

June 1, 2012

Martha Spencer
Interim Director, Department of
Community Development Services
County of Humboldt
3015 H Street
Eureka, CA 95501

Re: Humboldt County General Plan Update DEIR

Dear Ms. Spencer:

As you know, this office represents Humboldt Coalition for Property Rights with respect to the Humboldt County General Plan Update. We have reviewed your memorandum to the Board of Supervisors, dated May 14, 2012, in which you set forth a proposed schedule for Board deliberations regarding the General Plan Update. Your memorandum explains that Board deliberations will proceed in an iterative process, whereby parts of the General Plan Update will be reviewed in succession, and votes will be cast by the Board in stages beginning on June 25, 2012.

We strongly encourage you to delay Board deliberations until the County prepares and releases its General Plan Update Final Environmental Impact Report ("FEIR"). The FEIR serves as a vital component of the environmental review process. CEQA requires that the County, as the lead agency, must review and certify the FEIR, in conjunction with the issuance of CEQA findings, *prior to* any decision to approve or carry out the project. (Pub. Res. Code § 21061; CEQA Guidelines § 15092.)

The comment period for the General Plan Update Draft Environmental Report expires on June 15, 2012. It is likely that the County will receive comments from a variety of sources, such as responsible state or local agencies, federal agencies, and individuals. These comments must be considered by the County prior to the Board's deliberations. In addition, comments often require changes to the DEIR. As a result, the FEIR may identify newly identified project-related impacts, additional mitigation measures and other issues that are impossible to foresee at this time.

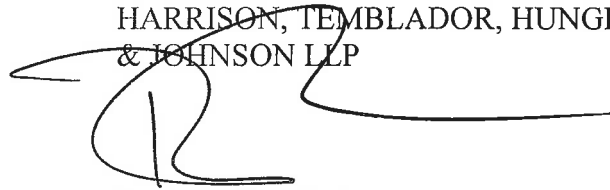
For this reason, California courts have consistently required lead agencies to review and certify the final EIR prior to approving a project – including portions thereof. (*See, e.g., Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 394; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116; *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186.) "Approval" under CEQA means "the decision by a

public agency which commits the agency to a definite course of action in regard to a project or committing to any action that would commits the lead agency to a specific course of action.” (CEQA Guidelines, § 15352.) Courts have set aside decisions by lead agencies to approve projects prior to certification of the EIR. (*Save Tara, supra; Riverwatch; supra.*) In *Save Tara*, the California Supreme Court established that CEQA Guidelines § 15352 defines ‘approval’ as “occurring when the agency *first exercises its discretion* to execute a contract or grant financial assistance, *not when the last such discretionary decision is made.*” (*Save Tara, supra*, 45 Cal.4th at 134, emphasis added.)

To ensure compliance with CEQA, we respectfully request that the Board defer all deliberations until it is prepared to certify the EIR.

Sincerely,

HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP

A handwritten signature in black ink, appearing to read 'DPT', with a long horizontal flourish extending to the right.

David P. Temblador

DPT/III

cc: Lee Ulansey
Humboldt County Board of Supervisors