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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **BESS BAIR; TRISHA LEE LOTUS;**
17 **JEFFREY HEDIN; DAVID SPREEN;**
18 **CENTER FOR BIOLOGICAL**
19 **DIVERSITY, a non-profit corporation;**
20 **ENVIRONMENTAL PROTECTION**
21 **INFORMATION CENTER, a non-profit**
22 **corporation; CALIFORNIANS FOR**
23 **ALTERNATIVES TO TOXICS, a non-**
24 **profit corporation; and FRIENDS OF DEL**
25 **NORTE, a non-profit group,**

23 **Plaintiffs,**

24 **v.**

25 **CALIFORNIA DEPARTMENT OF**
26 **TRANSPORTATION and MALCOLM**
27 **DOUGHERTY in his official capacity as**
28 **Director of the California Department of**
Transportation,

Defendants.

Case No.

COMPLAINT

**(National Environmental Policy Act; Wild
and Scenic Rivers Act; Administrative
Procedure Act; Declaratory Judgment Act)**

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1 Plaintiffs Bess Bair, Trisha Lee Lotus, Jeffrey Hedin, David Spreen, the Center for
2 Biological Diversity, Environmental Protection Information Center, Californians for Alternatives
3 to Toxics, and Friends of Del Norte (hereinafter collectively referred to as “Plaintiffs”) allege as
4 follows based on information and belief, except where specifically indicated:

5 **INTRODUCTION**

6 1. This action represents the third round, in the ongoing battle of trucks versus trees.
7 More specifically, Plaintiffs are compelled once again to seek assistance from this Court in
8 compelling the California Department of Transportation (“Caltrans”) to meet its obligations to
9 adequately evaluate and consider the environmental impact of a proposed highway widening
10 project, through the ancient old-growth redwoods of Richardson Grove State Park (“Richardson
11 Grove” or the “Park”), which Caltrans has misnamed the “Richardson Grove Operational
12 Improvement Project” and which is referred to herein as the “Proposed Project” or “Richardson
13 Grove Project.” The Proposed Project is a major highway construction project.

14 2. Richardson Grove provides the gateway to majestic old-growth redwoods unique
15 to California’s northern coast. U.S. Highway 101 threads through the Park for approximately a
16 mile. Rated as one of the 100 finest state parks in America, thousands of visitors annually trek to
17 this historic gem, seeking to enjoy the awe, reverence, and spirituality of the Richardson Grove.
18 Visitors are offered a true glimpse of history as they drive amidst old-growth redwoods ranging
19 between 1,000 and 3,000 years old, some as large as 18 feet in diameter, immediately adjacent to
20 or abutting Highway 101. In some areas the redwoods and other trees cause the narrowing of the
21 two-lane highway to only 22 feet in width, with shoulders of 2 feet or less. The ancient redwood
22 forest of Richardson Grove, furthermore, provides critical and essential habitat for numerous
23 species of Northwest coastal California plants and animals that have evolved in conjunction with
24 its redwoods. The survival of these plants and animals depends on the continued survival of the
25 Richardson Grove.

26 3. At a time in which Californians are experiencing an increasing disappearance of
27 the State’s natural wonders at an alarming and accelerating rate, Caltrans once again is
28 attempting to plow through a destructive and needless highway widening project that will both

1 waste millions of public money and likely destroy one of the last remaining irreplaceable stands
2 of ancient old-growth Redwoods, without studying the severe and permanent environmental
3 consequences.

4 4. This action follows successful state and federal court challenges to Caltrans’
5 initial 2010 approval of the Richardson Grove Operational Improvement Project. In both actions
6 the courts found Caltrans’ environmental review lacking and not in compliance with governing
7 law. Ultimately Caltrans rescinded all of its approvals: on June 26, 2014, Caltrans set aside and
8 rescinded its approval of the Richardson Grove Operational Project and certification of its 2010
9 Final Environmental Impact Report (“2010 FEIR”), and on November 17, 2014, Caltrans
10 withdrew and rescinded its 2010 Finding of No Significant Impact (“2010 FONSI”).

11 5. Caltrans first approved the Richardson Grove Project and its combined “Final
12 Environmental Assessment/Finding of No Significant Impact (FONSI)” on May 18, 2010.
13 *Federal Register*/Vol. 76, No. 243/Monday, December 19, 2011/Notices, [78717]. On
14 September 27, 2010, many of the same plaintiffs as in this action filed a federal court challenge
15 to these actions and alleging violations of NEPA, Wild and Scenic Rivers Act and Section 4(f) of
16 the Department of Transportation Act of 1966, 49 U.S.C. § 303, also codified at 28 U.S. § 138.
17 *Bair v. State of California Department of Transportation* (“*Bair I*”), No. 10-4360-WHA.

18 6. On April 4, 2012, in *Bair I*, Dkt. No. 146, this Court adhered to its previous
19 order, Dkt. 84 – which had preliminarily enjoined work on the Proposed Project – with an Order
20 granting summary judgment to the Plaintiffs (the “*Bair I Order*”). In the *Bair I Order*, this Court
21 questioned “whether Caltrans truly took a ‘hard look’ at the effects of the project” and made “an
22 informed decision,” as required by the law. *Bair I Order* at 8. Accordingly, this Court ordered
23 that Caltrans prepare:

24 “a revised EA [(“Environmental Assessment”)] that corrects the
25 data inaccuracies identified [in the Order] and assesses the impacts
26 of the project through the lens of a correct analysis . . .
27 Alternatively, Caltrans may proceed directly to conducting an EIS
28 [(“Environmental Impact Statement”)].

Id., at 10.

1 7. The referenced “data inaccuracies” refer to various discrepancies and omissions
2 that this Court identified in Caltrans’ original final EA (“Original EA”) and Finding of No
3 Significant Impact (“FONSI,” collectively with the original final EA, “Original EA/FONSI”),
4 approved on May 18, 2010. These “data inaccuracies” included, without limitation, completely
5 omitting from its maps an old-growth redwood tree less than 15 feet from the pavement,
6 miscalculating by almost 20 inches the diameter of another old-growth redwood in the path of
7 the Proposed Project. Caltrans’ statements in responses to comments on the draft EA (“Draft
8 EA”) that, on the one hand, stated Caltrans did not intend to cut “woody roots” for redwoods but,
9 on the other hand, stated Caltrans did not know where those “woody roots” were so Caltrans may
10 end up cutting them. *Id.* at 8-9.

11 8. The Court’s concern, however, was not the numerous data inaccuracies in-and-of-
12 themselves; rather, this Court expressed concern with the effects that such erroneous data had on
13 the analyses based thereon. *See id.* at 9 (finding that because of Caltrans’ data errors “the
14 analysis of the project’s impacts in relation to . . . the grove as a whole, are based off of false
15 data . . .”). Thus, in remanding the matter to Caltrans “to prepare a revised EA and record in
16 accordance with the instructions above,” *id.* at 12, this Court clearly stated that Caltrans should
17 not simply correct its data errors but also correct the analyses based on that erroneous data. The
18 Court further instructed: “In its revised EA (or EIS), Caltrans should give serious consideration
19 to the other significant arguments made by plaintiffs in their motion,” which arguments were left
20 unaddressed by the Court and are thus preserved. *Id.* at 10.

21 9. On September 18, 2013, Caltrans did not issue a Revised EA or Environmental
22 Impact Statement (“EIS”), but instead issued a document entitled “Supplement to the Final
23 Environmental Assessment” (“Supplement to the Original EA/FONSI”). On January 24, 2014,
24 Caltrans approved this unauthorized “Supplement to the Original EA/FONSI,” and based, in part
25 thereon, re-validated its Original EA/FONSI, which it had originally approved on May 18, 2010,
26 finding that it “remains valid” (“Re-Validation of Original EA/FONSI”). Caltrans published
27 notice of its approval of the Proposed Project based on the Re-Validation of Original EA/FONSI
28 in the Federal Register on February 26, 2014, imposing a 150-day statute of limitation for any

1 claim seeking judicial review of these actions on the Richardson Grove Project. *Federal*
2 *Register*/Vol. 79, No. 38/Wednesday, February 26, 2014/Notices, [10870].

3 10. Before the time ran on the 150-day period, Caltrans rescinded its approval of the
4 Richardson Grove Project. Caltrans did not at that time rescind its 2010 Original EA/FONSI,
5 2013 Supplement to the Original EA/FONSI or Reevaluation of the FONSI. Instead, Caltrans
6 maintained those approvals and allowed the clock to tick on the deadline to file any judicial
7 challenge. As a consequence, many of the same plaintiffs as in this case filed a second action on
8 the 150th day, challenging Caltrans' 2014 approvals. *Bair v. California Department of*
9 *Transportation* (“*Bair II*”), No. 14-03422 WHA.

10 11. In its Supplement to the Original EA/FONSI and Re-Validation of Original
11 EA/FONSI, Caltrans disregarded this Court's specific instructions in the *Bair I Order*. In its
12 *Supplement* to the Original EA/FONSI – not a “revised EA (or EIS),” as ordered by this Court –
13 Caltrans supposedly sought to correct some of the data errors in the Original EA/FONSI.
14 However, Caltrans did nothing to address the erroneous analyses that were based on the
15 erroneous data. Indeed, those analyses and the conclusions based thereon remain unchanged and
16 were explicitly “re-validated” by Caltrans. Furthermore, there is nothing in the Supplement to the
17 Original EA/FONSI that indicates Caltrans considered *any* of the other issues raised by Plaintiffs
18 in *Bair I*. Indeed, the Supplement to the Original EA/FONSI states that—aside from limited data
19 corrections, revisions concerning the Proposed Project's impacts on the marbled murrelet, and a
20 revision concerning a guardrail—“all other information and chapters in the original Final EA
21 remain accurate,” including the analyses that this Court specifically found, in the *Bair I Order*,
22 were “based off of false data” that the Supplement to the Original EA/FONSI supposedly to
23 corrected. Indeed, the “Environmental Consequences” section of the Original EA/FONSI is
24 among those that Caltrans apparently claims remain accurate.

25 12. Caltrans left unchanged the analyses and conclusions it reached based on the
26 erroneous data. Clearly this is not what the Court intended when it ordered Caltrans to prepare a
27 “revised EA (or EIS),” as those analyses and conclusions should have been revisited.

1 13. Furthermore, in the face of this Court’s instructions that it “give serious
2 consideration to the other significant arguments made by plaintiffs,” Caltrans not only ignored
3 those arguments in its preparation of the Supplement to the Original EA/FONSI, it expressly
4 refused to consider or respond to public comments and concerns regarding the very same issues
5 raised in those “significant arguments.”

6 14. The *Bair I Order* provided Caltrans with the opportunity to not only rectify its
7 failure to give a hard look at the Proposed Project’s environmental impacts, as required by the
8 NEPA, but also Caltrans’ failures to comply with several other federal environmental laws that
9 apply due to the uniquely important and precious environmental context through which Caltrans
10 seeks to create an industrial artery. These other environmental laws include: Section 4(f) of the
11 Department of Transportation Act of 1966, 49 U.S.C. § 303, also codified at 28 U.S. § 138,
12 which applies because of the Proposed Project’s location in a state park; the Wild and Scenic
13 Rivers Act (16 U.S.C. § 1271, *et seq.*), which applies because the Proposed Project is just yards
14 from the banks of the wild and scenic designated South Fork of the Eel River.

15 15. Only after *Bair II* was filed, did Caltrans withdraw and rescind its Finding of No
16 Significant Impact (FONSI), which was issued on May 18, 2010.” *Federal Register*/Vol. 79, No.
17 228/Wednesday, November 26, 2014/Notices, [70612]. *Bair II* was then dismissed.

18 16. Not willing in 2014 to issue an Environmental Impact Statement, or even a
19 “Revised Environmental Assessment,” for noticed public review and comment, Caltrans instead
20 has now developed multiple documents comprised of several hundred pages, and relied upon
21 earlier rescinded documents, all in an effort to justify a second approval of the Proposed Project,
22 and without consolidation or public review.

23 17. On May 22, 2017, Caltrans reapproved the Richardson Grove Project, claiming
24 changes to the Proposed Project, as well as the environmental impacts from those changes, are
25 “minor,” while, at the same time, attempting to justify its conclusion based on numerous
26 documents that have been developed over the course of nearly four years and comprise hundreds
27 of pages. In doing so, Caltrans failed to comply with its duty to ensure public participation in its
28

1 decision-making process, particularly in the face of the significant changed circumstances that
2 invalidated its previous decisions.

3 18. This action seeks to set aside Caltrans' May 22, 2017 approvals of the Richardson
4 Grove Project and its accompanying environmental findings, including a Finding of No
5 Significant Impact ("2017 FONSI") and Caltrans' 2010 Final Environmental Assessment and the
6 2013 Supplement, which Caltrans now collectively characterizes as the "Revised EA" that was
7 ordered in *Bair I*.

8 19. The shortcomings in Caltrans' response to the instructions contained in, and the
9 opportunities provided by, the *Bair I Order* are symptomatic of the haphazard and slipshod
10 manner in which Caltrans has observed (and failed to observe) its obligations to analyze the
11 environmental impacts of the Proposed Project.

12 20. Caltrans claims to have corrected the glaring errors that accompanied Caltrans'
13 initial 2010 approval of the Richardson Grove Project. However, Caltrans has left largely
14 unchanged the analyses and conclusions previously reached based on erroneous data, but has
15 purposely prevented exposure of its new conclusions and claimed analyses to any public scrutiny
16 or comment. Further, given the various documents now presented and the internal
17 inconsistencies between those documents, as well as the inconsistencies between certain of those
18 documents and the Proposed Project as now conceived, it is not even clear what documents and
19 analyses apply to the Proposed Project. This is particularly true as to the environmental review
20 process required by NEPA. Caltrans has cobbled together a series of separate documents in
21 piecemeal fashion, which do not comprise a unified or cogent analysis. Clearly this is not what
22 the Court intended when it ordered Caltrans to develop a Revised Environmental Assessment, in
23 order to revisit those analyses and conclusions, and is not allowed under NEPA.

24 21. Other than incompetence or intention, the only explanation for why Caltrans has
25 not, instead, used the four and half years since the issuance of this Court's decision in *Bair I* to
26 simply prepare an EIS is that it seeks to avoid the consequences of doing so. Specifically, the
27 consequences that Caltrans seeks to avoid by foregoing preparation of EIS include: the
28 requirement that it engage in the more fulsome analysis required of an EIS; the requirement that

1 it expose the EIS to full public review and comment; and the requirement that it subject the
2 Proposed Project to a full, non-programmatic review under Section 4(f) of the Transportation
3 Act.

4 22. Concerning the latter, Section 4(f) of the Transportation Act embodies “the
5 national policy that special effort should be made to preserve the natural beauty of the
6 countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic
7 sites.” 23 U.S.C. § 138. Accordingly, where, as here, a Proposed Project requires the use of park
8 land, the Federal Highway Administration (“FHWA”)—and in this case, Caltrans, in the shoes of
9 FHWA—must conduct an added layer of review to ensure that “there is no feasible and prudent
10 alternative to the use of such land, and (2) such program includes all possible planning to
11 minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site
12 resulting from such use.” *Id.*

13 23. Caltrans did not conduct a full Section 4(f) analysis of the Proposed Project, but
14 rather a more minimal “programmatic review,” which can only done concerning projects that
15 involve “certain minor uses” of parkland. 23 C.F.R. 774.3(d). A project does not qualify for such
16 a minimal programmatic Section 4(f) review if it requires the preparation of an EIS. Thus, by
17 evading the requirement that it prepare an EIS, Caltrans has sought not only to avoid the more
18 fulsome analysis of the Proposed Project that an EIS would provide, but also the more fulsome
19 analysis of the Proposed Project that a full Section 4(f) would provide.

20 24. This leaves one wondering: What is it concerning this Proposed Project that
21 Caltrans wants so badly to avoid subjecting to a fulsome analysis?

22 25. The answer is a proposed project that is ill-conceived, highly unpopular,
23 unnecessary, and destructive to some of the last remaining ancient redwoods on Earth.

24 26. As result of its pronounced aversion to conducting the type of common-sense
25 environmental review that the law requires for a project such as this, Caltrans now seeks based
26 on hodge-podge collection of documents, to engage in a project that would put at risk destruction
27 of California’s most irreplaceable public resources, ancient redwoods and the habitat they
28 provide, in order to make it easier for large commercial trucks to pass through state parks; and it

1 refuses to meet its legal obligations to adequately analyze the environmental impacts thereof.
2 With its approvals, Caltrans places these ancient redwoods and public resources at ecological
3 risk and, once severely damaged or destroyed, these ancient redwoods could take literally
4 thousands of years from which to recover.

5 27. Visitors to Richardson Grove State Park—through which the Proposed Project
6 would go—stroll among old-growth redwoods that have stood for as many as 3,000 years,
7 measure as much as 18 feet in diameter, and reach heights of 300 feet. Willing to recklessly put
8 these old-growth redwoods at risk of destruction, Caltrans has proposed a project to widen the
9 one mile stretch of U.S. Highway 101 that passes through Richardson Grove Park that by
10 Caltrans' own admission, threatens to destroy these ancient, irreplaceable redwoods by cutting
11 their roots and compacting hundreds of cubic yards of soil and paving over the roots.

12 28. Indeed, the Original EA/FONSI, which Caltrans continues as a basis for its
13 project approvals, states: “This work will involve the structural root zones of approximately 66
14 old-growth redwood trees ranging from 3 to 18 feet in diameter . . .” Original EA/FONSI at 21.
15 The Original EA/FONSI continues: “Additional paving and the placement of shoulder backing
16 could cause soil compaction and disturbance within the structural root zones of old-growth
17 redwoods. Studies have shown that compaction of the soil within the root zone can have an
18 adverse effect on these trees (Arnold 1973). *Adverse effects to old growth trees may be a*
19 *significant impact to this unique natural community.*” *Id.* at 22. (Emphasis added).

20 29. In the Supplement to the Original EA/FONSI, Caltrans raised the number of old-
21 growth redwoods whose root zones would “intersect [with] the proposed ground disturbance
22 areas of the project” from 66 to 116. However, paradoxically, Caltrans failed to revisit the
23 analyses, or the conclusion based thereon, contained in the Original EA/FONSI, which states that
24 the Proposed Project “would not significantly impact the root health of the old growth trees
25 adjacent to the construction.” Instead, it simply “re-validated” both documents.

26 30. In its most recent iteration, Caltrans changes these figures yet again, and identifies
27 109 old growth redwoods whose root zones would be subject to ground disturbance, and
28

1 increases to 78 the number of old growth redwoods whose “structural root zones” would be
2 subjected to ground disturbing activity.

3 31. Caltrans seeks to justify the environmental risks posed by the Proposed Project for
4 a single purpose: widening the road would allow lifting a general restriction on the passage
5 through Richardson Grove of large, commercial Surface Transportation Assistance Act of 1982
6 (or “STAA”) trucks, transforming the road through the Grove into an unrestricted industrial
7 artery. STAA trucks carry trailers that are 8 to 13 feet longer than what are known as “California
8 legal” trailers. Presently, these elongated trucks are generally prohibited from going through
9 Richardson Grove Park; however, as Caltrans acknowledges, STAA trucks already regularly
10 pass through the Grove with a California Highway Patrol (“CHP”) escort, by virtue of granted
11 exemptions, and pass through without incident, making the Proposed Project unnecessary.
12 Indeed, the approximately \$21 million that Caltrans estimates the Proposed Project would cost
13 could, using the current average salary numbers, pay the entire salary of a CHP Officer posted at
14 the Grove to escort the occasional STAA truck, for 178 years.

15 32. Despite the probable destruction of the ancient redwoods in the Grove and other
16 impacts on the human environment that the Project would create, Caltrans has, through its
17 actions and disregard of its other legal obligations, attempted to railroad the Proposed Project to
18 completion without adequately studying the Proposed Project’s potentially severe and permanent
19 human environmental consequences and without explaining or justifying the Proposed Project’s
20 purpose or need.

1 33. The cover of Caltrans’s Original EA/FONSI and its “Supplement” (displayed
2 below), both of which Caltrans characterizes as part of a so-called “Revised EA,” illustrates the
3 Proposed Project’s essential problem – the road through the Grove at its current width already
4 cuts so close to the old-growth trees that any widening would cause a devastating impact.



16 34. While less obvious—though apparent in dangerously leaning tree in the center of
17 the picture—the impact that the Proposed Project would have on the root zones of the old-growth
18 redwoods, which lay in the path of the Proposed Project, would be equally devastating.

19 35. Indeed, Comment No. 9 submitted by the California State Department of Parks
20 and Recreation North Coast Redwoods District (the “State Parks”) to the Draft Environmental
21 Impact Report/Environmental Assessment (“Draft EA”) states: “The hardened surface associated
22 with the roadbed and shoulder is a significant adverse effect on the health of any mature tree,
23 including old-growth redwood, where it encroaches into that tree’s critical root zone . . .
24 However the [Draft EA] does not document whether or not the proposed action will increase the
25 cumulative amount of hardened surface on the critical root zone or decrease it. Unless such a
26 detail analysis is conducted, the significance of the proposed action on old-growth redwoods
27 cannot be evaluated. Once this information is provided, it can be evaluated for the significance
28

1 of the impact to the trees. If that information is not provided, there is not enough substantial
2 evidence to make a finding of significant or less than significant.”

3 36. State Parks further states in its Comment 31 to the Draft EA: “The [Draft EA] . . .
4 does not provide an assessment of the number of trees that will have their structural root zone
5 compromised through the placement of an impervious surface within the structural root zone or
6 an estimate of the number of trees that will have structural roots severed. Without such an
7 assessment the State Parks cannot adequately assess the proposed actions impacts on old-growth
8 redwoods and other mature trees. The Department therefore must assume that the proposed
9 action will result in significant adverse effects to old-growth redwoods and that adequate
10 mitigation needs to be developed.”

11 37. Caltrans, however, not only ignored these Comments and numerous other likely
12 environmental consequences of its Proposed Project, but also denied Plaintiffs and the hundreds,
13 if not thousands, of other concerned persons a meaningful opportunity to review and comment
14 upon the Proposed Project and its stated justifications. Caltrans also gave no meaningful
15 consideration to the numerous alternatives that existed to its destructive plans, including simply
16 granting more exceptions to operators of STAA trucks that desired to pass through the Grove,
17 and failed to properly consider or explain the Proposed Project’s purpose or need.

18 38. Traveling under these redwoods, which tower over Highway 101 as it passes
19 through Richardson Grove, is for many people the only experience they will ever have of these
20 utterly unique and majestic forms of nature. No other plant, tree, or animal in the world
21 compares to the size of ancient redwoods, and for many first-time travelers of Highway 101
22 through Richardson Grove the experience is profound and deeply moving.

23 39. In an inept attempt to mask the true purpose of the Proposed Project, which is
24 lifting the general limitation on passage of STAA trucks through the Grove to create an industrial
25 artery, Caltrans initially tried to justify the Proposed Project on safety concerns. However,
26 Caltrans was not able to offer any evidence in support of those purported safety concerns, other
27 than the results of a computer model. These computer results were contrary to the evidence, such
28 as accident reports, which failed to support any such safety issues. Despite (or because of) this

1 divergence between observed reality and the results of its computer model, Caltrans never
2 provided the public with information regarding how the computer model was constructed; thus,
3 the public was never given the opportunity to meaningfully challenge the computer model's
4 results.

5 40. Caltrans ultimately admitted the Proposed Project would not solve any safety
6 problems, real or imagined. The EA states: "*The project is not a safety project*, but an
7 operational improvement project to lift the STAA restriction at this location. . . . The primary
8 purpose of the Project is to lift the restriction on STAA vehicles on the portion" of Highway 101
9 that runs through Richardson Grove State Park.

10 41. Caltrans proposes to engage in a multimillion dollar project and to endanger the
11 survival of giant old-growth redwoods that have towered over the area for millennia, not to solve
12 any safety issues, but rather to let bigger commercial trucks pass through a one mile stretch of
13 road without the hassle of seeking an exemption and CHP escort. The short-sightedness of this
14 Proposed Project is dumbfounding and contrary to federal law.

15 42. Plaintiffs hereby challenge Caltrans' approval of the Proposed Project, its
16 approval of the Original EA/FONSI, its approval of the unauthorized Supplement to the Original
17 EA/FONSI, its issuance of the 2017 FONSI, and its failures to have engaged in the required
18 environmental analyses, as violations of NEPA, the Department of Transportation Act, their
19 related regulations, and other applicable law, and seek an order by this Court enjoining Caltrans
20 from taking any further action on the Proposed Project until Caltrans both meets all applicable
21 legal requirements and complies with the *Bair I Order*. On May 1, 2017, Caltrans approved its
22 2017 FONSI and Revised EA, which Caltrans characterizes as the 2010 Final Environmental
23 Assessment, the 2013 Supplement to the Original EA/FONSI, and revisions and updates from
24 the 2017 FONSI. Caltrans published notice of its approval in the Federal Register on June 5,
25 2017. *Federal Register*/Vol. 82, No. 106/Monday, June 5, 2017/Notices, [25906]. This case
26 challenges those actions and reasserts claims from 2010 because Caltrans continues to violate the
27 law in its reliance on and re-approval of its 2010 actions. This case challenges the final agency
28 actions as announced in the Federal Register on June 5, 2017.

1 43. These individual Plaintiffs and the organizational Plaintiffs' members are
2 committed to taking all possible steps to preserve Richardson Grove State Park's old-growth
3 redwoods and the habitat they provide for posterity. These individual Plaintiffs and the
4 organizational Plaintiffs' members are informed and believe the Proposed Project would cause
5 irreparable harm to those redwoods and that habitat. Plaintiffs have exhausted any and all
6 administrative remedies prior to filing this Complaint, to the extent legally required to do so.

7 44. The redwoods of Richardson Grove are a profound natural resource. Federal law
8 prohibits the sacrificing of these old-growth redwoods for immense trucks in such a haphazard
9 and capricious way. The Grove should be preserved for the trees, not destroyed for the trucks.

10 **I. PARTIES**

11 **A. Plaintiffs**

12 45. Plaintiff BESS BAIR is the granddaughter of Bess and Fred Hartsook. In 1919,
13 her grandparents honeymooned in a cabin six miles south of Garberville, California. The cabin
14 was immediately below Richardson Grove State Park. During the 1920's, Fred Hartsook
15 purchased the honeymoon cabin and extended it into a resort, comprising 37 acres of pristine
16 redwood forest, known as The Hartsook Inn. The resort became a major attraction for
17 Hollywood celebrities, with guests including Mary Pickford and Bing Crosby. The Hartsook Inn
18 survived under a succession of owners until the 1990s, when the last operator sold the property
19 to the Save-The-Redwoods League. Bess was raised in Northern California, making frequent
20 visits to the redwoods in and around the Richardson Grove State Park. She continues to visit
21 these same redwoods as an adult and intends to do so in the future. Since 1975, Bess has resided
22 in San Francisco County, California.

23 46. Plaintiff TRISHA LEE LOTUS is the great granddaughter of Henry Devoy, who
24 in 1922 transferred to the State of California the 120 acres which became the initial acreage of
25 the Richardson Grove State Park. Trisha was born in Santa Rosa and every summer as a child
26 visited the redwoods in and around the Richardson Grove State Park. She continues to visit
27 these same redwoods as an adult and intends to do so in the future. Since 1998, Trisha has been
28 a resident of Humboldt County, California.

1 47. A retired licensed contractor and a disabled Vietnam Veteran, Plaintiff JEFFREY
2 HEDIN resides in Piercy, California. Jeff is an elected commissioner with the Piercy Fire
3 Protection District, members of which respond to emergency calls in Humboldt and Mendocino
4 Counties. While he is performing his work duties, Jeff drives on Highway 101 through
5 Richardson Grove State Park. Jeff is also a dedicated volunteer and leader in efforts to protect
6 and save local parks, including Standish Hickey State Recreation Area in Humboldt County.

7 48. Plaintiff DAVID SPREEN has lived in Humboldt County for decades. After
8 graduating from Humboldt State University (Math '76), David and his wife decided to live and
9 raise a family in Humboldt County. David accepted a position with a wholesale floor covering
10 distributor based in the San Francisco Bay Area and was promoted to Eureka warehouse branch
11 manager, which required coordinating logistics between local retail clients and numerous
12 manufacturers located in California and around the nation. In 2001, David opened Dave Spreen
13 Enterprises to offer consulting services to clients in the flooring industry interested in doing
14 business in China. David has served on the Freshwater Educational Foundation, the Freshwater
15 School Board, and the Eureka Adult School Business Advisory Council. David has previously
16 attempted to review Richardson Grove Project records at Caltrans, only to be denied access.

17 49. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is a non-profit
18 New Mexico corporation with offices in Alaska, Arizona, California, Illinois, Minnesota,
19 Nevada, New Mexico, Oregon, Vermont, and Washington, D.C. CBD is actively involved in
20 wildlife and habitat protection issues throughout the United States, and has members throughout
21 our country, thousands of whom reside in California. CBD’s members and staff include
22 individuals with educational, scientific, spiritual, recreational and other interests in protection of
23 ancient redwoods and the species which depend on those trees, including the Marbled Murrelet,
24 the Northern Spotted Owl and anadromous salmonids – including SONCC coho, CC Chinook
25 and NC Steelhead. CBD’s members and staff enjoy the biological, recreational and aesthetic
26 values of the California parks where species such as the Marbled Murrelet, the Northern Spotted
27 Owl and anadromous salmonids – including SONCC coho, CC Chinook and NC Steelhead –
28 live, including the Richardson Grove State Park. CBD’s members and staff have participated in

1 efforts to protect and preserve the habitat essential to the continued survival of the Marbled
2 Murrelet, the Northern Spotted Owl, and anadromous salmonids – including SONCC coho, CC
3 Chinook and NC Steelhead. CBD’s members and staff intend to visit Richardson Grove State
4 Park in the future to enjoy, appreciate, view, and study the ancient redwoods and to seek out and
5 observe the Northern Spotted Owl, Marbled Murrelet, anadromous salmonids – including
6 SONCC coho, CC Chinook and NC Steelhead – in their natural habitat. CBD brings this action
7 on its own behalf and on behalf of its adversely affected members and staff.

8 50. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER
9 (“EPIC”) is a non-profit public interest organization formed to promote environmental values
10 and environmental protection. EPIC is located in the State of California and has approximately
11 2,000 members, who live throughout California. EPIC is beneficially interested in the aesthetic
12 enjoyment and continued productivity of land, forest and other water resources, in the
13 preservation of wildlife and protected species including the Marbled Murrelet, the Northern
14 Spotted Owl and anadromous salmonids – including SONCC coho, CC Chinook and NC
15 Steelhead – at self-perpetuating population levels, in protection of ancient redwoods, watersheds,
16 and in protection of other natural resources and our environment. Members of EPIC travel
17 throughout California for personal, aesthetic and recreational pursuits, including hiking, bird
18 watching and enjoying California’s incredible beauty. Members of EPIC regularly visit and
19 enjoy California State Parks, including the remarkably beautiful and majestic Richardson Grove
20 State. EPIC’s members depend for their livelihood, health, culture and well-being on the
21 viability of vegetation and land throughout California. EPIC’s members rely upon water from
22 throughout California. Members of EPIC also observe, study, recreate, gather or otherwise enjoy
23 the unique biologic, scientific and aesthetic benefits of Richardson Grove State Park, which
24 EPIC members experience as important and unique State and public resources. EPIC’s
25 members intend to continue visiting Richardson Grove State Park in the future, in pursuit of
26 these interests and benefits.

27 51. Plaintiff CALIFORNIANS FOR ALTERNATIVES TO TOXICS (“CATs”) is a
28 non-profit public interest corporation, which has advocated for thirty years on behalf of its

1 members to enable their control over toxic chemicals in the environment. CATs seeks to advise
2 and advocate public concerns regarding toxic chemicals in the environment through organizing,
3 educating, advocating, and building community leadership. This mission is grounded in a
4 broader concern for the sustainability of the environment. CATs and its members are actively
5 involved in local, regional, national, and international government and regulatory processes
6 concerning the exposure, use and removal of toxic chemicals, including toxic lead and its
7 constituents. CATs is a region wide organization with its office in Humboldt County, California.
8 Members of CATs depend for their livelihood, health, culture, and well-being on the viability of
9 healthy environmental conditions throughout California. Its members live throughout California.
10 Members also observe, study, recreate, gather, or otherwise enjoy the biologic, scientific, and
11 aesthetic benefits of clean water and land throughout California. Members of CATs recreate
12 within and along the wild and scenic Eel River and in Richardson Grove State Park, and intend
13 to continue doing so in the future. Members of CATs have an interest in knowing California
14 remains alive with wildlife and natural wonders, always beautiful and available to enjoy and
15 utilize.

16 52. Plaintiff FRIENDS OF DEL NORTE (“Friends”) is a non-profit public interest
17 group established in 1973 in Crescent City and Gasquet, California, designed to protect the local
18 environment and educate our citizenry on the benefits of planning for living in a pristine setting.
19 For more than forty years, Friends has volunteered resources to foster public dialogue about
20 natural resources throughout the region, by attending federal, state, and local meetings and public
21 hearings working to influence elected leaders in planning for a healthy future in Del Norte
22 County and its bioregion. In part through monitoring local planning issues, Friends’ two
23 hundred local and northern California members have tirelessly worked to protect the pristine
24 qualities of the wild and scenic rivers of Northern California, salmon and steelhead habitat, the
25 scenic corridors of Highways 101 and 199, ancient redwood forests, the Lake Earl Coastal
26 Lagoon, and the wild Pacific coastline. Friends believes that, without deliberate attention and
27 care, these great natural treasures will be compromised or degraded over time and lost to future
28 generations. Friends is proud of its record of success in helping to foster the 40,000 acre

1 expansion of Redwood National and State Parks, the 180,000 acre Siskiyou Wilderness Area, the
2 Smith River National Recreation Area in the Six Rivers National Forest, long-term protection of
3 the Point St. George Heritage Area through acquisition by Del Norte County, better management
4 of Lake Earl Coastal Lagoon resulting in higher biodiversity, and participation at the stakeholder
5 level to successfully promote the creation of the Marine Life Protection Act for Del Norte,
6 Humboldt, and Mendocino counties. Over the years, Friends has worked to protect the scenic
7 qualities of our local highways and to plan the Cushing Creek realignment project on Highway
8 101 to save old growth redwood trees bordering this scenic highway. Friends will continue to
9 work with federal, state, and local agencies in planning to protect our natural resources.
10 Members of Friends recreate within and along the wild and scenic Eel River and in Richardson
11 Grove State Park, and intend to continue doing so in the future. Friends brings this action on its
12 own behalf and on behalf of its adversely affected members and staff.

13 53. The above-described health, recreational, scientific, cultural, inspirational,
14 educational, aesthetic, and other interests of Plaintiffs would be adversely and irreparably injured
15 by Defendants' failure to comply with NEPA, Section 4(f) of the Department of Transportation
16 Act, the Wild and Scenic Rivers Act, the MSA, the ESA, their related regulations, and other
17 applicable law. These are actual, concrete injuries to Plaintiffs and their members that would be
18 redressed by the relief sought herein. Plaintiffs have no adequate remedy at law.

19 54. Plaintiffs sue on behalf of themselves, their members, and their supporters.
20 Plaintiffs are comprised of residents of the State of California who are united by the following
21 common interests of law and fact: Each Plaintiff is an "interested person" in the aesthetic
22 enjoyment and protection of California's public lands, including State Parks such as Richardson
23 Grove State Park, in the preservation of ancient redwoods, fish and wildlife species at self-
24 perpetuating population levels, in the protection of our environment, and in the protection of
25 water and air quality.

26 **B. Defendants**

27 55. Defendant CALIFORNIA DEPARTMENT OF TRANSPORTATION
28 ("Caltrans") is a public and state agency within the State of California. Caltrans is the lead

1 agency for the Proposed Project under NEPA. Caltrans is using federal funding from the Federal
2 Highway Administration (“FHWA”). Caltrans has executed a Memorandum of Understanding
3 Between the Federal Highway Administration and the California Department of Transportation
4 (the “MOU”) under which FHWA assigned to and Caltrans assumed the delegation of authority,
5 pursuant to 23 U.S.C. § 327, to provide environmental review, consultation, or other such action
6 pertaining to the review or approval of a specific project such as Richardson Grove, as required
7 by federal environmental laws, including NEPA, 42 U.S.C. § 4331 *et seq.*; Section 4(f) of the
8 Department of Transportation Act of 1966, codified at 23 U.S.C. § 138 and 49 U.S.C. § 303, and
9 implementing regulations at 23 C.F.R. Part 774; the Wild and Scenic Rivers Act, 16 U.S.C. §
10 1271 *et seq.*; the MSA, 16 U.S.C. § 1801 *et seq.*; and the ESA, 16 U.S.C. §§ 1531, *et seq.*
11 Pursuant to this MOU, Caltrans is the agency which prepared and adopted the Original
12 EA/FONSI for the Proposed Project. Caltrans approved the Richardson Grove Project and
13 adopted the Original EA/FONSI on May 18, 2010. On January 24, 2014, Caltrans approved a
14 Supplement to the Original EA/FONSI, and revalidated the Original EA/FONSI, which was
15 described as a final agency action in a February 26, 2014 Federal Register Notice. Caltrans
16 subsequently rescinded those approvals. On May 2, 2017, Caltrans approved the 2017 FONSI as
17 part of a so-called “Revised EA” which also included the Original EA/FONSI and the
18 Supplement to the Original EA/FONSI, and on May 22, 2017 Caltrans again approved the
19 Richardson Grove Project.

20 56. Defendant MALCOLM DOUGHERTY is the Director of the State of California
21 Department of Transportation. As Director, Mr. Dougherty is responsible for maintenance and
22 operations of roadways comprising the California state highway system. Mr. Dougherty is sued
23 in his official capacity.

24 **II. JURISDICTION**

25 57. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises
26 under the laws of the United States. This Court also has jurisdiction to review Caltrans’ actions
27 in this case pursuant to 23 U.S.C. § 327(d) and the MOU. As stated in the MOU, Caltrans has
28 consented to and accepted the exclusive jurisdiction of the Federal courts for any matter arising

1 out of or relating to action for compliance, and/or enforcement of any of the responsibilities
 2 assigned by the FHWA and assumed by Caltrans, including compliance of NEPA and Section
 3 4(f) of the Department of Transportation Act and the Wild and Scenic Rivers Act. The State of
 4 California has consented to federal jurisdiction and waived any claim of sovereign immunity
 5 pursuant to California Streets and Highways Code § 820.1.

6 58. An actual controversy exists between the parties within the meaning of 28 U.S.C.
 7 § 2201. Final agency action exists that is subject to this Court’s review under the Administrative
 8 Procedure Act, 5 U.S.C. § 702 (“APA”). This Court may grant declaratory relief, and additional
 9 relief, including an injunction, pursuant to 28 U.S.C. §§ 2201 and 2202, and 5 U.S.C. § 705, §
 10 706(1), § 706(2)(A) & (D).

11 **III. VENUE**

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

17 **IV. INTRADISTRICT ASSIGNMENT**

18 60. A substantial part of the events and omissions giving rise to the claims in this case
 19 impact all of Northern California and have occurred in various counties throughout the Northern
 20 District, including the County of San Francisco.

21 **V. OUR RICHARDSON GROVE AND CALTRANS’ PLAN FOR ITS** 22 **DESTRUCTION**

23 **A. Driving Through History**

24 61. In 1922, Henry Devoy transferred 120 acres to the State of California, to establish
 25 what ultimately became Richardson Grove State Park. At that time, a narrow dirt road wound
 26 through this iconic redwood grove. It was not until 1927, after creation of the Richardson Grove
 27 State Park, that the road was first surfaced. With improvement of the road and increased vehicle
 28 traffic, thousands of visitors came to see these majestic redwoods and the name “Richardson

1 Grove” became synonymous with ancient redwoods. Over time, Richardson Grove has
2 expanded to more than 2,000 acres. Richardson Grove State Park is the gateway to the
3 magnificent redwood forests of Northern California, with the towering girth of these oldest living
4 things on earth, their age estimated at 1,000 to 3,000 years, sheltering the roadway from both
5 sides.

6 62. Highway 101 threads through the Richardson Grove State Park, providing a
7 transportation route for residents, visitors, tourists, commerce, and safety vehicles.

8 63. Richardson Grove State Park is a “heritage park” with worldwide significance,
9 serving as the gateway to the Redwood Region and the quintessential beauty of Northern
10 California. It provides millions of tourists with breathtaking views of gigantic redwoods. The
11 Richardson Grove has withstood the test of time for nearly 3,000 years, as its towering ancient
12 redwoods shelter Highway 101, with a magnificent cathedral of trees and branches that interlace
13 above the road. The section of Highway 101 threading through Richardson Grove is eligible for
14 scenic highway status on the California Scenic Highway System, and thus exists for both
15 transportation and scenic purposes. It is an unparalleled portion of California’s Highway 101.

16 64. Redwood root systems are shallow and inter-related, extending 3 to 10 times
17 beyond the diameter of the individual tree. Roots that have spent literally centuries successfully
18 navigating their place under and through the soil must be protected to ensure water uptake,
19 nutrient capacity, and structural stability. The California State Department of Parks and
20 Recreation (the “State Parks”) instructs all Richardson Grove visitors that “all park features are
21 protected by law and must not be disturbed.” Commenting on the Proposed Project, the State
22 Parks declared that “[a]ny project that affects the historic patina and the natural fabric of
23 Richardson Grove State Park can have far reaching impacts to millions of people as they enter
24 the Redwood Region.” In fact, even Caltrans admits “[i]t is not possible to know where roots
25 may be encountered.”

26 65. The Richardson Grove is home and/or provides habitat for many wildlife species,
27 including blue herons, osprey, acorn woodpeckers, belted kingfishers, the protected marbled
28 murrelet, and the protected northern spotted owl, and provides critical and essential habitat for

1 the Southern Oregon Northern California Coast Evolutionary Significant Unit of coho salmon
2 (“SONCC coho”), federally listed as threatened (May 6, 1997; 62 FR 24588), the Coastal
3 California Evolutionary Significant Unit of Chinook salmon (“CC Chinook”), federally listed as
4 threatened (September 16, 1999; 64 FR 50393), and the Northern California Evolutionary
5 Significant Unit of steelhead (“NC Steelhead”), federally listed as threatened (June 7, 2000; 65
6 FR 36074).

7 66. The area is also rich with cultural resources, including those of Native American
8 people, the first known inhabitants of the region, who hunted, fished, gathered food, and
9 collected native materials for basket weaving. The South Fork of the Eel River threads through
10 the Richardson Grove and along Highway 101, and is designated as a Wild and Scenic River
11 under California law (1972) and the Federal Wild and Scenic Rivers Act (1981). The South Fork
12 of the Eel River flows north 105 miles (169 km) from Laytonville to Weott, where it joins the
13 Eel River on the left bank. The South Fork’s watershed of about 689 square miles (1,780 km²)
14 drains a long and narrow portion of the Coast Range of California, covering parts of Mendocino
15 and Humboldt counties. For much of its length, the Eel River parallels U.S. Route 101,
16 including through Richardson Grove State Park.

17 **B. Destroying Our Redwoods**

18 67. California State Parks are havens for California’s unparalleled natural and cultural
19 resources. As an economic engine for recreation and tourism, the State Parks also generate
20 billions of dollars a year in spending in local communities and support over 100,000 jobs
21 statewide. Recently overcoming the worst financial crisis in decades, California cannot
22 withstand threats of any kind to such an immensely valuable source of jobs and revenue. Yet,
23 these treasured parklands are facing an unprecedented barrage of assaults, not only from the lack
24 of funding, but from projects such as the one challenged herein, which would encroach upon
25 park land and devastate natural resources.

26 68. Richardson Grove State Park is directly threatened by such assaults. Caltrans
27 proposes to widen and realign Highway 101 through the Richardson Grove State Park, by
28

1 removing trees and cutting and impacting the root systems of ancient redwoods along a one-mile
2 section of the highway.

3 69. Caltrans is placing these ancient redwoods at risk with this Proposed Project,
4 particularly by cutting, compacting, and placing fill on the roots of these ancient trees,
5 endangering their very survival. The Proposed Project contradicts Caltrans' own
6 acknowledgment of "the importance of redwoods." The ancient redwoods in Richardson Grove
7 State Park are protected trees, for which State Parks declares that in "dense forests where drip
8 lines of trees touch each other it is impossible to install a new facility without causing damage."
9 State Parks advises that:

10 There should be no construction activities in the Structural Root Zone of a
11 protected tree ... Any intrusion into this zone is usually accompanied by
12 significant injury to roots further from the trunk; this will shorten the useful life of
13 the tree in the developed area by reducing vigor and introducing root disease.
14 Furthermore, damage to any structural roots may cause an already structurally
15 compromised tree to become hazardous.

16 70. Because of the renowned and iconic status of Richardson Grove, the Proposed
17 Project's influence extends well beyond its borders, exposing a state and national public treasure
18 to risk of harm. Because the Proposed Project is intended to provide STAA trucks with new
19 access through the Grove solely for "goods movement," and because Richardson Grove is
20 treasured by visitors from throughout California and the nation, this Proposed Project has
21 impacts extending well beyond Humboldt County. The Proposed Project as designed would
22 result in a devastating legacy.

23 71. Furthermore, the watershed of the South Fork of the Eel River, including its
24 tributaries, is designated critical habitat under the ESA for the SONCC coho.

25 72. The watershed of the South Fork of the Eel River, including its tributaries, is also
26 designated as essential fish habitat ("EFH") for both coho and Chinook salmon under the MSA.

27 73. Caltrans admits in the Final EA that threatened steelhead, threatened coho
28 salmon, and threatened Chinook salmon are "likely present in Durphy Creek," which flows into
the South Fork of the Eel River and thus is part of its watershed designated as EFH for coho and
Chinook salmon. The Final EA also admits "[t]hese species are also present in the South Fork of

1 the Eel River.” The Original EA/FONSI also acknowledged the area of the Proposed Project
2 includes suitable habitat for threatened steelhead, threatened coho salmon, and threatened
3 Chinook salmon.

4 74. Durphy Creek, which Caltrans admits supports threatened steelhead, threatened
5 coho salmon, and threatened Chinook salmon, is within the area of the Proposed Project.
6 Caltrans plans to conducted significant soil disturbing activities in the immediate vicinity
7 thereof. All of the work that Caltrans proposes to do would be upslope from the South Fork of
8 the Eel River, including large amounts of cut slope work that would expose significant areas of
9 soil to erosion. The Proposed Project would also likely increase the amount of truck traffic
10 through the Grove, thereby increasing the risk of accidents and related toxic spills into the South
11 Fork of the Eel River and areas hydrologically connected thereto, as well as increasing
12 contamination of the South Fork of the Eel River and areas hydrologically connected thereto
13 related to truck exhaust, truck tire, and truck brake wear. Contaminants from such sources,
14 including, without limitation, copper and poly-aromatic hydrocarbons (“PAHs”), have
15 devastating effects on salmonids. The Proposed Project would also disturb large deposits of lead
16 contaminated soil, which would in turn erode into the South Fork of the Eel River and areas
17 hydrologically connected thereto. Thus, the Proposed Project would likely adversely affect these
18 salmonid species and their habitat.

19 **C. The Grove is Threatened by Trucks**

20 75. The Proposed Project would widen Highway 101 through Richardson Grove by
21 increasing the width of paved road in both directions and widening shoulders along the side of
22 the highway, to change curve radii along the one mile section. The Proposed Project also would
23 include installation of a retaining wall and barrier rail outside of the Park on the north to allow
24 the road widening, excavating at least 20 feet down and placing a retaining wall closer to and
25 above the Eel Wild and Scenic River.

26 76. To accomplish this road widening and realignment, Caltrans now claims it would
27 remove 38 trees and work within and impact the roots and root zones of 109 old-growth
28

1 redwoods. Since its initial approval, Caltrans has increased to 78 the number of old growth
2 redwoods which would have project work occur within the structural root zone of those trees –
3 the same area which State Parks advises should be avoided. Many of these old-growth redwoods
4 are as large as 18 feet in diameter, located immediately adjacent to Highway 101. The following
5 photos vividly depict how close the redwoods are to Highway 101 in the Grove and how
6 dangerous the road widening Project would be to these trees:



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The Proposed Project would also entail ground disturbance, slope excavation, culvert work, excavation and movement of lead-contaminated soils, potential temporary stream diversion,

1 night work with night lighting, disposal/barrow sites, equipment staging areas, permanent right-
2 of-way acquisitions from State Parks and private landowners, temporary construction easements,
3 and vegetation and tree removal.

4 77. Beneficiaries of the Proposed Project include corporate giants whose trucks would
5 make expedited deliveries to Humboldt County. Caltrans' stated justification for widening
6 Highway 101 through the Grove is that the road must be wider to allow STAA trucks to pass one
7 another in opposite directions on this section of the highway. So-called STAA trucks are truck-
8 and-trailer combinations that tend to be somewhat longer than the "California legal" truck-and-
9 trailer combination.

10 78. Caltrans has specifically stated that the Proposed Project "**is not a safety**
11 **project.**"

12 79. Specifically, Caltrans maintains it is necessary to widen Highway 101 through
13 Richardson Grove and change the highway's alignment to prevent these STAA trucks from "off-
14 tracking." "Off-tracking" refers to a phenomena in which a truck's rear tires may follow a
15 shorter path than the front tires when turning.

16 80. However, some STAA trucks are currently allowed through the Richardson
17 Grove. Caltrans cites no evidence in its Draft Environmental Assessment ("Draft EA") (defined
18 below), Original EA/FONSI, or Supplement to the Original EA/FONSI, indicating that these
19 STAA trucks are unable to safely pass in opposite directions. Similarly, Caltrans cites no
20 evidence in its Draft EA, Original EA/FONSI, Supplement to the Original EA/FONSI, or 2017
21 FONSI indicating that in practice runs any STAA trucks are off-tracking when traveling through
22 the Richardson Grove.

23 81. In its Draft EA, Caltrans cited information showing that over the most recent five-
24 year period only six accidents occurred involving trucks in the Proposed Project area, and two of
25 those were within one minute of each other. Moreover, only one of these accidents involved
26 trucks traveling opposite directions, and there is no evidence that these trucks were STAA trucks.

27 82. Indeed, there is no evidence that any of these six accidents involved STAA trucks.
28 According to a California Highway Patrol report in existence at the time of the EA, there is no

1 record of any collisions, citations, verbal warnings, or even complaints involving STAA trucks
2 traveling through the Richardson Grove.

3 83. In response to the absence of such evidence, Caltrans created a computer model to
4 show how these non-existent accidents might possibly happen. According to Caltrans, this
5 computer model purportedly demonstrated “where the deficiencies [in the current design of the
6 highway] were that would cause off-tracking.”

7 84. Given the lack of any evidence of off-tracking for STAA trucks in the Richardson
8 Grove, there is no reason to use a computer model to show that the current design “would” cause
9 off-tracking.

10 85. Caltrans, however, did not provide any information clarifying this apparent
11 discrepancy. In fact, Caltrans never disclosed to the public any information used to develop the
12 computer model—information which also formed the basis for the Proposed Project’s design.
13 Caltrans never provided basic information, such as curve radii, length of curves, shoulder width,
14 existing geometrics, elevations, or the engineering used to develop the Proposed Project’s
15 computer model.

16 86. In doing so, Caltrans deprived the public of any meaningful opportunity to
17 evaluate and critique not only the very nature and impacts of the Proposed Project, but also
18 whether the Proposed Project as designed would accomplish what Caltrans sought to achieve.

19 87. Caltrans’ failure to identify the data used in its Proposed Project model also
20 deprived the public of an opportunity to investigate better alternatives to the Proposed Project.

21 88. Because this Proposed Project intends to use State Parks land, Caltrans was
22 obligated to conduct a federal Department of Transportation Section 4(f) analysis. Section 4(f)
23 bars the use of parklands for transportation projects absent exceptional circumstances which,
24 among other things, require Caltrans to demonstrate there are no prudent and feasible alternatives
25 to the Proposed Project and that all possible planning measures to minimize harm to Richardson
26 Grove State Park have been considered. Caltrans failed to meet these obligations.

27 89. Ultimately, Caltrans conceded the safety problems purportedly found by its
28 computer model “cannot be improved within the scope of the proposed project.” Caltrans also

1 conceded that the Proposed Project failed to bring the stretch of Highway 101 through
2 Richardson Grove up to standards it purportedly identified as currently deficient, including:
3 minimum design speed and curve radii, shoulder width, minimum super-elevation rate, stopping
4 site distance, minimum distance to fixed objects, and corner sight distance.

5 90. Not surprisingly, by the time Caltrans released the Original EA/FONSI, it
6 conceded the Proposed Project was not about safety at all: “The project is not a safety project,
7 but an operational improvement project to lift the STAA restriction at this location.” “Improved
8 safety is a secondary objective to this project.” Caltrans had to disclose that the primary purpose
9 of the Proposed Project was to allow STAA trucks to come barreling through the Grove: “The
10 primary purpose of the Project is to lift the restriction on STAA vehicles on the portion” of
11 Highway 101 that runs through Richardson Grove State Park. Through its Supplement to the
12 Original EA/FONSI and Re-Validation of the Original EA/FONSI, and now the 2017 FONSI,
13 Caltrans reaffirmed this concession.

14 **D. Caltrans Failed to Properly Provide for Public Review**

15 91. In early 2007 Caltrans initiated a “Richardson Grove Goods Movement
16 Feasibility Study” (the “2007 Study”), which was intended to design a cooperative realignment
17 plan to improve the movement of goods in and out of Humboldt County. The purpose of the
18 2007 Study was to develop and consider alternative ways of providing safe and economically
19 feasible goods movement, including increased access by STAA trucks. STAA truck access is
20 currently allowed by statute for livestock trucks and moving vans on Highway 101 through
21 Richardson Grove State Park, but is otherwise prohibited.

22 92. Caltrans abandoned development of the 2007 Study in favor of computer
23 modeling for STAA access through the Richardson Grove. The computer software developed
24 conceptual designs using truck turning templates specific to the STAA truck type.

25 93. On July 26, 2007, Caltrans issued a press release announcing that the movement
26 of goods through Richardson Grove would be “dramatically improved” under a realignment plan
27 developed by Caltrans. Caltrans apparently consulted regional government representatives from
28 Humboldt, Del Norte, and Mendocino counties, as well as State and federal legislators, in the

1 development of this realignment plan, but did not disclose or provide an opportunity for public
2 review and input on the proposed road realignment.

3 94. Caltrans then held two “open house” public meetings on September 26, 2007 and
4 February 20, 2008, at which Caltrans made no formal presentation, but rather displayed maps
5 and exhibits for review and took questions. Caltrans conducted a scoping meeting on May 14,
6 2008, and again made no formal presentations but took questions and comments. Caltrans
7 received a flood of scoping comments, urging it to consider reasonable and feasible alternatives
8 to any widening that could impact the ancient redwoods and the fish and wildlife habitat, and to
9 ensure that the full scope of STAA access projects in Humboldt, Mendocino, and Del Norte
10 counties be fully evaluated as related projects with cumulative and growth-inducing effects.

11 95. Even though Caltrans characterized its decision reported in the Federal Register
12 on February 26, 2014 as a “reevaluation” of the Original EA/FONSI, and despite the Court's
13 explicit instructions in the *Bair I Order* that Caltrans broadly re-examine the Proposed Project in
14 a Revised EA, Caltrans refused to respond to, or ever consider, comments submitted in response
15 to the Supplement to the Original EA/FONSI that addressed shortcomings in the Original
16 EA/FONSI. These comments were left unaddressed in the Supplement to the Original
17 EA/FONSI.

18 96. Now, in 2017, Caltrans furthers its disregard for the *Bair I* requirements and
19 federal law, particularly by attempting to revive previously rescinded documents and cobble
20 them together as a so-called “Revised EA,” concerning which, notwithstanding changes made to
21 both the Proposed Project and Caltrans’ analysis of it, as well as the changed circumstances that
22 have occurred over the last decade since the project was first conceived, Caltrans did not provide
23 any opportunity for public comment.

24 **E. Caltrans’ Draft EA Was Deficient**

25 97. In early December 2008, Caltrans issued its Draft Environmental Impact
26 Report/Environmental Assessment and Programmatic Section 4(f) evaluation (the “Draft EA”).
27 The public comment period was scheduled to close on January 29, 2009, but because Caltrans
28 had failed to notice the preparation of the Draft EA to the California State Clearinghouse, public

1 comments were accepted until March 12, 2009. Caltrans conducted a public hearing on the Draft
2 EA on December 15, 2008. Caltrans received more than 800 comments in opposition to the
3 Proposed Project and its Draft EA.

4 98. Caltrans' Draft EA was dramatically deficient. In particular, the Draft EA lacked
5 data and information necessary to evaluate the impact of the Proposed Project to State Park
6 resources, its significant and cumulative effects particularly in relation to its purpose and need,
7 the existence of feasible alternatives to the Proposed Project, and the viability of the proposed
8 mitigation measures. The Proposed Project description lacked the most basic information
9 necessary to review the Proposed Project, including not only the engineering, curve, and design
10 criteria used to create the Proposed Project, but also any identification of the State Park land to
11 be acquired. The Proposed Project plans were largely unreadable and failed to present the most
12 basic details concerning cut and fill, easements, and the proposed retaining wall. Caltrans did
13 not provide diagrams depicting root structure zones of the redwoods, maps of independently
14 proposed bicycle routes, or the location of right-of-ways to be acquired or relinquished by State
15 Parks. In this way, Caltrans failed to provide the required Proposed Project description to enable
16 the public to understand and critique how the proposed changes to Highway 101 might affect
17 Richardson Grove.

18 99. The statement of project purpose and need in the Draft EA failed to provide a
19 clear and consistent statement of the objectives that the Proposed Project was intended to
20 achieve. For example, although Caltrans initially informed the public that the purpose of the
21 Proposed Project was to enhance safety, it changed tack during the environmental review
22 process, and ultimately admitted that the Proposed Project is not a safety project. Moreover,
23 even though Caltrans stated in the Draft EA that the Proposed Project would enhance goods
24 movement by opening Richardson Grove to STAA trucks, it simultaneously concluded that the
25 economic impacts of the Proposed Project on Humboldt County businesses and trucking firms
26 would be negligible. The Draft EA thus cast doubt on whether the Proposed Project would
27 accomplish any of Caltrans' stated purposes. The statement of project purpose and need in the
28 Draft EA was not well-established, not well-defined, and not well-justified.

1 100. The Proposed Project purpose and need as ultimately defined in the Draft EA –
2 opening Richardson Grove to large trucks – was so narrowly stated as to preclude meaningful
3 analysis of a range of reasonable alternatives: by narrowly framing the purpose and need in this
4 way—as opposed to, for example, framing it as enhancing the movement of goods in the area—
5 Caltrans effectively predetermined its analysis of alternatives. A properly framed statement of
6 purpose and need would have allowed decision makers and the public to consider the preliminary
7 and foundational question: does the public need large trucks to go through Richardson Grove or
8 is there another way to efficiently get toilet paper and washing machines to stores that does not
9 put at risk 3000 year-old trees?

10 101. However, even as to this narrowly defined purpose and need, the Draft EA failed
11 to consider and evaluate feasible alternatives to the Proposed Project that would achieve it, and
12 yet not expose public resources to environmental risk. These include slowing traffic speed
13 through the Grove, providing alternative transportation measures, or hiring a CHP officer to
14 escort the through the Grove the small number of STAA trucks that Caltrans claims do not
15 currently qualify for exemptions to the STAA restriction but would travel through the Grove if
16 they could. Caltrans did not document an examination of all prudent and feasible alternatives
17 and all possible planning measures to minimize harm to Richardson Grove.

18 102. As the comments on the Draft EA also repeatedly pointed out, Caltrans failed to
19 identify and adequately evaluate the Proposed Project’s significant environmental impacts,
20 including: effects on the ancient redwood trees adjacent to the highway throughout the Proposed
21 Project site; effects on protected fish and wildlife species and other biological resources, not only
22 from tree damage and removal but also from increased noise and light during and after
23 construction and from release and disposal of toxic materials; greenhouse gas emissions; and the
24 cumulative and growth-inducing effects associated with expanding STAA truck access and
25 goods movement throughout Humboldt, Mendocino, and Del Norte counties.

26 103. The Draft EA failed to provide, for example, documentation and analysis about
27 how the Proposed Project would increase or decrease the cumulative amount of hardened surface
28 on the critical structural root zones of the redwoods, which for many trees extend several feet on

1 either side of the road. The Draft EA failed to evaluate the effects of constructing the Proposed
2 Project and altering the road's drainage pattern on water transport and availability to the old-
3 growth redwoods. In fact, the Draft EA merely listed 41 trees as having "potential tree root
4 effects," yet failed to provide an assessment of the number of these trees that would have their
5 structural root zone compromised through placement of impervious surface, fill, and/or cutting of
6 their roots.

7 104. Roots are the life lines of the redwood tree. Any disturbance of the roots can
8 threaten a tree's health and longevity. Redwoods breathe through their roots, requiring soil that
9 is loose enough to allow ample air flow and nutrients underground. Roots act as a conveyance
10 and storage system for water and nutrients. Roots also serve as the structural system for entire
11 groves of redwoods. Redwoods lack a deep tap root, and instead rely on a dense and far-
12 reaching network of shallow, interconnected roots for mutual stability, forming symbiotic root
13 systems among groves. Soil compaction and fill disrupt the respiration process, effectively
14 cutting off air to these trees. The Proposed Project would sever redwood roots, and soil
15 compaction would be unavoidable as the combined effects of construction, roadbed material, and
16 an increase in paved surfaces adjacent to the road threaten to devastate these trees. The proposed
17 root cutting may significantly impact the nutrient and water acquisition of the trees, reduce their
18 stability, and inhibit asexual reproduction through stump sprouting. Even Caltrans
19 acknowledges that "[i]t is not possible to know where roots may be encountered."

20 105. The Draft EA failed to properly disclose and analyze construction impacts on
21 tourism and park visitors, particularly in terms of increased noise and light associated with
22 nighttime work and the summer construction phases. The Draft EA did not evaluate whether the
23 road widening would result in a degraded park experience for future park visitors, given the
24 removal of understory vegetation, increased exposure to the highway in areas of tree removal,
25 and increased noise and light impacts as a result of these changes. In many respects, the Draft
26 EA made sweeping, conclusory statements that the Proposed Project's environmental effects
27 would not be significant, without providing any criteria or meaningful explanation why, for
28

1 example, the Proposed Project would not diminish State Park values and resources for those
2 millions of travelers who pass through the Grove.

3 106. While the Proposed Project supposedly would advance the economic interests of a
4 small group of businesses, including large non-local companies, the Draft EA failed to identify
5 and evaluate the related impacts associated with this purpose, including any negative economic
6 impacts to tourism, the cumulative effects associated with other STAA access projects Caltrans
7 is undertaking in northern Humboldt and adjacent counties, and any growth-inducing impacts.

8 107. The Draft EA failed to provide adequate mitigation measures for most of these
9 and other impacts. The limited planning and mitigation measures that were identified were
10 improperly deferred, ineffective, unenforceable, and vague. For example, Caltrans failed to
11 provide technical reports or other documentation to demonstrate that the ancient redwoods,
12 biological resources, and other State Park resources would be fully and adequately protected
13 from impact. Caltrans also failed to conduct any field studies or surveys for the federally
14 protected marbled murrelet and the northern spotted owl, despite recognition that the Proposed
15 Project “may affect, and is likely to adversely affect” these species. Caltrans admits construction
16 night lighting “could affect Northern spotted owls.” Instead, Caltrans deferred collection of data
17 essential to analysis of these effects until *after* implementation of the Proposed Project.

18 108. The Draft EA thus indicated that the Proposed Project may have a significant
19 effect on the environment. At the very least, the Draft EA’s inconsistencies and other failures
20 raised a substantial question as to whether the Proposed Project may have a significant effect on
21 the environment.

22 **F. The Original EA/FONSI Failed to Remedy the Draft EA’s Deficiencies**

23 109. After the close of public comment, Caltrans developed additional data about the
24 Proposed Project, including facts and information, changes, and evaluation that had not been
25 provided in the EA. On May 18, 2010, more than a year after the close of public comment on
26 the Draft EA, Caltrans released the Proposed Project’s Final Environmental Impact
27 Report/Environmental Assessment and Programmatic Section 4(f) Evaluation (“Original
28

1 EA/FONSI”). On the same date, Caltrans approved the Proposed Project with no further
2 opportunity for public review or input.

3 110. Despite information in the Draft EA indicating that the Proposed Project may
4 have a significant effect on the environment, or at the very least raising a substantial question as
5 to whether the Proposed Project may have a significant effect on the environment, Caltrans failed
6 to prepare an Environmental Impact Statement for the Proposed Project as NEPA requires.
7 Instead, Caltrans adopted the Original EA/FONSI.

8 111. The Original EA/FONSI fails to remedy the Draft EA’s dramatic deficiencies.
9 Rather than do as hundreds of comments had requested and provide the public with an
10 opportunity to review a revised environmental analysis that corrected the Draft EA’s extensive
11 informational and analytical errors and omissions, Caltrans simply certified the Original
12 EA/FONSI and immediately approved the Proposed Project. The public had no opportunity to
13 review and comment on the Original EA/FONSI and the new information and analysis Caltrans
14 included therein. In this way, Caltrans’ process deprived the public of its opportunity to review
15 the Proposed Project’s purpose and need, its significant environmental effects, proposed
16 alternatives and mitigation measures, and the information relied upon by Caltrans to approve the
17 Proposed Project.

18 112. Notably, the Original EA/FONSI does not remedy many of the informational and
19 analytical deficiencies found in the Draft EA, including its failure to provide: a legally sufficient
20 statement of purpose and need for the Proposed Project, an adequate project description and
21 project plans, an evaluation of significant environmental effects, a sufficient cumulative impact
22 analysis and evaluation of growth inducing impacts, technical studies and documentation to
23 support conclusions that impacts would be less than significant, an adequate analysis of feasible
24 and prudent alternatives, or identification of enforceable and effective mitigation measures.

25 113. Caltrans also significantly changed the Proposed Project in the Original
26 EA/FONSI from what was described in the Draft EA and made available for public review.
27 After close of public comment, and with no opportunity for review by the public or other
28 agencies, Caltrans added an additional 46 trees to the original 41 trees identified in the Draft EA

1 as having potential root impacts. Most of these trees are large redwoods: 73 are 30 inches or
2 greater in diameter (the standard Caltrans uses to define “old-growth”), and 40 are between 7 and
3 18 feet in diameter. According to the Original EA/FONSI, “[c]onstruction activities in close
4 proximity to these trees could result in impacts to the root systems. There would be both cut and
5 fill activities occurring within the structural root zone. The maximum depth of excavation would
6 be approximately two feet and the maximum fill depth would be approximately three and a half
7 feet.” Original EA/FONSI at 40-41. The Original EA/FONSI identifies 68 of the 87 total trees
8 that would have cut and fill activities within their root zone, but does not provide any technical
9 study or documentation assessing how these trees would have their structural root zone
10 compromised through placement of impervious surface, fill, or cutting of their roots. Caltrans
11 acknowledges in the Original EA/FONSI that “it may not be possible to avoid cutting roots
12 greater than two inches.” Caltrans also admits that it did not conduct any field studies of the
13 redwoods’ structural root systems affected by this Proposed Project, and does not know where
14 roots may be encountered. Thus, Caltrans by its own admission does not know what the ultimate
15 effects of the Proposed Project will be on the redwoods or their root systems.

16 114. Caltrans proposes to protect these trees by using an air spade to dig up roots,
17 adding brow logs to minimize the impact of fill on the trunks of the trees, and watering the trees
18 weekly once excavation below the finish grade occurs. Caltrans also proposes increasing the
19 removal of invasive plants as a mitigation measure to offset impacts to these mature redwoods
20 where construction occurs within their structural root zone. However, the Original EA/FONSI
21 fails to provide any documentation to establish how these measures or other measures would be
22 effective and sufficient to protect these trees from harm, or to supply sufficient support, water,
23 and nutrients to meet their demands. The Original EA/FONSI fails to provide adequate detail to
24 assess the Proposed Project’s impacts on the redwoods and their root systems. Nor did Caltrans
25 provide at the time of approval a mitigation monitoring plan to establish that the mitigation
26 measures it did identify would be implemented and properly reported. The Original EA/FONSI
27 never adequately addresses widespread concern that the Proposed Project would eventually
28 cause tree mortality along the highway and within the Grove.

1 115. Caltrans also significantly altered the scope of the Proposed Project after issuance
2 of the Draft EA by relocating the retaining wall from one side of Highway 101 to the other, and
3 placing it downslope to provide for the widening and placement of the road in the northern
4 section of the Proposed Project. Because of this change, Caltrans was obligated to, but did not,
5 submit this change to the federal-river administering agency, the National Park Service, for
6 Section 7 consultation under the Wild and Scenic River Act. The Original EA/FONSI failed to
7 provide any information or analysis about the significant environmental effects related to this
8 relocation, particularly in terms of geology, soils, plants, trees, and other biological and natural
9 resources, and impacts on the Wild and Scenic Eel River. These changes to the Proposed Project
10 were made without any opportunity for the public or other agencies to review and comment upon
11 them.

12 116. Caltrans also revised its plans for the Proposed Project after issuance of the Draft
13 EA to include deeper excavation in areas with lead-contaminated soils. Yet the Original
14 EA/FONSI failed to disclose or analyze whether removal and disposal of these soils—which
15 Caltrans proposes to stockpile in a roadside area that ultimately drains to the South Fork of the
16 Eel River—would comply with hazardous materials handling laws or pose any risk of significant
17 impacts to water quality, aquatic species, or public health.

18 117. Other changes in the Original EA/FONSI included: new but still fundamentally
19 contradictory information concerning whether the Proposed Project would fulfill its purpose and
20 need and whether the Proposed Project would induce significant growth or development
21 elsewhere in Humboldt County; new but still internally inconsistent and contradictory
22 information about the increase in impervious area resulting from the Proposed Project; a new
23 mitigation measure—removal of a restroom in the State Park—the impacts and effectiveness of
24 which were not properly disclosed or analyzed; changes in the proposed method of culvert
25 replacement (from a cast-in-place resin liner to full culvert replacement), without any discussion
26 or analysis of the potential environmental impacts of these changes; new but impermissibly
27 deferred mitigation measures for impacts to water quality; new information concerning the
28 United States Fish and Wildlife Service’s “Biological Opinion” finding that the Proposed Project

1 would “adversely affect” and result in “harassment” of federally protected species, without any
2 revision to the Original EA/FONSI’s conclusion that the Proposed Project would have no
3 significant effects on listed wildlife; new, internally inconsistent, and contradictory information
4 about impacts associated with night-time construction; and a new but still fundamentally
5 deficient discussion of the cumulative impacts of the Proposed Project in relation to other past,
6 present, and reasonably foreseeable future projects affecting old-growth redwood forests.

7 118. The Original EA/FONSI included responses to comments, which were deficient
8 in their failure to identify and respond to all comments and concerns raised, as required by
9 NEPA. The numerous changes to the Original EA/FONSI failed to provide the public with
10 sufficient information to permit members of the public to weigh in on the Proposed Project and
11 inform decision-makers of their concerns.

12 119. The Original EA/FONSI, now purportedly “revised” by Caltrans through several
13 other subsequent and contradictory documents fails to put forth a convincing statement that the
14 Proposed Project is not likely to have a significant impact on the environment. At the very least,
15 the Original EA/FONSI, in combination with Caltrans’ response to public comments and other
16 information in the record, indicate that Caltrans failed to take a the required hard look at the
17 Proposed Project’s potential impact on the environment. In fact, the obvious severity of the
18 Proposed Project’s impact is enough to require that Caltrans have prepared an EIS.

19 120. Caltrans issued its Finding of No Significant Impact and decision on May 18,
20 2010, and filed a notice of decision with the California State Clearinghouse pursuant to
21 California state law on May 19, 2010.

22 **G. Caltrans Has Failed to Correct Its Errors Identified by the *Bair* Court or**
23 **Otherwise Address the Shortcomings in the Original EA/FONSI**

24 121. Several of Plaintiffs in this case successfully challenged Caltrans’ May 18, 2010
25 approvals in *Bair v. California State Department of Transportation*, U.S. District Court for the
26 Northern District of California., No. C 10-04360 (“*Bair I*”). The Court in *Bair* granted summary
27 judgment to the Plaintiffs in its Order on Cross-Motions for Summary Judgment, Motion to
28 Strike, and Motion for Sanctions (the “*Bair I Order*”), due to the serious questions about whether

1 Caltrans truly took “a ‘hard look’ at the effects of the project” and made “an informed decision,”
2 as required by NEPA. *Bair I Order* at 8, 9. The Court ordered that

3 “a revised EA that corrects the data inaccuracies identified [in the
4 *Bair I Order*] and assesses the impacts of the project through the
5 lens of a correct analysis is necessary, even if this reevaluation
6 ultimately reveals that the EA/FONSI remains valid.
Alternatively, Caltrans may proceed directly to conducting an
EIS.”

7 *Id.* at 10.

8 122. The Court ordered Caltrans to “prepare accurate maps, and a qualified engineer
9 shall sign and date the revised maps (unlike the unsigned maps in the existing record). The
10 agency’s analysis shall number each ancient redwood, clearly identify it in the map, identify its
11 root zone, and set forth the environmental issues to each one. The written analysis and the maps
12 should be readable together without doubt as to which tree is which.” *Id.* at 10-11.

13 123. The Court instructed that “Caltrans should give serious consideration to the other
14 significant arguments made by plaintiffs in their motion.” *Id.* at 10.

15 124. On September 18, 2013, Caltrans approved a “Supplement to the Final
16 Environmental Assessment” (the “Supplement to the Original EA/FONSI” or “Supplement”),
17 representing it as “in compliance with the April 4, 2012 *Bair I Order* to prepare updated old-
18 growth redwood tree maps and analysis.” The Supplement to the Original EA/FONSI purports
19 to “revise[] a portion of Chapter 2 of the original document presenting results of subsequent
20 surveys for marble murrelets and analyzing potential tree impacts based on revised tree data and
21 new proposed barrier rail modifications.” Supplement at 1.

22 125. The Supplement provides that, except for changes in Chapter 2 and a minor
23 change in Chapter 1 to address modifications to the barrier rails needed to satisfy new federal
24 standards, “all other information and chapters in the original Final EA remain accurate.”
25 Supplement at 1.

26 126. The Supplement to the Original EA/FONSI included three Attachments: A) maps
27 intending to identify old-growth redwoods in the Proposed Project; B) an intended “Individual
28 Tree Analysis”; and C) a Table intending to cross-reference trees mapped in Attachment A with
tree numbers presented in the May 2010 Final EA. In addition, Caltrans published a “Final

1 Report and Evaluation of Potential Effects on Old-Growth Redwoods from Implementation of
2 the Richardson Grove Operational Improvement Project,” dated September 16, 2013 (the “Tree
3 Report”).

4 127. On September 21, 2013, Caltrans released its Supplement for a 30-day public
5 comment period. The public comment period closed on October 21, 2013. Plaintiffs submitted
6 extensive comments, identifying many of the same issues and concerns which remain
7 inadequately or not addressed from the Original EA/FONSI.

8 128. The Supplement did not remedy the deficiencies of the Original EA/FONSI and
9 did not comply with the *Bair I Order* in several respects. Caltrans failed to provide a valid
10 NEPA document. A “supplement to an environmental assessment” is not a type of NEPA
11 document. 40 C.F.R. § 1508.20. The *Bair* Court, in evaluating Caltrans’ failure to prepare an
12 EIS, determined that “there are a number of discrepancies and omissions that raise serious
13 questions about whether Caltrans truly took a ‘hard look’ at the effects of the project and made
14 an informed decision.” *Bair I Order*, at 8. The *Bair I Order* set forth specific errors, and stated
15 that a “revised EA ... is necessary” to correct the data inaccuracies, and that “[a]lternatively,
16 Caltrans may proceed directly to conducting an EIS.” *Bair I Order*, at 10. By issuing only the
17 Supplement, Caltrans did neither - it failed to prepare and issue a “revised” EA and failed to
18 prepare an EIS.

19 129. The Supplement, moreover, fails take a “hard look” at the Project’s environmental
20 impacts and demonstrate that the impacts to the old-growth redwoods would not be significant.
21 The Supplement fails to correct the data inaccuracies and omissions about impacts of the
22 Proposed Project on the old-growth redwoods. The Supplement fails to provide any metric for
23 measuring the effect of root zone disturbance or damage to foliage, relying on the subjective
24 conclusions of an arborist, unconnected to any concrete root disturbance criteria. The individual
25 tree analysis presents a summary of conclusions, lacking adequate explanation for how those
26 conclusions were reached for any given tree. In addition, the Supplement greatly expands an
27 exception from the handwork restrictions identified in the Original EA/FONSI, allowing the use
28 of mechanized equipment in root zones not only for culvert work, but also for soldier pile,

1 gabion and barrier wall installation, and cutting back roadside slopes. Further exacerbating the
2 Original EA/FONSI's inconsistency as to whether and where roots greater than two inches in
3 diameter would be cut, the Supplement lists additional "areas of proposed cuts (culvert work,
4 wall work and cutting back roadside slopes)" in which the large roots may be cut.

5 130. The Supplement creates more inaccuracies and confusion by failing to discuss the
6 ten percent root loss threshold for old, low-vigor trees identified in the State Parks Natural
7 Resources Handbook, recommended by Caltrans' own arborist, and relied upon extensively in
8 the *re-validated* Original EA/FONSI. The Supplement assumes that all redwoods are resilient
9 enough to withstand significant root damage, which represents a change in rationale from and
10 further inconsistency with the *re-validated* Original EA/FONSI's reliance on the State Parks
11 Natural Resources handbook.

12 131. The Supplement's "individual tree analysis" in Attachment B omits information
13 critical to an evaluation of the Proposed Project's impacts, including information about the
14 location or depth of planned excavation in each tree's root zones. The Final EA's Table 10 is not
15 mentioned or considered. Cut areas are not depicted on the maps. The Supplement is misleading
16 because it only discloses placement of materials, and not the excavation of materials. Nor do the
17 maps calculate the percentage of each tree's root zone that would be covered by impervious
18 surface, instead relying on an average impervious area increase across all root zones. The tree
19 analysis does not even identify the Supplement as reviewed material, and fails to evaluate the
20 expanded potential for damage from mechanized equipment.

21 132. The Supplement also fails in remedying the other extensive errors which the *Bair*
22 Plaintiffs had argued and which the *Bair I Order* instructed Caltrans to give "serious
23 consideration" in a "revised EA" or "EIS." These are discussed herein, and include, without
24 limitation, the failure to justify the purpose and need for the Proposed Project; failure to address
25 potential impacts and hazards related to excavation of lead-contaminated soils, particularly with
26 respect to air spade excavation; significant gaps in the manner in which Caltrans's attempted to
27 assess toxicity levels in soils; failure to evaluate the impact on the northern spotted owl,
28 particularly because of the increase presence of barred owls in or adjacent to Project areas;

1 failure to correctly assess impacts to the Eel River watershed and the listed salmonid species that
2 inhabit it, including without limitation in relation to cumulative impacts from increased
3 marijuana production; failure to correctly address impacts to State Park resources and visitor
4 experiences, particularly given the service reductions and budget cuts throughout the State Park
5 system since 2010; failure to provide adequate assessment of the Proposed Project impacts to
6 public safety; failure to address the cumulative impacts of the related STAA projects, and the
7 significance of the overall project for STAA access in Northern California; failure to provide
8 valid economic analysis related to the Proposed Project impacts; failure to establish the
9 effectiveness of mitigation measures, and relying on mitigation that is no longer valid; and
10 failure to evaluate impacts to the human environment, particularly health and safety associated
11 with increased use of STAA trucks.

12 133. On January 23, 2014, Caltrans issued “Responses to Comments on the
13 Supplement to the Final Environmental Assessment” (the “Supplement Responses”). Caltrans
14 limited its Supplement Responses to comments pertaining to information in the Supplement or
15 that brought forward new information. Contrary to the express direction in the *Bair I Order*,
16 Caltrans refused to and did not respond to comments concerning many issues, including “other
17 significant arguments” Plaintiffs had made in *Bair I*. Thus Caltrans did not and refused to
18 respond to comments concerning a number of issues, including the purpose and need for the
19 Proposed Project, the need for an EIS, potential impacts on the visitor experience at Richardson
20 Grove State Park, bicycle access, construction impacts of noise, nuisance odors and traffic
21 congestion, alternatives, potential impacts to threatened coho salmon, threatened Chinook
22 Salmon, and threatened steelhead, cumulative impacts, adverse effects on emergency services,
23 and financial and economic impacts.

24 134. On February 26, 2014, Caltrans caused a notice to be published in the Federal
25 Register, announcing Caltrans had taken “actions ... by issuing licenses, permits and approvals”
26 for the Richardson Grove Operational Improvement Project, as described in the Final
27 Environmental Assessment Finding of No Significant Impact (“FONSI”) for the Proposed
28 Project, approved on May 18, 2010; the Supplement to the Original EA/FONSI, approved on

1 January 24, 2014; and other documents in the FHWA project records. *Federal Register*/Vol. 79,
 2 No. 38/Wednesday, February 26, 2014/Notices, [10870]. On January 24, 2014, Caltrans executed
 3 a “NEPA/CEQA Re-Validation Form,” finding the original EA was in need of updating, and
 4 that, with the Supplement to the Original EA/FONSI, the Original EA/FONSI “remains valid.”

5 135. Caltrans subsequently withdrew and rescinded its May 18, 2010 Project approval
 6 and Original EA/FONSI, as well the 2014 “NEPA/CEQA Re-validation Form.” *Federal*
 7 *Register*/Vol. 79, No. 228/Wednesday, November 26, 2014/Notices, [70612].

8 **H. Caltrans’ 2017 Approvals Fail To Comply With NEPA Or Correct Errors**
 9 **Identified By The *Bair I* Court Or Otherwise Address The Shortcomings In**
 10 **The 2010 EA/FONSI**

11 136. Caltrans subsequently commenced upon an secretive several-year process,
 12 without allowing any public review and comment, which resulted in issuance of a May 1, 2017
 13 Finding of No Significant Impact (“2017 FONSI”) and a May 22, 2017 second approval of the
 14 Richardson Grove Project. The 2017 FONSI, which Caltrans characterizes as part or its
 15 purported “Revised EA,” fails to attend to the deficiencies which have been identified since
 16 2008, including errors as identified by the court in *Bair I*.

17 137. Under Caltrans’ procedures, a Project Report documents Caltrans’ approval of a
 18 highway project, and a project receives its approval when the Project Report is approved.
 19 Caltrans approved the 2017 Project Report on May 22, 2017. The 2017 Project Report provides
 20 an overall cost estimate of more than **20 million dollars**, for a project which Caltrans has
 21 repeatedly characterized as making only “minor adjustments” to a one-mile segment of Highway
 22 101.

23 138. The Project Report purports to summarize changes made to the Proposed Project,
 24 since issuance of the 2010 Original EA/FONSI. The changes mentioned are: (1) extending three
 25 culverts rather than replacing them; (2) reducing the depth of roadway structural section from
 26 previous 18” to 12”; and (3) changes to the Retaining Wall at the north end of the Project.

27 139. The Project Report’s stated purpose is to “update and reapprove the 2010 Project
 28 Report,” which it included as Attachment A, but without any of the attachments originally part of
 the 2010 Project Report on which the 2010 Original EA/FONSI extensively relied. It also

1 includes new Attachments B-M, of which Attachments B-D are undated and unsigned. The latter
2 unsigned documents are plan layouts, typical cross-section diagrams, and a retaining wall general
3 plan.

4 140. The new Attachment E is titled the “2017 Environmental Documentation” for the
5 Richardson Grove Project. It provides two documents which were both approved on May 1,
6 2017: an Addendum to the 2010 FEIR (“2017 Addendum”), and a separate 2017 FONSI, which
7 purports to identify revisions to the 2010 FONSI, Original EA/FONSI and the 2013 Supplement
8 to the Original EA/FONSI. According to the 2017 FONSI, the 2010 Original EA/FONSI, its
9 2013 Supplement, and the revisions and updates presented in the 2017 FONSI, together
10 constitute the “Revised EA” required by *Bair I*. In approving the 2017 FONSI, Caltrans relied
11 on the 2010 Original EA/FONSI and its 2013 “Supplement”; but Caltrans did not re-adopt those
12 documents. And neither the Project Report nor the 2017 FONSI includes or incorporates the
13 2010 Original EA/FONSI and its 2013 “Supplement” as part of the Proposed Project’s
14 “Environmental Documentation.”

15 141. The 2017 FONSI summarizes Caltrans’ revised impacts analyses for old growth
16 redwoods, and purportedly revises portions of the 2010 Original EA/FONSI and the 2013
17 “Supplement,” with changes to the project description and additional information and analyses.
18 The 2017 FONSI identifies changes to the 2010 Original EA/FONSI, including reducing (1) the
19 number of trees to be removed; (2) the total amount of disturbed soil; (3) the amount of new
20 impervious surface; (4) the volume of excavated material. It does not provide or reference
21 supporting calculations or analyses to document any of these changes. Caltrans does not make
22 clear what is intended to support the decision for these changes, and whether these changes make
23 any real difference in terms of significant environmental impacts. Elsewhere in the multiple
24 documents that Caltrans’ appears to rely on for its approval—the legal status of which under
25 NEPA is questionable at best—there is inconsistent evidence identifying a greater volume of
26 excavated material and different culvert work than claimed in the 2017 FONSI.

27 142. The 2017 FONSI also identifies a change and *increase* from 2010 of the number
28 of old growth redwood trees for which Caltrans claims work will be done within their structural

1 root zones. According to the 2017 FONSI 109 old growth redwood trees would have project
2 work within their root health zones. Of these, 78 would have ground disturbing work within
3 their structural root zones, and 72 of these are located within Richardson Grove State Park.

4 143. The 2017 FONSI lists as an update to References and substantially relies upon to
5 conclude that the Proposed Project will have no significant impact on these and other trees in the
6 Proposed Project—but does not incorporate or attach—a study dated August 14, 2015, entitled
7 Final Report An Evaluation of Potential Effects on Old-Growth Redwoods from Implementation
8 of the Richardson Grove Operational Improvement Project, by Dennis Yniguez of Tree
9 Decisions (“2015 Tree Report”), which, in turn, relies on project maps intended to depict old
10 growth redwoods in the Proposed Project, dated August 13, 2015, and *Individual Tree Details*,
11 dated August 12, 2015, both prepared by Caltrans. The 2015 Tree Report simply concludes there
12 will be no significant environmental effect on these trees. The *Individual Tree Details* document
13 does not identify any avoidance or mitigation measures for work in and around the root zones of
14 the old growth redwoods.

15 144. The 2015 Tree Report’s conclusion is not based on an adequate disclosure and
16 evaluation of the impacts of the Proposed Project on the old growth redwoods. While it purports
17 to relies on a “rating” system of construction impact of 1 to 6 to conclude no impact, this rating
18 system—which was created by its author, based apparently on his professional judgment (which
19 he admits is not based on redwood expertise), and lacks any accepted professional or scientific
20 basis—lacks quantification of the effects of root zone disturbance on tree health and fails to
21 provide a metric for measuring impacts, making it impossible for the public to evaluate whether
22 the ratings are valid.

23 145. Furthermore, the 2015 Tree Report does not provide any explanation of the
24 relationship between the quantitative ratings that it assigns impacts and the qualitative
25 conclusions that the report presents. And those qualitative conclusions are, in many cases,
26 completely unjustified, unjustifiable, and internally contradictory amounting to a conclusion of
27 no significant impact “because we way it is,” transparently aimed at achieving that result. For
28 example, the Proposed Project calls for moving the roadway up to seven feet towards an old-

1 growth redwood tree assigned the number 102 in the report, which has diameter at breast height
2 (“dbh”) of 103 inches, impacting 33.2% of the structural root zone of the tree. By any measure,
3 this qualifies as a significant impact—and, in fact, severe impact—to this ancient tree. However,
4 the qualitative analysis assigned to the Proposed Project’s impacts to this tree is merely “short-
5 term visible reduction in foliage density.” This is the exact same analysis assigned an old-growth
6 redwood tree of the same approximate dbh and assigned the number 37, which would have one
7 sixth of the impact in its structural root zone. A further example is the old-growth redwood tree
8 assigned the number 42 in the report, 26.8% of the structural root zone of which would be
9 impacted by the Proposed Project. Without explanation, the report describes the impact on this
10 tree as “slight.”

11 146. Given the report’s failure to use any commonly accepted metric to assess impacts
12 or to explain the basis for its *sui generis* system of analysis, these results can only be understood
13 as the result of carelessness, inexperience, and/or a drive to achieve a certain result: to whit a
14 finding of no significant impact. The fact that the author of the report, Dennis Yniguez has
15 explicitly stated explicitly that he is “not a redwood expert” makes his “just trust me” approach
16 to the analysis of the Proposed Project’s impacts on irreplaceable 3000 year old trees all the more
17 unacceptable.

18 147. Other shortcomings of the 2015 Tree Report include as follows.

19 148. Its failure to account for the fact that the Proposed Project would impact the
20 largest trees in the Grove, which play a dominant role in the ecology of the Grove as well as
21 visitor experience.

22 149. Its failure to account for the impact of previous highway construction on the trees
23 that would be impacted by the Proposed Project.

24 150. Its application of an arbitrary formula for determining the extent of a trees root
25 health zone—five times dbh—rather than the commonly accepted approach which uses a tree’s
26 drip line to make the determination, which allows the report to underestimate the impact of the
27 Propose Project on particular trees.

1 151. Its inconsistency with, failure to comply with, or address the California State Park
2 Handbook’s guidance concerning work in the structural root zones of redwood trees, to wit:
3 “There should be no construction activities in the Structural Root Zone of a protected tree. This
4 includes soil disturbance from 0 to 3 foot depth including trenching, grade changes, storage of
5 vehicles and materials, or compaction caused by machinery traversing the zone. Any intrusion
6 into this zone is usually accompanied by significant injury to roots further from the trunk; this
7 will shorten the useful life of the tree in the developed area by reducing vigor and introducing
8 root disease. Furthermore, damage to any structural roots may cause an already structurally
9 compromised tree to become hazardous (i.e., a high risk of uprooting).”

10 152. Its reliance on research concerning the regrowth of redwood roots that are
11 premised on situations very different from that which would be presented by the changes in soil
12 composition and structure resulting from the highway construction activities.

13 153. Based on this flawed and inadequate analysis, the 2015 Tree Report—and by
14 extension the 2017 FONSI—arbitrarily conclude that the Proposed Projects indisputable impacts
15 to the root systems of the Grove’s old growth redwood would have have no significant negative
16 consequences.

17 154. Neither the 2017 FONSI nor the 2015 Tree Report provide a consolidated set of
18 plans which identifies location of old growth redwood trees and the nature and extent of project
19 work proposed within the root zones of old growth redwood trees. The 2015 Tree Report is not
20 included as an Attachment to or incorporated by reference in the Project Report or the 2017
21 FONSI.

22 155. The 2017 FONSI states that “[e]xcept for the minor changes and additional
23 studies as noted in this document, all other information in the Final EA and the Supplement
24 remains accurate.” 2017 FONSI, at 3. The other studies which Caltrans identified in the 2017
25 FONSI as the basis for the 2017 FONSI are: a Biological Assessment for Potential Impacts to
26 Marbled Murrelet (*Brachyramphus marmoratus*), Marbled Murrelet Critical Habitat, and Northern
27 Spotted Owl (*Strix occidentalis caurina*), a Biological Assessment for Potential Impacts to Coho
28 Salmon (*Oncorhynchus kisutch*), Chinook Salmon (*Oncorhynchus tshawytscha*), Steelhead Trout

1 (*Oncorhynchus mykiss*), their Designated Critical Habitat, and Essential Fish Habitat Assessment
2 for Pacific Salmon, a Historic Properties Survey Report, a Natural Environment Study
3 Addendum, a Programmatic Section 4(f) Evaluation, Visual Impact Assessment Addendums 3
4 and 4, and Water Quality Assessment Report. None of these documents are included in the
5 Project Report or the 2017 FONSI; only some are available on Caltrans website.

6 156. Attachments to the Project Report include the following:

- 7 • a May 18, 2017 Cost Estimate, detailing costs associated with proposed
8 work (Attachment F);
- 9 • a May 17, 2017 Caltrans Memorandum concerning Current Estimate Right
10 of Way costs (Attachment G);
- 11 • a July 2, 2013 Caltrans Transportation Management Plan Update # 5,
12 describing how Caltrans proposes to manage traffic during project
13 implementation (Attachment H);
- 14 • “a May 19, 2017 Programming Sheet identifying dates for project
15 implementation (Attachment I);
- 16 • “a December 15, 2015 Caltrans Memorandum about an Updated Initial
17 Site Assessment, but without including the actual assessment (Attachment
18 J);
- 19 • an October 20, 2014 Caltrans Memorandum recommending different
20 strategies for roadway surface materials (Attachment K);
- 21 • “an undated Caltrans Risk Register, which among other things admits that
22 the “sensitive location makes even minor design changes susceptible to
23 major environmental work” (Attachment L); and
- 24 • an undated and unsigned Caltrans Storm Water Data Report (Attachment
25 M).

26 157. Caltrans did not provide any opportunity for the public to review and comment on
27 the Project Report or any of these Attachments, including the 2017 FONSI the 2015 Tree Report.
28

1 158. In addition to these documents, it appears Caltrans relies on several other
2 documents to justify its May 22, 2017 Project approval, including:

- 3 • Caltrans' March 2015 Construction Noise Analysis;
- 4 • A June 18, 2015 letter from the National Park Service regarding potential
5 impacts to the Wild and Scenic Eel River;
- 6 • Caltrans' May 9, 2016 Memorandum regarding impacts of Proposed
7 Project on truck volumes and changes in highway character;
- 8 • A January 23, 2017 letter from the National Marine Fisheries Service
9 regarding ESA Consultation Concurrence; and
- 10 • A March 29, 2017 letter from the U.S. Fish and Wildlife Service regarding
11 Informal Consultation under the ESA for the Marbled Murrelet and the
12 Northern Spotted Owl.

13 159. Caltrans did not provide any opportunity for the public to review and comment on
14 these documents, nor did it circulate any of these documents for review under NEPA. Nor are
15 any of these documents part of any final environmental assessment or the 2017 FONSI.

16 160. Instead, in the face of clear public controversy and at risk natural resources,
17 without any public scrutiny or conversation, from which Caltrans' analyses and conclusions
18 could be evaluated and properly informed, and without remedying legal errors identified in *Bair*
19 *I* or its state counterpart, Caltrans acted in a void to re-affirm its 2010 approvals and to once
20 again approve the Richardson Grove Project based on illegitimate analysis and NEPA
21 documentation. Caltrans failed to evaluate and remedy legal deficiencies related not just in
22 relation to the potential impacts to old growth redwood trees, but also in terms of evaluating
23 significant and cumulative impacts from the road work, on safety, from other projects; failed to
24 consider feasible and viable alternatives; and failed to adequately respond to comments on the
25 2010 Original EA and the 2013 Supplement.

26 161. Caltrans published notice of its approval in the Federal Register on June 5, 2017.
27 *Federal Register*/Vol. 82, No. 106/Monday, June 5, 2017/Notices, [25906]. This action is timely
28 filed.

1 **VI. PLAINTIFFS HAVE COMPLIED WITH ALL PROCEDURAL**
2 **REQUIREMENTS**

3 **A. Irreparable Harm and Arbitrary and Capricious Action**

4 162. At all times mentioned herein, Caltrans has been able to deny the approvals and
5 reject the Original EA/FONSI, Supplement to the Original EA/FONSI, and 2017 FONSI for the
6 Proposed Project. Notwithstanding such ability, Caltrans has failed and continues to fail to
7 perform its duty to deny and reject the Proposed Project.

8 163. If Caltrans is not ordered to withdraw its approval of the Proposed Project, the
9 Original EA/FONSI, Supplement to the Original EA/FONSI, and 2017 FONSI, the People of
10 California, as well as the land, watershed, wildlife, economic, and environmental values subject
11 to and affected by the Proposed Project, would suffer immediate, irreparable, and permanent
12 damage.

13 164. Plaintiffs bring this action on the ground that each individual Plaintiff and each
14 organizational Plaintiff's members and staff would suffer irreparable injuries if Defendants'
15 actions herein are not set aside immediately. Such injuries include, but are not limited to,
16 injuries to Plaintiffs' aesthetic, spiritual, scientific, recreational, and educational interests caused
17 by deterioration of protected State Park land and its environmental setting, damage to ancient
18 redwood groves protected within the State Park, degradation of wildlife and fisheries habitat,
19 including for the marbled murrelet, the northern spotted owl, and threatened anadromous
20 salmonids, impacts associated with noise and light, impacts associated with toxic materials
21 handling and disposal, impacts to air quality, and impacts to the designated Wild and Scenic Eel
22 River.

23 **B. Exhaustion of Administrative Remedies**

24 165. To the extent they legally were required to, Plaintiffs individually and/or through
25 their representatives and members, have performed all conditions precedent to the filing of this
26 Complaint by raising each and every issue known to them before Caltrans in compliance with
27 NEPA, the Department of Transportation Act, the Wild and Scenic Rivers Act, and the APA,
28 including by participating in the public meetings and hearings hosted by Caltrans and submitting
written comments. Plaintiffs, however, do not believe they are required to exhaust their

1 administrative remedies, because to attempt to do so would be futile, as Plaintiffs do not have
2 adequate administrative remedies, and/or Plaintiffs lacked a full and fair opportunity to exhaust
3 certain claims.

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

6 **C. Standing**

7 167. Plaintiffs are individuals, groups of citizens, taxpayers, and residents of the State
8 of California. Plaintiffs have participated in the review of the Proposed Project. Individual
9 Plaintiffs and organizational Plaintiffs' members and staff visit and rely on the natural and other
10 resources of the Richardson Grove Park for their economic livelihood, enjoyment, recreation,
11 education, and spiritual experiences. Plaintiffs' interests would be concretely and particularly
12 injured by the effects of the Proposed Project on the environment. Individual Plaintiffs have
13 standing to bring this action on their own behalf, and organizational Plaintiffs have standing to
14 bring this action on behalf of their injured members and staff.

15 **D. Attorneys' Fees**

16 168. In pursuing this action, Plaintiffs are entitled to, and Caltrans is responsible for
17 payment of, their reasonable fees, costs, and expenses associated with this litigation pursuant,
18 *inter alia*, to the Equal Access to Justice Act, 28 U.S.C. § 2412, California Code of Civil
19 Procedure § 1021.5, and other authority.

20 **CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **(Violation of NEPA)**

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

25 170. NEPA establishes a national policy to "prevent or eliminate damage to the
26 environment and biosphere." 42 U.S.C § 4321. NEPA recognizes that "the critical importance
27 of restoring and maintaining environmental quality," declares that the federal government has a
28 continuing responsibility to use "all practicable means" to minimize environmental degradation,

1 and directs that “to the fullest extent possible ... the policies, regulations and public laws of the
 2 United States shall be interpreted and administered in accordance with the policies set forth in
 3 this Act.” 42 U.S.C. §§ 4331(a), 4332(1). NEPA also recognizes the right of each person to
 4 enjoy a healthful environment. 42 U.S.C. § 4331(c). Pursuant to the MOU, Caltrans was
 5 obligated to comply with NEPA for highway projects, including the Proposed Project.

6 171. NEPA Regulations for Implementing the Procedural Provisions of the National
 7 Environmental Policy Act are codified at 40 C.F.R. § 1500 *et seq.* The Federal Highway
 8 Administration adopted its own NEPA regulations, codified at 23 C.F.R. Part 771, binding on all
 9 agencies which must comply with NEPA, including Caltrans pursuant to the MOU for highway
 10 projects, including the Proposed Project.

11 172. Caltrans has violated these fundamental principles of NEPA in several ways,
 12 including, but not limited to, failing to establish the purpose and need for the Project, disclose
 13 and evaluate the significant environmental effects, explore and evaluate reasonable alternatives
 14 to the Proposed Project, adequately document public comments and concerns and responses to
 15 those comments, and failing to prepare an Environmental Impact Statement (“EIS”) for the
 16 Proposed Project, and issuing and approving a 2017 FONSI which purports to be part of a so-
 17 called “Revised EA,” which also includes the 2010 Original EA/FONSI and the 2013
 18 “Supplement to the Final EA/FONSI.” In violation of NEPA. 40 C.F.R. § 1508.10.

19 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

20 **SECOND CLAIM FOR RELIEF**

21 **(Violation of NEPA - Purpose and Need)**

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

24 174. NEPA requires that the agency to establish a statement of purpose and need for
 25 the proposed action under review. 23 U.S.C. § 139(f); 40 C.F.R. §§ 1508.9(b), 1502.13.

26 175. Caltrans violated NEPA by failing to provide a valid discussion or document in
 27 the Original EA/FONSI or Supplement to the Original EA/FONSI, and 2017 FONSI the purpose
 28 and need of the Proposed Project, by among things, failing to: (a) present an adequate description

1 of the proposed action; (b) present a clear statement of the objectives that the Proposed Project is
2 intended to achieve, including evidence of safety concerns; (c) document that the Proposed
3 Project was necessary in the absence of safety issues; and (d) involve the public adequately in
4 defining the ultimate purpose and need for the Proposed Project. Caltrans' failure to provide a
5 clear statement of the purpose of the proposed action included, but was not limited to, its failure
6 to adequately disclose key components of the Proposed Project, such as the engineering and
7 design criteria used to develop and define the Proposed Project, information about and location
8 of tree root structures within the Proposed Project, the acquisition criteria for State Park lands,
9 and the interrelationships among the Proposed Project and other Caltrans STAA truck access
10 projects in Northern California.

11 176. Further, by jettisoning the original safety rationale for the Proposed Project, and
12 by adopting a project purpose focused solely on STAA truck access, Caltrans improperly defined
13 the Proposed Project's purpose and need so narrowly as to preclude analysis of a reasonable
14 range of alternatives that would avoid significant environmental impacts.

15 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16 **THIRD CLAIM FOR RELIEF**

17 **(Violation of NEPA - Failure to Evaluate Impacts)**

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

20 178. NEPA requires Caltrans to adequately consider, analyze, and disclose the
21 individual and cumulative environmental impacts of the proposed action and alternatives to it.
22 42 U.S.C. § 4332(2)(c); 23 C.F.R. §§ 771.105, 771.119; 40 C.F.R. §§ 1508.9, 1502.16.

23 179. Caltrans violated NEPA by issuing and approving the Original EA/FONSI,
24 Supplement to the Original EA/FONSI, and 2017 FONSI which fail to provide the required
25 analysis of individual and cumulative environmental effects of the Proposed Project, including
26 but not limited to, the effects:

27 a. on the ancient redwoods which stand in close proximity to the highway
28 throughout the Proposed Project site,

1 b. on fish and wildlife species and other biological resources, including
2 special status threatened and endangered species such as the marbled murrelet and the northern
3 spotted owl, SONCC coho, CC Chinook, NC Steelhead, SONCC coho critical habitat, and coho
4 and Chinook salmon essential fish habitat,

5 c. from tree removal,

6 d. from increased noise and light (particularly nighttime light) during and
7 after construction,

8 e. from toxicity to the environment, including from the movement and
9 storage of lead-contaminated soil and other toxic materials,

10 f. from harm to the old-growth redwoods due to excavation and movement
11 of lead-contaminated soil,

12 g. the effect on the forest ecosystem from disturbing a road system without
13 knowing and understanding the prior construction and the extent to which the road bed has never
14 been entirely removed and altered as proposed for the Proposed Project,

15 h. on greenhouse gas emissions,

16 i. on cultural resources,

17 j. on park, recreation, wildlife, or historic areas, and changes to vehicular
18 and pedestrian access, and

19 k. from the growth-inducing effects or opportunities associated with
20 advancing goods movement throughout Humboldt, Mendocino, and Del Norte counties.

21 180. Caltrans also violated NEPA because the Proposed Project's Original EA/FONSI,
22 Supplement to the Original EA/FONSI, and 2017 FONSI fail to adequately identify and discuss
23 cumulative impacts related to the Proposed Project, including, but not limited to:

24 a. the impacts associated with logging redwoods and other trees in the area,

25 b. the cumulative effects on wildlife and protected species from removing
26 trees and opening the forest along Highway 101,

27 c. the traffic and its related noise and air quality impacts in the City of
28 Eureka and other areas of Humboldt County from STAA trucks,

1 d. proposed development projects and Humboldt Bay port development
2 which require STAA truck access, and

3 e. increased truck traffic associated with other Caltrans STAA access
4 projects designed to create a STAA loop from the Del Norte County in the north to the
5 Richardson Grove State Park in the south.

6 f. increased truck traffic from projects which Caltrans has failed to consider,
7 including the truck hauling of waste from Humboldt County to Mendocino County on Highway
8 101.

9 181. Caltrans violated NEPA by issuing a Draft EA and which was fundamentally and
10 dramatically deficient, as noted by numerous comments, including those by the State Parks, the
11 California State Parks Foundation, the Natural Resources Defense Council, EPIC, CATs, and
12 many others. These comments repeatedly stated that, in the absence of legally required
13 information and analysis concerning the Proposed Project, the public could not evaluate the
14 Proposed Project's potential for impacts, including impacts to the State Park, the ancient
15 redwoods within Richardson Grove, and other resources. Caltrans' Draft EA was so deficient it
16 rendered public comment effectively meaningless, in violation of NEPA requirements to provide
17 members of the public with sufficient environmental information to permit them to weigh in and
18 to inform agency decision-making.

19 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Violation of NEPA - Failure to Evaluate Alternatives)**

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

24 183. NEPA requires that agencies rigorously explore and objectively evaluate all
25 reasonable alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(iii); 23 C.F.R § 771.105;
26 40 C.F.R. §§ 1508.9, 1502.14. A proper analysis of alternatives requires appropriate mitigation
27 measures not already included in the proposed action or alternatives. See 23 C.F.R. §
28 771.119(b); 40 C.F.R § 1502.14(f).

1 184. Caltrans violated NEPA because the Original EA/FONSI, Supplement to the
2 Original EA/FONSI, and 2017 FONSI contain an inadequate range of alternatives. Among other
3 reasonable alternatives, Caltrans failed to consider reasonable alternatives that would reduce the
4 significant adverse environmental effects of the Proposed Project, including but not limited to:

- 5 a. an alternative to altering and cutting roots and compacting the root
6 systems of ancient redwoods averaging more than seven feet in diameter,
- 7 b. changing the Proposed Project design to avoid certain redwoods,
- 8 c. reducing the speed limit through the Grove in light of the fact that certain
9 STAA trucks are already permitted to travel through the Grove and there is no evidence of safety
10 impacts related to such transport,
- 11 d. providing uniform STAA truck access without disturbing the existing road
12 through the Richardson Grove State Park,
- 13 e. provide a viable business transfer service to switch out cabs on trucks to
14 bring them through the Grove, and
- 15 f. short sea shipping in lieu of trucking.

16 185. Caltrans also violated NEPA by failing to provide the required appropriate
17 mitigation measures, including but not limited to measures that would:

- 18 a. protect the ancient redwoods and their root systems,
- 19 b. not touch any redwoods or their root systems within the Richardson Grove
20 State Park that are 30 inches or larger in diameter,
- 21 c. not allow any roots of redwoods to be cut,
- 22 d. document the presence or absence of protected species and other
23 biological resources and fully analyze the potential significant environmental effects associated
24 with the Proposed Project before the Proposed Project commences,
- 25 e. avoid impacts to cultural resources, and
- 26 f. avoid impacts associated with excavation, handling, and disposal of lead-
27 laden soils.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

(Violation of NEPA - Response to Comments)

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2
3 186. Plaintiffs incorporate by reference all the allegations contained in the previous
4 paragraphs as though fully set forth herein.

5 187. NEPA requires that the agency present and respond to comments for a proposed
6 major federal action significantly affecting the quality of the human environment. 40 C.F.R. §
7 1503.2. The Richardson Grove Project is a major federal action significantly affecting the
8 quality of the human environment.

9 188. Numerous comments submitted to Caltrans throughout the initial environmental
10 review process and for the Supplement identified the Proposed Project's significant impacts.
11 Yet, Caltrans either ignored these comments or glossed over their substance with conclusory
12 responses. Due to Caltrans' disregard, the Proposed Project's identified potential impacts related
13 to ancient redwoods, fish and wildlife, water quality, air quality, cultural resources, toxic
14 materials, and plant populations, as well as its cumulative impacts, must therefore still be
15 considered significant. Caltrans has not successfully mitigated the impacts of the Proposed
16 Project in the manner or to the extent required by law.

17 189. Caltrans violated NEPA by failing to document and respond to comments in the
18 Final EA and the Supplement Responses regarding:

- 19 a. the Proposed Project purpose and need,
20 b. the Proposed Project description,
21 c. Project impacts related to ancient redwoods, traffic, noise, light, water
22 quality, air quality, cultural resources, toxic materials, protected species, and growth inducement,
23 d. the lack of adequate study and documentation to support the Original
24 EA/FONSI, and Supplement to the Original EA/FONSI,
25 e. the inadequate Section 4(f) analysis,
26 f. the lack of a valid and adequate public review and comment process,
27 g. the need for reissuance and recirculation of the Draft EA because of its
28 inconsistencies and lack of disclosure and analysis,

- 1 h. the lack of response to scientific data and evidence submitted, and
- 2 i. Other significant arguments made by the *Bair* plaintiffs.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

4 **SIXTH CLAIM FOR RELIEF**

5 **(Violation of NEPA - Failure to Circulate EA Prior to Adoption of FONSI)**

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

8 191. Under certain circumstances, NEPA requires that an EA must be available to the
9 public for a minimum of 30 days before the finding of no significant impact is made and the
10 action is approved. 40 C.F.R. §§ 1505.1, 1501.4(e)(2).

11 192. The Proposed Project, due to its significant effects on the environment, is the type
12 of project that normally would require an EIS. This Project also is without precedent, in that it
13 involves widening and realigning a state highway through an ancient redwood grove, in a
14 popular California State Park, in a manner that could damage the root systems of the ancient
15 trees and degrade park resources. Accordingly, Caltrans was required to make the Original EA
16 and the so-called “Revised EA” available for 30 days prior to adoption of a FONSI pursuant to
17 40 C.F.R. § 1501.4(e)(2)(i) and (ii).

18 193. Caltrans also violated NEPA by failing to provide the required 30-day public
19 review period for the Original EA/FONSI and Supplement and 2017 FONSI – characterized by
20 Caltrans as a “Revised EA” -- which included substantial new impacts, and increased the
21 severity of existing impacts from the Proposed Project, in a manner that significantly altered the
22 scope of the Proposed Project’s impacts without providing effective mitigation. These include,
23 but are not limited to:

- 24 a. more than doubling the number of trees, averaging 7 feet in diameter,
25 whose structural root zone would be impacted by the Proposed Project,
- 26 b. changing the location and nature of the retaining wall to now serve as
27 roadbed, without providing any analysis or mitigation for that change or engaging Section 7
28 consultation under the Wild and Scenic Rivers Act,

1 c. eliminating a mitigation measure intending to mitigate effects of
2 impervious fill, and

3 d. proposing new methods of culvert replacement without any analysis of the
4 impacts of the change.

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

6 **SEVENTH CLAIM FOR RELIEF**

7 **(Violation of NEPA - Failure to Prepare an EIS)**

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

10 195. NEPA requires all agencies to prepare a detailed EIS on every proposal for a
11 major federal action significantly affecting the quality of the human environment. 42 U.S.C. §
12 4322(2)(c). Under NEPA, an agency must prepare an EIS when an action may have a significant
13 environmental effect, 40 C.F.R. § 1508.3, or where there is a substantial question raised as to
14 whether an action may have an environmental effect. The EIS must contain a detailed discussion
15 of environmental impacts, 40 C.F.R. §1502.16, and of alternatives. 40 C.F.R. § 1502.14.

16 196. The Proposed Project is a major federal action significantly affecting the quality
17 of the human environment for which Caltrans must prepare an EIS. It is an action requiring an
18 EIS because, among other things:

19 a. The Proposed Project may or will have a significant environmental effect,
20 as outlined in this First Amended Complaint, within the meaning of the criteria set forth in 40
21 C.F.R. § 1508.27,

22 b. The Proposed Project will have more than a minimal impact on lands
23 protected under Section 4(f) of the Department of Transportation Act, and

24 c. The Draft EA, Original EA/FONSI, Supplement to the Original
25 EA/FONSI, and the 2017 FONSI, in conjunction with Caltrans' responses to comments and
26 other information in the record, raise a substantial question as to whether the Proposed Project
27 may have a significant effect on the environment.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

EIGHTH CLAIM FOR RELIEF

(Violation of Section 4(f))

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

5 198. Section 4(f) of the Department of Transportation Act requires specific
6 consideration and analysis of environmental impacts of transportation activities that are proposed
7 to take place in parks, recreation areas, wildlife refuges, and other public lands or areas with
8 historical significance, and prohibits an agency from using any public land meeting this criteria
9 unless there has been a determination that “(1) there is no feasible and prudent alternative to the
10 use of such land, and (2) such program includes all possible planning to minimize harm ...
11 resulting from such use.” 23 U.S.C. § 138, 23 C.F.R. Part 774. The “no feasible and prudent
12 alternative” 4(f) standard allows less discretion for an agency to reject alternatives than under
13 NEPA.

14 199. Caltrans’ Proposed Project includes acquisition of and impact on lands within the
15 Richardson Grove State Park. Caltrans used a “programmatic” Section 4(f) determination for the
16 Proposed Project, rather than conduct a complete analysis, claiming among other things that the
17 Proposed Project is a federally funded improvement of an existing highway and that the amount
18 and location of land used does not impair the use of the remaining section 4(f) land, i.e. the rest
19 of the Richardson Grove State Park. By using the programmatic Section 4(f) determination,
20 Caltrans limited its analysis of alternatives to three standard alternatives: (1) no build option, (2)
21 an improvement of the highway without using the Section 4(f) land, or (3) building a new facility
22 on an alternative location without using the Section 4(f) land. Caltrans rejected all three
23 alternatives in its Original EA/FONSI.

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

27 a. an alternative to altering and cutting roots and compacting the root
28 systems of ancient redwoods averaging more than seven feet in diameter,

1 license or otherwise in the construction of any water resources project that would have a direct
2 and adverse effect on the values for which such river was established . . .” 16 U.S.C. § 1278 (a).
3 Absent congressional intervention, projects may not be authorized or commenced which have an
4 adverse effect on the values for which the river is designated.

5 204. Implementation of Section 7 requires rigorous and consistent evaluation
6 procedures to protect river resources, and the determination as to effect of the project lies with
7 one of the four federal river-administering agencies. The National Park Service is the federal
8 river-administering agency for the South Fork Eel River.

9 205. The Proposed Project is a water resources project for which Section 7 consultation
10 with and determination by the National Park Service is required. The Proposed Project is within
11 one mile of the federally designated wild and scenic Eel River, and will have a direct and adverse
12 effect on the values for which the river was designated. In violation of Section 7, Caltrans failed
13 to consult with and seek a Section 7 determination from the National Park Service when Caltrans
14 changed the project scope and moved the retaining wall closer to the Eel River and just upstream
15 from a chronic slip-out, requiring excavation to 20 feet, removal of large, native trees, and
16 deposition of lead laden soils.

17 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

18 **TENTH CLAIM FOR RELIEF**

19 **(Violation of APA)**

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

22 207. The APA entitles a party to seek judicial review of an agency action where a legal
23 wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the
24 agency action. Pursuant to 5 U.S.C. § 706(2)(A), a reviewing court shall hold unlawful and set
25 aside an agency action found to be arbitrary, capricious, or otherwise not in accordance with the
26 law. In addition, pursuant to 5 U.S.C. § 706(2)(D), a reviewing court shall hold unlawful and set
27 aside agency action, findings, and conclusions found to be without observance of procedure
28 required by law. Defendants acted illegally for all the reasons set forth above.

1 208. Caltrans acted illegally and in violation of the APA by approving and adopting
2 the Original EA/FONSI, Supplement to the Original EA/FONSI, the 2017 FONSI, and the
3 Proposed Project each of which does not fully comply with NEPA and Section 4(f) of the
4 Department of Transportation Act as set forth above, and which together are inconsistent,
5 contradictory, and prevent meaningful understanding and review by decision-makers, the public
6 or the Court.

7 209. Due to Defendants' knowing and conscious failure to comply with NEPA and
8 Section 4(f), Plaintiffs have suffered legal wrongs because of agency action and are adversely
9 affected and aggrieved by agency action within the meaning of the APA.

10 210. Defendants' knowing and conscious failure to comply with NEPA and Section
11 4(f), is arbitrary, capricious, and an abuse of discretion, not in accordance with law, in excess of
12 statutory jurisdiction, and without observance of procedure required by law within the meaning
13 of the APA, 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this
14 Court.

15 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16 **ELEVENTH CLAIM FOR RELIEF**

17 **(Declaratory Judgment Act)**

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

20 212. Pursuant to the MOU executed between Caltrans and the US DOT Secretary, in
21 December, 2016, under the authority of 23 U.S.C. § 327, Caltrans expressly: consented to the
22 jurisdiction of the federal courts for the "compliance, discharge and enforcement of any
23 responsibility of the U.S. DOT Secretary assumed by the by Caltrans under [the] MOU," MOU §
24 4.3.1; accepted responsibility "for the compliance, discharge and/or enforcement of any
25 responsibilities assigned by the USDOT Secretary and assumed by Caltrans under this MOU"
26 and waives the State's immunity under the Eleventh Amendment of the U.S. Constitution to
27 address "matters arising out of the MOU," *id.* § 4.3.1; is subject to the same procedural or
28 substantive requirements that apply to the USDOT Secretary in carrying out its responsibilities;

1 *id.*, § 5.1.1.; and is “responsible for opposing party’s attorney’s fees and costs if a court awards
2 those costs to an opposing party, or in the event those costs are part of a settlement agreement,”
3 *id.*, § 6.2.2.

4 213. 23 U.S.C. § 327 further provides *inter alia* that: “A civil action [such as this,
5 pursued against a state agency that has assumed the FHWA’s responsibilities under Section 327]
6 shall be governed by the legal standards and requirements that would apply in such a civil action
7 against the Secretary had the Secretary taken the actions in question,” 23 U.S.C. § 327 (d)(2); “A
8 State shall assume responsibility under this section subject to the same procedural and
9 substantive requirements as would apply if that responsibility were carried out by the Secretary,”
10 23 U.S.C. § 327(a)(2)(C); “A State that assumes responsibility under subsection (a)(2) shall be
11 solely responsible and solely liable for carrying out, in lieu of the Secretary, the responsibilities
12 assumed under subsection (a)(2),” 23 U.S.C. § 327(e); and that a State to whom federal highway
13 project administration obligations have been delegated under the section, can use federal funds
14 apportioned to it, “for attorneys’ fees directly attributable to eligible activities associated with the
15 project,” 23 U.S.C. 327(a)(2)(G).

16 214. California Code of Civil Procedure § 1021.5 further provides: “a court may
17 award attorneys’ fees to a successful party against one or more opposing parties in any action
18 which has resulted in the enforcement of an important right affecting the public interest if: (a) a
19 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public
20 or a large class of persons, (b) the necessity and financial burden of private enforcement, or of
21 enforcement by one public entity against another public entity, are such as to make the award
22 appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if
23 any.”
24

25 215. Plaintiffs contend that Caltrans, under the foregoing and/or other law is liable and
26 responsible for Plaintiffs’ attorneys’ fees and costs in this action.

27 216. Caltrans denies its responsibility to pay Plaintiffs’ attorneys’ fees and costs in this
28 action.

1 217. An actual, present and justiciable controversy has arisen between Plaintiffs and
2 Defendants Caltrans concerning Caltrans responsibility to pay Plaintiff's attorneys fees and costs
3 in this action..

4 218. Plaintiffs seek declaratory judgment from this Court that Caltrans, under the
5 foregoing and/or other law is legally liable and responsible for Plaintiffs' attorneys' fees and
6 costs in this action and Plaintiffs have corresponding legal rights.

7 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

8 **TWELFTH CLAIM FOR RELIEF**

9 **(Injunctive Relief)**

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

12 220. The Proposed Project as approved by Caltrans would cause irreparable injury and
13 harm to State Park resources, to Plaintiffs, and to the public at large. Its significant
14 environmental impacts have not been adequately evaluated, much less mitigated to a less than
15 significant level, and feasible and reasonable alternatives have not been properly evaluated by
16 Caltrans, as required by law and as set forth in this First Amended Complaint.

17 221. The errors and arbitrary and capricious conduct by Caltrans constitute the bases
18 for injunctive relief to prevent this irreparable injury pursuant to Rule 65 of the Federal Rules of
19 Civil Procedure and other applicable law.

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs, and each of them, pray for judgment and further relief as
23 follows:

- 24 1. Declare that Defendants have violated NEPA and Federal Highway statutes as
25 alleged herein;
- 26 2. Declare that Defendants' violation of NEPA and the Federal Highway statutes are
27 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, under the
28 APA;

1 3. Declare that Defendants have failed to observe procedures required by law in their
2 Project approval, Original EA/FONSI, Supplement to the Original EA/FONSI, and 2017 FONSI,
3 including the Section 4(f) Evaluation, and all related findings and approvals;

4 4. Declare that Caltrans is legally liable and responsible for Plaintiffs’ attorneys’
5 fees and costs in this action and Plaintiffs have corresponding legal rights.

6 5. Set aside Defendants’ approval of the Richardson Grove Operational
7 Improvement Project , Original EA/FONSI, Supplement to the Original EA/FONSI, and 2017
8 FONSI, including the Section 4(f) Evaluation, and all related findings and approvals, and require
9 Defendants to follow federal statutes and regulations, including NEPA and Section 4(f) of the
10 Department of Transportation Act of 1966, 23 U.S.C. § 138, 49 U.S.C. § 309, and any
11 implementing regulations in any review of and decision for the Proposed Project;

12 6. Grant interlocutory and permanent injunctive relief enjoining Defendants, and
13 each of them from engaging in any activity pursuant to the Proposed Project until the Proposed
14 Project complies with the *Bair I Order*, and all applicable federal regulations and statutes,
15 including requirements of NEPA and the Department of Transportation Act of 1966;

16 7. Award costs of suit herein, including attorney fees and expert witness fees,
17 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, California Code of Civil
18 Procedure 1021.5, or other authority; and

19 8. Grant such other and further equitable or legal relief as the Court deems just and
20 proper.

21 DATED: November 2, 2017

GROSS & KLEIN LLP

23 By: /S/ Stuart G. Gross
24 **STUART G. GROSS**
25 *Attorneys for Plaintiffs*

DECLARATION OF SERVICE

I, SHARON E. DUGGAN, declare:

I am, and was at the time of the service hereinafter mentioned over the age of eighteen and not a party to the above-entitled cause. My business address is 336 Adeline Street, Oakland, California 94607 and I am a resident of or employed in the County of Alameda, California.

On November 2, 2017 I served the attached Complaint on the California Attorney General addressed as follows:

XAVIER BECERRA
California State Attorney General
455 Golden Gate Avenue Suite 11000
San Francisco, CA 94102

XXX **BY FIRST CLASS MAIL** by depositing a sealed envelope in the United States Postal Service in the ordinary course of business on the same day it is collected in Oakland, California postage fully prepaid.

_____ **BY FACSIMILE MACHINE** by personally transmitting a true copy thereof via a facsimile machine at approximately ____ a.m./p.m. on _____.

_____ **BY FEDERAL EXPRESS or UNITED PARCEL SERVICE** overnight delivery by personally depositing in a box or other facility regularly maintained by Federal Express or United Parcel Service, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents.

_____ **BY HAND DELIVERY** by personally delivering a true copy thereof in an envelope addressed to the parties identified above at the addresses given for those parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 2, 2017 in Oakland, California.



SHARON E. DUGGAN