturgeon, and/or SONCC coho critical habitat; (d) failed to adequately gather and analyze data concerning the extent that the Project was likely to result in long-term increases of noise pollution from increase truck traffic on US 199 and/or SR 197 and the effects such noise pollution would have on SONCC coho, green sturgeon, and/or SONCC coho critical habitat; and (e) failed to use the best and most recent scientific data concerning the impacts of road building and/or road runoff on SONCC coho, particularly spawners and alevin, including without limitation the data contained in the NMFS 2012 Draft SONCC Coho Recovery Plan, the 1999 PFMC Salmon EFH Report, and/or recent studies by NMFS and/or others.

166. Despite the improperly constrained manner in which Caltrans conducted its biological assessment of whether the Project would likely adversely affect SONCC coho, green sturgeon, or SONCC coho critical habitat, ***Caltrans determined that the Project was likely to adversely affect SONCC coho critical habitat***. Specifically, the Revised Coho BA/EFHA states at page 63: "The proposed action at PCN-2 [Patrick Creek Narrows 2] is likely to adversely affect SONCC coho critical habitat." At page (iv), the Revised Coho BA/EFHA goes on to state: "SONCC critical habitat is also likely to be adversely affected."

167. This determination by Caltrans that its action was likely to adversely affect SONCC coho critical habit triggered the obligation of NMFS, the consulting agency, to issue a biological opinion concerning the Project's impact on critical SONCC coho habitat. However, NMFS did not issue a biological opinion. Rather, on May 7, 2012, NMFS issued a letter of concurrence ("LOC") purporting to concur in a finding by Caltrans that its actions would not have an adverse effect on SONCC coho, green sturgeon, or SONCC coho critical habitat. This was arbitrary, capricious, an abuse of discretion, and/or in violation of the law, including without limitation, ESA § 7. It was also nonsensical. As to the Project's impact on SONCC coho critical habitat, NMFS purported to "concur" in a nonexistent finding of no likely adverse effects.

168. However, as to Caltrans' findings that the Project was not likely to adversely affect SONCC coho or green sturgeon – findings that did actually exist in the Revised Coho BA/EFHA – NMFS' concurrence in these findings and its failure to require Caltrans to engage in formal consultation concerning these effects of the Project was also arbitrary, capricious, an abuse of discretion, and/or in violation of the law. As outlined *supra*, Caltrans' analysis of the Project's likely effects on SONCC coho or green sturgeon was inadequate in a multitude of ways. Thus, NMFS arbitrarily and capriciously failed to require formal consultation concerning the Project's likely effects on SONCC coho or green sturgeon, as well, and NMFS should have issued a biological opinion concerning these likely effects. NMFS' failure to do so is all the more arbitrary and capricious in light of its authorship of both the NMFS 2012 Draft SONCC Coho Recovery Plan and recent studies linking road runoff to severe effects on spawning coho.

Caltrans ignored both the Recovery Plan and these studies in conducting the Revised Coho BA/EFHA.

B. Caltrans and NMFS Failed to Comply With the Magnuson-Stevens Act In Their Consultation Concerning the Project's Impacts on the Designated Essential Fish Habitat of Pacific Salmon

169. In 2000, the Pacific Fisheries Management Counsel, pursuant to the enabling regulations of the Magnuson-Stevens Act, 50 C.F.R. §§ 600.805 *et seq.*, designated the Middle Fork of the Smith River as Essential Fish Habitat for Coho and Chinook salmon. This was done in Chapter 1 of Appendix A to the 14th Amendment to the Pacific Coast Salmon Plan, adopted in 1997. All of the Project Locations, as well as the remainder of the Smith River downstream of the Project Locations, are included within this designation.

170. Section 305(b)(2) of the Magnuson-Stevens Act, U.S.C. § 1855(b)(2), and its enabling regulations, 50 C.F.R. §§ 600.920 *et seq.*, requires that Federal agencies and any non-federal entities to which federal programs have been delegated – in this case, Caltrans pursuant to the Caltrans/FHWA MOU – consult with the NMFS "with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency [or delegate] that ***may adversely affect any essential fish habitat***." (Emphasis added). The purpose of this consultation is to protect habitat that managed fish species – in this case, Pacific coho and Chinook salmon – need to complete their life cycles.

171. "Adverse effect," in this context, "means ***any impact that reduces quality and/or quantity of EFH***. Adverse effects may include ***direct or indirect physical, chemical, or biological alterations of the waters*** or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH." 50 C.F.R. § 600.910(a) (emphasis added). Furthermore, "[a]dverse effects to EFH may result ***from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts***, ***including individual, cumulative, or synergistic consequences of actions***." *Id.* (Emphasis added)

172. All EFH assessments must contain: (a) a description of the action; (b) an analysis of the potential adverse effects of the action on EFH and the managed species; (c) the

action agency's conclusions regarding the effects of the action on EFH; and (d) any proposed mitigation. 50 C.F.R. § 600.920(e)(3). An action agency can limit its EFH assessment to these minimum requirements, and thus engage in what are known as the "abbreviated consultation procedures" with NMFS, only if its action does not have the potential to cause substantial adverse effects on EFH. 50 C.F.R. § 600.920(h).

173. However, if the action does have the potential to cause substantial adverse effects on EFH, the action agency must engage in what is known as "expanded consultation procedures" with NMFS. 50 C.F.R. § 600.920(i). These procedures are intended to "allow [] maximum opportunity for NMFS and the [action] agency to work together to review the action's impacts on EFH and to develop EFH Conservation Recommendations." *Id.* As appropriate, these expanded consultation procedures must involve: (a) an on-site inspection to evaluate the habitat and the site-specific effects of the project; (b) the views of recognized experts on the habitat or species that may be affected; (c) a review of pertinent literature and related information; (d) an analysis of alternatives to the action, including alternatives that could avoid or minimize adverse effects on EFH; and (e) analysis of other relevant information. 50 C.F.R. § 600.920(e)(4).

174. If the action agency believes that its action would not result in substantial adverse impacts to EFH, it may submit an EFH assessment meeting the minimal requirements discussed above. 50 C.F.R. § 600.920(h)(2). However, if NMFS determines that, in fact, "the action ***may*** result in substantial adverse effects on EFH, or that additional analysis is needed to assess the effects of the action," NMFS must request that the action agency engage in expanded consultation. 50 C.F.R. § 600.920(h)(3).

175. At all stages in this process, both the action agency – Caltrans, in this case – and NMFS are required to "use the best scientific information available regarding the effects of the action on EFH and the measures that can be taken to avoid, minimize, or offset such effects." 50 C.F.R. § 600.920(b).

176. Neither Caltrans nor NMFS met their respective obligations in this process. Each agency acted in a manner that was arbitrary, capricious, an abuse of discretion, and/or was

otherwise not in compliance with the law, including without limitation the Magnuson-Stevens Act.

177. For its part, Caltrans' failings in this regard parallel its failings in analyzing the Project's impacts on SONCC coho, green sturgeon, and SONCC coho critical habitat. Instead of analyzing, as required, the adverse effects of the Project, as whole, "including individual, cumulative, or synergistic consequences" of the various components of the Project and other State or Federal actions or other human activity, Caltrans improperly segmented its analysis into distinct sections. Each section individually analyzed the adverse effects of just the work called for in each of the seven Project Locations and improperly limited that analysis only to an examination of adverse impacts that could occur in the immediate vicinity of each of those Locations. Once again, the practical effect of this approach was to limit its analysis to just the adverse impacts on the Pacific Salmon EFH in the immediate vicinity of Patrick Creek Narrows Location No. 2. Because the Project did not call for in-stream work at the other six Locations, Caltrans arbitrarily and capriciously determined that the work called for in these Locations would not have adverse effects on Pacific Salmon EFH, ignoring its obligations under the Magnuson-Stevens Act to analyze the potential adverse effects of the Project on Pacific Salmon EFH in the vicinity of these locations as well as in the Smith River as whole, including without limitation its estuary.

178. Caltrans' analysis of the potential adverse effects of the Project also failed to use the best scientific data available concerning the impacts of road building and/or road runoff on Pacific Salmon EFH or measures that could be taken to avoid, minimize, or offset such effects, including without limitation those contained in the NMFS 2012 Draft SONCC Coho Recovery Plan, the 1999 PFMC Salmon EFH Report, and/or recent studies by NMFS and/or others. In short, the same basic shortcomings that afflicted Caltrans' analysis of the Project's potential impacts on SONCC coho, green sturgeon, and SONCC critical habitat afflicted its analysis of the Project's potential adverse effects on Pacific Salmon EFH.

179. When it received this deficient assessment from Caltrans, NMFS should have required that Caltrans engage in expanded consultation: based on this deficient consultation

there are significant grounds to believe that the Project may adversely affect Pacific Salmon EFH and/or that additional analysis is needed to assess the effects of the action. *See* 50 C.F.R. § 600.920(h)(3). NMFS also should have used the best scientific data available – including without limitation its own studies concerning the effects of road building and road runoff on SONCC coho – in determining whether expanded consultation was needed. Nonetheless, in the same May 7, 2012 letter of concurrence, NMFS arbitrarily, capriciously, in an abuse of discretion, and/or in violation with the law, including without limitation the Magnuson-Stevens Act, failed to require Caltrans engage in expanded consultation procedures concerning the Project's potential adverse effects on Pacific Salmon EFH.

C. Caltrans Failed to Comply With the Wild and Scenic River Act Concerning the Project's Impacts on the Wild and Scenic Smith River

180. The Smith River Wild and Scenic River System were designated first in January, 1981 and again in November 1990 with the creation of the Smith River National Recreation Area. The primary value for which the Smith River was federally designated is its "outstanding, remarkable" anadromous fishery; secondary factors of the designation are its notable recreational and scenic values. All of the Smith River in the vicinity of the Project Locations and downstream therefrom are designated, as are three tributaries of the Smith River that within the Project area: Monkey Creek, Patrick Creek, and Kelly Creek.

181. Section 7 of the Wild and Scenic Rivers Act imposes a duty on federal agencies and their designees to protect the free-flowing condition and other values of designated rivers. Pursuant to the Caltrans/FHWA MOU, Caltrans assumed the Federal Highway Administration's obligation to comply with the Wild and Scenic Rivers Act. "[N]o department or agency of the United States shall assist by loan, grant, license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established . . ." 16 U.S.C. § 1278 (a). Absent congressional intervention, projects may not be authorized or commenced which have an adverse effect on the values for which the river is designated.

182. Implementation of Section 7 of the Wild and Scenic Rivers Act requires rigorous and consistent evaluation procedures to protect river resources, and the determination as to effect of the project lies with one of the four federal river-administering agencies. The United States Forest Service and National Park Service are the federal river-administering agencies for the Wild and Scenic Smith River.

183. The Project is a water resources project for which consultation under Section 7 of the Wild and Scenic Rivers Act with and determination by the U. S. Forest Service for work on US 199 and by the National Park Service for work on SR 197 is required.

184. Caltrans has violated its obligations under the Wild and Scenic River Act by failing to disclose and provide for meaningful and informed consultation all relevant and necessary information about the Project and its impacts, including without limitation relevant and necessary information concerning the Project and its impacts on the Smith River's "outstanding, remarkable" anadromous fishery.

D. Caltrans Failed to Comply With NEPA in Its Analysis of the Project's Impacts on the Human Environment

185. NEPA establishes a national policy to "prevent or eliminate damage to the environment and biosphere." 42 U.S.C § 4321. NEPA recognizes "the critical importance of restoring and maintaining environmental quality," declares the federal government has a continuing responsibility to use "all practicable means" to minimize environmental degradation, and directs that "to the fullest extent possible ... the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act." 42 U.S.C. §§ 4331(a), 4332(1). NEPA also recognizes the right of each person to enjoy a healthful environment. 42 U.S.C. § 4331(c).

186. NEPA Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act are codified at 40 C.F.R. §§ 1500 *et seq*. The Federal Highway Administration has adopted its own NEPA regulations, which are codified at 23 C.F.R. Part 771. These are binding on all agencies which must comply with NEPA, including Caltrans

pursuant to the Caltrans/FHWA MOU assigning it the obligation to comply with NEPA for highway projects, including the 197/199 Project.

187. NEPA requires all agencies to prepare a detailed environmental impact statement ("EIS") on every proposal for a major federal action that could potentially have a significant effect on the quality of the human environment. 42 U.S.C. § 4322(2)(c). Under NEPA, an agency must prepare an EIS when an action may have a significant environmental effect, 40 C.F.R. § 1508.3, or where there is a substantial question raised as to whether an action may have an environmental effect.

188. The 197/199 Project is a major federal action significantly affecting the quality of the human environment for which Caltrans must prepare an EIS. It is an action requiring an EIS because, among other things:

a. there are substantial questions whether the Project may cause a significant degradation of some human environmental factor and have significant environmental impacts, as outlined in this Complaint, including without limitation within the meaning of the context and intensity criteria set forth in 40 C.F.R. § 1508.27;

b. the Project would have more than a minimal impact on lands protected under Section 4(f) of the Department of Transportation Act; and

c. the Draft EA and the EA/FONSI, in conjunction with Caltrans' responses to comments and other information in the administrative record, raise a substantial question as to whether the Project may have a significant effect on the environment.

189. Caltrans failed to provide a convincing set of reasons why the Project's potential impact on the human environment would not be significant, particularly in relation to the Project's potential short- and long-term impacts on: the Smith River's near extinct population of SONC coho; the critical habitat of SONCC coho in the Smith River; the Pacific Salmon EFH in the Smith River; safety of drivers of the US 199 and SR 197; riparian vegetation, including

several old growth Douglas firs; the Wild and Scenic Smith River and its corridors and natural, scenic, and aesthetic resources; domestic water supplies; and quality of human life.

190. Numerous questions exist concerning whether the 197/199 Project may cause significant degradation of some human environmental factor, including without limitation: the Wild and Scenic Smith River; the Smith River's near extinct population of SONC coho; the critical habitat of SONCC coho in the Smith River; the Pacific Salmon EFH in Smith River; other fishes (anadromous or otherwise) and protected species that inhabit the river and its environs and those habitats; riparian vegetation, including several old growth Douglas firs; safety of drivers of the US 199 and SR 197; the Smith River National Recreation Area; the National Scenic Byway; the Smith River's pure and remarkable water; and the area's scenic and recreational resources, including sport fishing.

191. NEPA also requires, whether an agency prepares an EIS or an EA, that the agency *inter alia*: (a) adequately consider, analyze, and disclose the individual and cumulative environmental impacts of the proposed action and alternatives to it, 42 U.S.C. § 4332(2)(c), 23 C.F.R. §§ 771.105, 771.119, 40 C.F.R. §§ 1508.9, 1502.16; (b) adequately establish the purpose and need for the proposed action under review, 23 U.S.C. § 139(f), 40 C.F.R. §§ 1508.9(b), 1502.13; (c) rigorously explore and objectively evaluate all reasonable alternatives to the proposed action, 42 U.S.C. § 4332(2)(C)(iii), 23 C.F.R § 771.105, 40 C.F.R. §§ 1508.9, 1502.14; (d) rigorously explore and objectively evaluate appropriate mitigation measures not already included in the proposed action or alternatives, 23 C.F.R. § 771.119(b); 40 C.F.R § 1502.14(f); and (e) present for, and respond to, comments on any proposed major federal action that could significantly affect the quality of the human environment, 40 C.F.R. § 1503.2, and under certain circumstances when an EA is prepared make the EA available for a minimum of 30 days before a no significant impact is made and the action approved, 40 C.F.R. §§ 1505.1, 1501.4(e)(2).

192. The EA/FONSI failed to satisfy these requirements in numerous ways, including without limitation those outlined in this Complaint. In summary, these shortcomings include without limitation the following:

193. Caltrans issued and approved a EA/FONSI which failed to provide the required analysis of individual and cumulative environmental effects of the 197/199 Project, including but not limited to, the Project's effects on: the resources values of the Wild and Scenic Smith River; the Smith River's near extinct population of SONC coho; the Smith River's population of green sturgeon; the critical habitat of SONCC coho in the Smith River; the Pacific Salmon EFH in Smith River; other fishes (anadromous or otherwise) and protected species that inhabit the Smith River and its environs as well as those habitats; the Smith River National Recreation Area; safety of drivers of the US 199 and SR 197; extent of right-of-ways; water quality and domestic water resources; conflicts with governing plans and policies for the Smith River National Recreation Area; and the area's scenic and recreational resources, including sport fishing.

194. Caltrans failed to provide a valid discussion, or to document in the EA/FONSI, the purpose and need of the 197/199 Project. These failings included without limitation: (a) failing to present an adequate description of the proposed action; (b) failings to present a clear statement of the objectives that the Project is intended to achieve, including safety concerns; (c) failing to involve the public adequately in defining the ultimate purpose and need for the Project; and (d) failing to adequately disclose key components of the Project such as the engineering and design criteria used to develop and define the Project, and the interrelationships among the 197/199 Project and other Caltrans STAA truck access projects in Northwestern California and Caltrans' project to create a NW California STAA Network, as whole. As to the latter failing, in particular, by ignoring other projects for STAA truck access and Caltrans' project to create a NW California STAA Network, as whole, Caltrans improperly defined the Project's purpose and need so narrowly as to preclude analysis of a reasonable range of alternatives that would avoid significant environmental impacts.

195. Caltrans also failed to adequately identify and discuss cumulative impacts related to the 197/199 Project, including but not limited to:

a. impacts of the Project on SONCC coho, SONCC coho critical habit, and/or Pacific Salmon EFH cumulatively with other impacts of State,

Federal, or other human activities, including without limitation those identified in the NMFS 2012 Draft SONCC Coho Recovery Plan, and the 1999 PFMC Salmon EFH Report;

b. impacts of the Project cumulatively with the impacts of other components of Caltrans' project to create a NW California STAA Network, including without limitation impacts related to cumulative increases in truck traffic throughout the region as well as within in particular portions of the proposed NW California STAA Network such as along US 199 and SR 197.

c. impacts of the Project cumulatively with existing safety concerns on Routes 197 and 199, which threaten natural and environmental resources as well as human health, safety, and welfare;

d. impacts of the Project cumulatively with other impacts on wildlife and protected species within the Smith River corridor; and

e. impacts of the Project related to increases in heavy and large truck traffic – with its related noise, air, and water quality impacts – throughout the Smith River Canyon and the redwood forests, which comprise one of California's two UNESCO World Heritage sites – including without limitation impacts on the Smith River's threatened and remarkable fish resources, bird watching, sightseeing, camping, river rafting, boating, and sport fishing – cumulatively with the impacts of the other Federal, State, and/or other human activities.

196. Caltrans also failed to consider and describe an adequate range of alternatives. Other unconsidered reasonable alternatives that would reduce the significant adverse environmental effects of the 197/199 Project include without limitation:

a. restricting all soil and rock excavation to the west side of the roadway, to avoid any potential introduction of debris into the Wild and Scenic Smith River;

b. limiting access by STAA trucks to certain times of the year, to prevent use of Routes 197/199 as an alternate route during snow events on Interstate-5;

c. reducing permitting speed to reflect need for slower traffic along both Routes 197/199; and

d. creating an alternate route to avoid SR 197 and US 199 entirely.

197. Caltrans also failed to provide the required appropriate mitigation measures, including but not limited to measures that would:

a. provide walk-ways on SR 197 and into Hiouchi on US 199 for school children, other pedestrians, and bicyclists;

b. protect old growth redwoods and Douglas fir trees from cutting;

c. prohibit work from being done on the river side of road to ensure no degradation of the Smith River; and

d. protect the Smith River's near extinct population of SONCC coho, their critical habitat, green sturgeon, and the Pacific Salmon EFH in the Smith River

198. The 197/199 Project is a major federal action significantly affecting the quality of the human environment. Numerous comments submitted to Caltrans throughout the environmental review process identified the 197/199 Project significant impacts. Yet, Caltrans either ignored these comments or glossed over their substance with conclusory responses. Due to Caltrans' disregard, the Project's identified potential impacts related to fish and wildlife, water quality, air quality, and plant populations, safety, as well as its cumulative impacts, must therefore still be considered significant. Caltrans has not successfully mitigated the impacts of the 197/199 Project in the manner or to the extent required by law.

199. Caltrans failed to document and respond to comments regarding subjects including without limitation:

a. the Project purpose and need;

b. the Project description;

c. Project impacts related to safety, fish, fish habitat, traffic, water quality, air quality, scenic resources, and growth inducement;

d. the lack of adequate study and documentation to support the EA/FONSI;

e. Project inconsistency with governing plans and policy documents;

f. the inadequate Section 4(f) analysis;

g. the lack of a valid and adequate public review and comment process;

h. the lack of response to scientific data and evidence submitted; and

i. the need for an EIS.

200. Furthermore, Caltrans issued a Draft EA which was fundamentally and dramatically deficient. Caltrans' Draft EA was so deficient it rendered public comment effectively meaningless, in violation of NEPA requirements to provide members of the public with sufficient environmental information to permit them to weigh in and to inform agency decision-making.

201. Furthermore, the Project, due to its significant effects on the environment, is the type of project that normally would require an EIS. This Project also is without precedent, in that it involves widening and realigning a Scenic Byway through a pristine National Recreation Area along the Wild and Scenic Smith River, in a manner that could seriously harm near extinct fish, water quality, and other resources. Accordingly, Caltrans was required to make the EA available for 30 days prior to adoption of a FONSI pursuant to 40 C.F.R. § 1501.4(e)(2)(i) and (ii).

E. Caltrans Failed to Comply With the Requirements of Section 4(f) of the Department of Transportation Act Concerning the Project's Acquisition of, and Impact On, Lands Within the Six River National Forest and the Smith River National Recreation Area

202. Caltrans' 197/199 Project calls for acquisition of, and impact on, lands within the Six River National Forest and the Smith River National Recreation Area.

203. Section 4(f) of the Department of Transportation Act requires specific consideration and analysis of environmental impacts of transportation activities that are proposed to take place in parks, recreation areas, wildlife refuges, and other public lands or

areas with historical significance, and prohibits an agency from using any public land meeting this criteria unless there has been a determination that "(1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm ... resulting from such use." 23 U.S.C. § 138, 23 C.F.R. Part 774. The "no feasible and prudent alternative" 4(f) standard allows less discretion for an agency to reject alternatives than under NEPA.

204. Caltrans used a "programmatic" Section 4(f) determination for the Project, rather than conduct a complete analysis, claiming among other things that the Project is a federally funded improvement of an existing highway and that the amount and location of land used does not impair the use of the remaining section 4(f) land. By using the programmatic Section 4(f) determination, Caltrans improperly narrowed its analysis of alternatives to conclude there would be no significant environmental impact.

205. Caltrans violated its obligations under Section 4(f) by, among other things, using the "programmatic" Section 4(f) and by failing to properly evaluate feasible and prudent alternatives to the proposed action, which include and are not limited to:

a. the no build alternative;

b. restricting all soil and rock excavation to the west side of the roadway, to avoid any potential introduction of debris into the Wild and Scenic Smith River; and

c. reducing permitting speed to reflect need for slower traffic along both Routes 197/199.

206. Caltrans also violated Section 4(f) by failed to include all possible planning to minimize harm, and to maintain or enhance the natural beauty of the lands traversed, including by not limited to those discussed in this Complaint.

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VIII. PLAINTIFFS HAVE COMPLIED WITH ALL PROCEDURAL REQUIREMENTS

A. Irreparable Harm and Arbitrary and Capricious Action

207. At all times mentioned herein, Caltrans has been able to deny the approvals and reject certification of the EA/FONSI for the 197/199 Project, including the Revised Coho BA/EFHA. Notwithstanding such ability, Caltrans has failed and continues to fail to perform its duty to deny and reject the Project. If Caltrans is not ordered to withdraw its approval of the 197/199 Project and the EA/FONSI, the People of California, as well as the land, watershed, wildlife, economic, and environmental values subject to and affected by the Project, would suffer immediate, irreparable, and permanent damage.

208. Plaintiffs bring this action on the ground that each Plaintiff, and each Organizational Plaintiff's members and staff would suffer irreparable injuries if Defendants' actions herein are not set aside immediately. Such injuries include, but are not limited to, injuries to Plaintiffs' aesthetic, spiritual, scientific, recreational, and educational interests caused by deterioration of protected resources, the wild and scenic Smith River and its environmental setting, degradation of wildlife and fisheries habitat, including for anadromous fisheries, SONCC coho, green sturgeon, SONCC critical habitat, and the Pacific Salmon EFH, as well as impacts associated with construction, safety impacts and impacts to air quality.

B. Exhaustion of Administrative Remedies

209. Plaintiffs through their representatives and members have performed all conditions precedent to the filing of this Complaint by raising each and every issue known to them before Caltrans in compliance with NEPA, the Department of Transportation Act, the Wild and Scenic Rivers Act, the ESA, and the APA, including by participating in the public meetings and hearings hosted by Caltrans and submitting written comments. Plaintiffs are not required to exhaust their administrative remedies. To attempt to do so would be futile, because Plaintiffs do not have adequate administrative remedies and/or because Plaintiffs lacked a full and fair opportunity to exhaust certain claims.

210. On the same day as the filing of this action, Plaintiffs are serving by mail a copy of the filed Complaint on the California State Attorney General.

C. Standing

211. Plaintiffs are individuals, groups of citizens, taxpayers, and residents of the State of California. Plaintiffs have participated in the review of the 197/199 Project. Plaintiffs and Organizational Plaintiffs' members and staff visit and rely on the natural and other resources of the wild and scenic Smith River, its National Recreation Area, its National Scenic Byway, and other public parks and lands, for their economic livelihood, enjoyment, recreation, education, and spiritual experiences. Plaintiffs' interests would be concretely and particularly injured by the effects of the proposed 197/199 Project on the environment. Individual Plaintiffs have standing to bring this action on their own behalf, and Organizational Plaintiffs have standing to bring this action on behalf of their injured members and staff.

D. Attorneys' Fees

212. In pursuing this action, Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, or other applicable law.

IX. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violations of the APA, 5 U.S.C. § 701, *et seq.*

Failure to Adequately Engage in Endangered Species Action Section 7 Consultation

(Against Defendant NMFS)

213. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

214. As set forth herein, NMFS' decision to issue a letter of concurrence in response to Caltrans' Revised Coho BA/EFHA, rather than requiring that Caltrans engage in formal consultation and issuing a biological opinion, was arbitrary, capricious, an abuse of discretion, and/or in violation of the law, including without limitation, ESA § 7.

215. Caltrans determined in the Revised Coho BA/EFHA that the Project was likely to adversely affect SONCC coho critical habitat; thus NMFS, as the consulting agency was required to issue a biological opinion, determining whether the action was likely to jeopardize the SONCC coho and describing, if necessary, reasonable and prudent alternatives that would avoid a likelihood of jeopardy.

216. Furthermore, Caltrans' analysis of the Project's likely effects on SONCC coho or green sturgeon was inadequate in a multitude of ways. Thus, NMFS should have required Caltrans engage in formal consultation concerning the Project's likely effects on SONCC coho or green sturgeon, as well, and NMFS should have issued a biological opinion concerning these likely affects as well.

217. Thus, NMFS issuance, instead, on May 7, 2012, a letter of concurrence purporting to concur in a finding by Caltrans that its actions would not have an adverse effect on SONCC coho, green sturgeon, or SONCC coho critical habitat was arbitrary, capricious, an abuse of discretion, and/or in violation of the law, including without limitation, ESA § 7.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

Violations of the APA, 5 U.S.C. § 701, *et seq.*

Failure to Adequately Engage in Magnuson-Stevens Act Section 305 Consultation

(Against All Defendants)

218. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

219. In conducting its consultation required under Section 305 of the Magnuson-Stevens Act, U.S.C. § 1855(b)(2), and its enabling regulations, 50 C.F.R. §§ 600.920 *et seq.*, with NMFS concerning the potential adverse effects of the Project on Pacific Salmon EFH, Caltrans acted in a manner that was arbitrary, capricious, an abuse of discretion, and/or was otherwise not in compliance with the law, including without limitation the Magnuson-Stevens Act, in ways including without limitation those described in this Complaint. Caltrans failed to properly analyze the adverse effects that the Project may have, including without limitation site-

specific or habitat-wide impacts, such as individual, cumulative, or synergistic consequences of the various components of the Project, as well as the effect of other State, Federal, or other human activity.

220. In conducting its consultation required under Section 305 of the Magnuson-Stevens Act, U.S.C. § 1855(b)(2), and its enabling regulations, 50 C.F.R. §§ 600.920 *et seq.*, with Caltrans concerning the potential adverse effects of the Project on Pacific Salmon EFH, NFMS acted in a manner that was arbitrary, capricious, an abuse of discretion, and/or was otherwise not in compliance with the law, including without limitation the Magnuson-Stevens Act, in ways including without limitation those described in this Complaint. NMFS should have required that Caltrans engage in expanded consultation and should have used the best scientific data available in determining whether expanded consultation was needed. The May 7, 2012 decision by NFMS not to require Caltrans engage in expanded consultation procedures concerning the Project's potential adverse effects on Pacific Salmon EFH was not made based on the best scientific data available and was arbitrary, capricious, an abuse of discretion, and/or in violation with the law, including without limitation the Magnuson-Stevens Act.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

THIRD CLAIM FOR RELIEF

Violation of the APA, 5 U.S.C. § 701, *et seq.*

Failure to Adequately Engage in Section 7 of the Wild and Scenic Rivers Act Consultation

(Against Defendant Caltrans)

221. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

222. Caltrans has violated its obligations under Section 7 of the Wild and Scenic River Act, 16 U.S.C. § 1278, by failing to disclose and provide for meaningful and informed consultation all relevant and necessary information about the Project and its impacts.

223. Accordingly, Caltrans took actions in the context of its consultation under Section 7 of the Wild and Scenic River Act that were arbitrary, capricious, an abuse of

discretion, and/or were otherwise not in compliance with the law, including without limitation Section 7 of the Wild and Scenic River Act.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FOURTH CLAIM FOR RELIEF

Violation of the APA, 5 U.S.C. § 701, *et seq.*

Failure to Prepare and EIS as Required by NEPA

(Against Defendant Caltrans)

224. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

225. The 197/199 Project is a major federal action significantly affecting the quality of the human environment for which Caltrans must prepare an EIS, under NEPA and its implementing regulations.

226. Caltrans failed to provide a convincing set of reasons why the Project's potential impact on the human environment would not be significant.

227. Numerous substantial questions exist concerning whether the Project may cause significant degradation of some human environmental factor.

228. Accordingly, Caltrans' decision not to prepare an EIS but to instead issue an EA/FONSI and approve the Project based thereon was arbitrary, capricious, an abuse of discretion, and/or otherwise not in compliance with the law, including without limitation NEPA.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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FIFTH CLAIM FOR RELIEF

Violation of the APA, 5 U.S.C. § 701, *et seq.*

Failure to Prepare an Adequate EA as Required by NEPA

(Against Defendant Caltrans)

229. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

230. Assuming for sake of this claim only that preparation of an EA was all that was required of Caltrans here, Caltrans' EA still failed to comply with NEPA and its implementing regulations.

231. Caltrans failed to adequately consider, analyze, and disclose the individual and cumulative environmental impacts of the Project.

232. Caltrans failed to adequately establish the Project's purpose and need.

233. Caltrans failed to rigorously explore and objectively evaluate all reasonable alternatives to the Project.

234. Caltrans failed to provide the required appropriate mitigation measures.

235. Caltrans failed to adequately document and respond to comments.

236. Caltrans failed to make the EA available to the public for a minimum of 30 days before issuing a finding of no significant impact and approving the Project.

237. Caltrans failed to adequately evaluate the individual impacts of the 197/199 Project.

238. Caltrans failed to adequately evaluate the cumulative impacts of the Project in relation to impacts from other activities, including components of Caltrans' Project to Create a STAA Truck Network throughout Northern California.

239. Caltrans failed to establish a purpose or need for the 197/199 Project.

240. Caltrans failed to adequately evaluate alternatives to the 197/199 Project.

241. Accordingly, Caltrans' decision to issue the EA/FONSI and approve the Project based thereon was arbitrary, capricious, an abuse of discretion, and/or otherwise not in compliance with the law, including without limitation NEPA.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SIXTH CLAIM FOR RELIEF

Violation of the APA, 5 U.S.C. § 701, *et seq.*

Failure to Comply with Section 4(f) of the Department of Transportation Act

(Against Defendant Caltrans)

242. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

243. Caltrans used a "programmatic" Section 4(f) determination for the Project, rather than conduct a complete analysis, claiming among other things that the Project is a federally funded improvement of an existing highway and that the amount and location of land used does not impair the use of the remaining section 4(f) land. By using the programmatic Section 4(f) determination, Caltrans improperly narrowed its analysis of alternatives to conclude there would be no significant environmental impact.

244. Caltrans further violated its obligations under Section 4(f) of the Department of Transportation Act by, among other things, using the "programmatic" Section 4(f). By failing to properly evaluate feasible and prudent alternatives to the proposed action, Caltrans also violated Section 4(f) by failing to include all possible planning to minimize harm, and to maintain or enhance the natural beauty of the lands traversed, including by not limited to those discussed in this Complaint.

245. Accordingly, Caltrans took actions in the context of its consultation under Section 4(f) of the Department of Transportation Act that were arbitrary, capricious, an abuse of discretion, and/or were otherwise not in compliance with the law, including without limitation Section 4(f) of the Department of Transportation Act.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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SEVENTH CLAIM FOR RELIEF

Violations of APA, 5 U.S.C. § 701, *et seq*.

Failure to Comply with NEPA, the ESA, the Magnuson-Stevens Act,

the Wild and Scenic Rivers Act, and the Department of Transportation Act

(Against All Defendants)

246. Plaintiffs incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

247. The Administrative Procedure Act ("APA"), 5 U.S.C. § 701, *et seq*., entitles a party to seek judicial review of an agency action where a legal wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706(2)(A), a reviewing court shall hold unlawful and set aside an agency action found to be arbitrary, capricious, or otherwise not in accordance with the law. Defendants acted illegally for all the reasons set forth in this Complaint.

248. In the ways described in this Complaint, Caltrans acted arbitrarily, capriciously, abused its discretion, and in violation of the law, including without limitation, NEPA, the ESA, the Magnuson-Stevens Act, the Wild and Scenic Rivers Act, the Department of Transportation Act, and the APA, by *inter alia* approving and adopting the EA/FONSI and 197/199 Project that do not fully comply with NEPA and Section 4(f) of the Department of Transportation Act and issuing the Revised Coho BA/EFHA that does not comply with the ESA or the Magnuson-Stevens Act, as set forth above.

249. NMFS acted arbitrarily, capriciously, abused its discretion, and in violation of the law, including without limitation the ESA and the Magnuson-Stevens Act, as set forth above.

250. Due to Defendants' knowing and conscious failure to comply with NEPA, the ESA, the Magnuson-Stevens Act, the Wild and Scenic Rivers Act, and/or Section 4(f) of the Department of Transportation Act, Plaintiffs have suffered legal wrongs because of agency actions and are adversely affected and aggrieved by agency actions within the meaning of the Administrative Procedure Act, 5 U.S.C. § 702.

251. Defendants' knowing and conscious failure to comply with NEPA, the ESA, the Magnuson-Stevens Act, the Wild and Scenic Rivers Act, and/or Section 4(f) of the Department of Transportation Act, was arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory jurisdiction, and without observance of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this Court.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and further relief as follows:

1. This Court declare that Caltrans has violated the APA, NEPA, the Magnuson-Stevens Act, Department of Transportation Act, and the Wild and Scenic River Act as alleged herein;

2. This Court declare that Caltrans' violations of NEPA, the Magnuson-Stevens Act, the Department of Transportation Act, and the Wild and Scenic Rivers Act constitute agency action unlawfully withheld or unreasonably delayed, and/or are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, under the APA;

3. This Court declare that NMFS has violated the APA, the ESA, and the Magnuson-Stevens Act, as alleged herein;

4. This Court declare that NMFS' violations of the ESA and the Magnuson-Stevens Act constitute illegal action, are arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with law, under the APA;

5. This Court set aside Caltrans' approval of the 197/199 Project, the EA/FONSI, Decision Notice (including certification of the Final Environmental Impact Report/Environmental Assessment and Section 4(f) Evaluation), the Revised Coho BA/EFHA, and all related findings and approvals, and require Caltrans to follow federal statutes and regulations, including without limitation NEPA, the ESA, the Magnuson-Stevens Act, Section 4(f) of the Department of Transportation Act, and Section 7 of the Wild and Scenic Rivers Act in any review of and decision for 197/199 Project;

6. This Court require Caltrans to issue an EIS concerning the 197/199 Project;

7. This Court set aside NMFS' purported "concurrence" in Caltrans' findings of no likely adverse impacts on green sturgeon, SONCC coho, and critical SONCC habitat purportedly contained the Revised Coho BA/EFHA and require NMFS follow federal statutes and regulations including without limitation the ESA in any review of and decision for 197/199 Project;

8. This Court require NMFS to conduct a biological opinion concerning the 197/199 Project;

9. This Court set aside NMFS determination that the Project contained measures sufficient to avoid, minimize, mitigates or otherwise offset the adverse effects of the Project on the Pacific Salmon EFH and require NMFS follow federal statutes and regulations including without limitation the Magnuson-Stevens Act in any review of and decision for 197/199 Project;

10. This Court grant interlocutory and permanent injunctive relief enjoining Caltrans from engaging in any activity pursuant to the 197/199 Project until the Project complies with all applicable federal regulations and statutes, including requirements of the NEPA, the ESA, the Magnuson-Stevens Act, the Department of Transportation Act, and the Wild and Scenic Rivers Act;

11. This Court award costs of suit herein, including attorney fees, including without limitation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other authority; and

12. This Court grant such other and further equitable or legal relief as the Court deems just and proper.

Dated: September 23, 2013

COTCHETT, PITRE & McCARTHY, LLP

By: _____
PHILIP L. GREGORY
Attorneys for Plaintiffs