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9 **THE SUPERIOR COURT OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF HUMBOLDT**  
11

12 BESS BAIR; TRISHA LEE LOTUS, JEFFREY  
13 HEDIN, THE CENTER FOR BIOLOGICAL  
14 DIVERSITY, ENVIRONMENTAL  
15 PROTECTION INFORMATION CENTER,  
CALIFORNIANS FOR ALTERNATIVES TO  
16 TOXICS, AND FRIENDS OF DEL NORTE.,

17 **Petitioners,**

18 v.

19 CALIFORNIA DEPARTMENT OF  
20 TRANSPORTATION and TONY TAVARES,

21 **Respondents.**  
22  
23  
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25  
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27  
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Case No. **CV 2300375**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

[Code Civ. Proc. §§ 526, 1085, 1094.5;  
Pub. Res. Code §§ 21168, 21168.5]

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**FAX FILE**

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

5 **I. INTRODUCTION**

6 1. Petitioners are required to act to protect the precious ancient redwoods of  
7 Richardson Grove State Park (“Richardson Grove” or the “Park”) from the unyielding desire of the  
8 California Department of Transportation (“Caltrans”) to push through the unnecessary and fiscally  
9 foolish Richardson Grove Operational Improvement Project (“Proposed Project” or “Richardson  
10 Grove Project”). Consistent with their decade-and-a-half pursuit of the Proposed Project,  
11 Respondent has ignored its obligations to adequately evaluate and consider the environmental  
12 impact of a proposed major highway construction project set to widen the highway through the  
13 ancient old-growth redwoods of Richardson Grove, in violation of the California Environmental  
14 Quality Act, Public Resources Code § 21000 *et seq.* (“CEQA”).

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

26 3. While California’s world-renowned ecosystems face unprecedented uncertainty and  
27 peril wrought by climate change, Caltrans tries once again to push through its boondoggle  
28 highway widening project at the expense of one of the last remaining irreplaceable stands of

1 ancient old-growth Redwoods in the area. California rightfully requires those seeking to sacrifice  
2 the state’s environmental jewels for economic riches to show its work, but Caltrans once again  
3 backs up its destructive designs with a recycled mess of outdated reports and superficial studies.

4 4. This case follows closely in the footsteps of its predecessor litigation because  
5 Caltrans is consistent in its legal failings. The fundamental problem is Caltrans’ stubborn refusal to  
6 change course, despite constant and widespread public opposition and ever-increasing costs  
7 compared to diminishing economic benefit.

8 5. But Petitioners do not challenge Caltrans poor policy decisions nor its misuse of  
9 public funds, but will, as they have for over a decade, challenge Caltrans’ blatant disregard of the  
10 public’s rightful role in decision-making processes when public resources are at stake. Caltrans is  
11 not new to the CEQA process. However, even the most casual observer would question why  
12 Caltrans continues to approve environmental reviews plagued by procedural and substantive flaws,  
13 demonstrated by its approval here, in 2023, of an Environmental Impact Report (“EIR”) originally  
14 drafted in 2007.

15 6. This action follows successful court challenges to Caltrans’ initial 2010 and 2017  
16 approvals of the Richardson Grove Operational Improvement Project. In those actions, the courts  
17 found Caltrans’ environmental review lacking and not in compliance with governing law. Most  
18 recently, in this Court, Caltrans’ attempt to approve an addendum to the invalidated 2010 Final  
19 EIR (“FEIR”) was struck down for Caltrans’ procedural failure to circulate the new review  
20 document for public comment prior to approval.

21 7. However, this Court did not reach the substantive inadequacies of the 2017  
22 Addendum to the Final EIR (“2017 Addendum”); and Caltrans has not corrected those  
23 inadequacies.

24 8. Since this Court’s 2019 order for Caltrans to rescind its approval of the 2017  
25 Addendum and the 2017 FEIR—whose analytical void the 2017 Addendum sought to fill—  
26 Caltrans made no substantive changes to the 2017 Addendum. Instead, Caltrans sat on its hands  
27 for years, and finally in the fall of 2021 circulated for public comment the very same 2017  
28 Addendum that was the subject of the previous litigation in front of this Court.

1           9.       On January 30, 2023, Caltrans approved the Proposed Project, certifying the same  
2 FEIR and claiming that the 2017 Addendum, having been circulated for public comment but still  
3 unchanged from its original form, adequately replaced its original flawed analysis of impacts to  
4 old-growth redwood trees and their root zones. Despite nearly a decade of litigation over the  
5 Proposed Project, repeated Writs of Mandate compelling compliance with CEQA, and the years  
6 Caltrans waited to recirculated an unchanged 2017 Addendum, Caltrans failed to properly approve  
7 the 2017 Addendum when issuing its purported project approvals and certification of the FEIR.  
8 Whether this was the result of incompetence, or a brazen disregard of the rules, it matters not—  
9 Caltrans has failed once again to comply with CEQA in its pursuit of the Proposed Project.

10           10.       Beyond this glaring procedural shortcoming, and more important for the purposes  
11 of the public interest in the health and longevity of the Richardson Grove old-growth redwoods,  
12 the 2017 Addendum fails to adequately disclose, analyze and mitigate the Proposed Project’s  
13 impacts to those precious trees. While the procedural failures are enough to unwind Caltrans’ most  
14 recent approvals, its continued refusal to honestly investigate and disclose the true impacts of the  
15 Proposed Project, which would excavate feet of soil over and around the root systems of old-  
16 growth redwood trees, replacing it with compacted soil, aggregate and asphalt, is the most  
17 pernicious of Caltrans’ legal violations. The analysis contained in the 2017 Addendum falls far  
18 short of CEQA’s mandate.

19           11.       Caltrans continued refusal to accurately disclose the Proposed Project’s true  
20 impacts portends the catastrophic outcomes that will befall the redwoods of Richardson Grove if  
21 construct commences. The Proposed Project would damage these ancient redwoods and the habitat  
22 they provide, just to make it easier for larger commercial trucks to pass through the Park. With its  
23 approvals, Caltrans places these ancient redwoods and public resources at ecological risk and,  
24 once severely damaged or destroyed, these ancient redwoods would be lost forever.

25           12.       Visitors to Richardson Grove stroll among old-growth redwoods that have stood for  
26 as many as 3,000 years, measure as much as 18 feet in diameter, and reach heights of 300 feet.  
27 Willing to recklessly put these old-growth redwoods at risk of destruction, Caltrans has proposed a  
28

1 project to widen the one mile stretch of U.S. Highway 101 as much as 17 feet toward old-growth  
2 redwood trees as it passes through Richardson Grove Park.

3 13. 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 (or  
6 “STAA”) trucks, transforming the road through the Grove into an unrestricted industrial artery.  
7 STAA trucks carry trailers that are 8 to 13 feet longer than what are known as “California legal”  
8 trailers. Presently, STAA trucks are generally prohibited from going through Richardson Grove  
9 Park; however, by virtue of granted exemptions, STAA trucks already regularly pass through the  
10 Grove without incident, making the Proposed Project unnecessary. Moreover, Caltrans concedes  
11 that increased use of these STAA trucks will not change any barriers which currently constrain  
12 business growth in Humboldt County.



23  
24 14. Caltrans’ website photo (above) for the Proposed Project illustrates the Proposed  
25 Project’s essential problem – the road through the Grove at its current width already cuts so close  
26 to the old-growth trees that any widening would cause a devastating impact.

27 15. The Proposed Project would have a devastating impact on the root zones of the old-  
28 growth redwoods, which lay in the path of the Proposed Project. As a substantial portion of these

1 root zones already lay below the current road and there is nowhere to expand the road except  
2 further upon those zones—upon which California State Parks Department literally request visitors  
3 not to *walk* in order to prevent damage—the risk posed by this proposed expansion is profound  
4 and irreversible.

5 16. Traveling under these redwoods, which tower over Highway 101, as it passes  
6 through Richardson Grove, is for many people the only experience they will ever have of these  
7 utterly unique and majestic forms of nature. No other living thing in the world compares to the size  
8 of ancient redwoods. For many first-time travelers of Highway 101 through Richardson Grove, the  
9 experience is profound and deeply moving. The short-sightedness of this Proposed Project is  
10 offensive; and Caltrans continued pursuit of it is dumbfounding, as is its inability to correct  
11 fundamental CEQA errors after so many tries.

12 17. The old-growth redwoods of Richardson Grove are a profound natural resource.  
13 California law prohibits sacrificing these old-growth redwoods for immense trucks in such a  
14 haphazard and capricious way. Unfortunately, Caltrans continues to fail to meet its informational  
15 and analytical mandate under CEQA, and thus Petitioners are forced, yet again, to come before  
16 this Court to call out Caltrans' incompetence.

## 17 **II. PARTIES**

### 18 **A. PETITIONERS**

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



1           19.     Petitioner TRISHA LEE LOTUS is the great granddaughter of Henry Devoy, who  
2 in 1922 transferred to the State of California the 120 acres which became the initial acreage of the  
3 Richardson Grove State Park. Trisha was born in Santa Rosa and every summer as a child visited  
4 the redwoods in and around the Richardson Grove State Park. She continues to visit these same  
5 redwoods as an adult and intends to do so in the future. Since 1998, Trisha has been a resident of  
6 Humboldt County, CA.

7           20.     A retired licensed contractor and a disabled Vietnam Veteran, Petitioner JEFFREY  
8 HEDIN resides in Piercy, CA. Jeff is an elected commissioner with the Piercy Fire Protection  
9 District, members of which respond to emergency calls in Humboldt and Mendocino Counties.  
10 While he is performing his work duties, Jeff drives on Highway 101 through Richardson Grove  
11 State Park.

12           21.     Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-  
13 profit, public interest corporation with over tens of thousands of members. The Center has offices  
14 in Joshua Tree and Oakland, California; as well as offices in Arizona, Colorado, Florida, Hawaii,  
15 New Mexico, North Carolina, Oregon, Washington State, and Washington, D.C. The Center is  
16 actively involved in wildlife and habitat protection issues throughout the United States, and has  
17 members throughout our country, thousands of whom reside in California. The Center’s members  
18 and staff include individuals with educational, scientific, spiritual, recreational, and other interests  
19 in protection of ancient redwoods and the species which depend on those trees, including the  
20 Marbled Murrelet, the Northern Spotted Owl, and listed evolutionarily significant units of  
21 anadromous salmonids – including Southern Oregon Northern California Coast (“SONCC”) coho,  
22 California Coastal (“CC”) Chinook, and Northern California (“NC”) Steelhead. The Center’s  
23 members and staff enjoy the biological, recreational, and aesthetic values of the California parks  
24 where species such as the Marbled Murrelet, the Northern Spotted Owl, and anadromous  
25 salmonids—including SONCC coho, CC Chinook, and NC Steelhead—live, including within and  
26 near Richardson Grove State Park. The Center’s members and staff have participated in efforts to  
27 protect and preserve the habitat essential to the continued survival of the Marbled Murrelet, the  
28 Northern Spotted Owl, and anadromous salmonids—including SONCC coho, CC Chinook, and

1 NC Steelhead. The Center’s members and staff intend to visit Richardson Grove State Park in the  
2 future to enjoy, appreciate, view, and study the ancient redwoods and to seek out and observe the  
3 old growth Redwood trees and forest, Northern Spotted Owl, Marbled Murrelet, anadromous  
4 salmonids—including SONCC coho, CC Chinook, and NC Steelhead—in their natural habitat.  
5 The Center brings this action on its own behalf and on behalf of its adversely affected members  
6 and staff.

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

26 23. Petitioner CALIFORNIANS FOR ALTERNATIVES TO TOXICS (“CATs”) is a  
27 non-profit public interest corporation, which has advocated for over thirty years on behalf of its  
28 members to enable their control over toxic chemicals in the environment. CATs seeks to advise

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

15 24. Plaintiff FRIENDS OF DEL NORTE (“Friends”) is a non-profit public interest  
16 group established in 1973 in Crescent City and Gasquet, California, designed to protect the local  
17 environment and educate our citizenry on the benefits of planning for living in a pristine setting.  
18 For more than forty years, Friends has volunteered resources to foster public dialogue about  
19 natural resources throughout the region, by attending federal, state, and local meetings and public  
20 hearings working to influence elected leaders in planning for a healthy future in Del Norte County  
21 and its bioregion. In part through monitoring local planning issues, Friends’ two hundred local and  
22 northern California members have tirelessly worked to protect the pristine qualities of the wild and  
23 scenic rivers of Northern California, salmon and steelhead habitat, the scenic corridors of  
24 Highways 101 and 199, ancient redwood forests, the Lake Earl Coastal Lagoon, and the wild  
25 Pacific coastline. Friends believes that, without deliberate attention and care, these great natural  
26 treasures will be compromised or degraded over time and lost to future generations. Friends is  
27 proud of its record of success in helping to foster the 40,000 acre expansion of Redwood National  
28 and State Parks, the 180,000 acre Siskiyou Wilderness Area, the Smith River National Recreation

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

12 25. The above-described health, recreational, scientific, cultural, inspirational,  
13 educational, aesthetic, and other interests of Petitioners would be adversely and irreparably injured  
14 by Respondents' failure to comply with CEQA and its related regulations, and other applicable  
15 law. These are actual, concrete injuries to these individual Petitioners and the members of the  
16 organizational Petitioners that would be redressed by the relief sought herein. Petitioners have no  
17 adequate remedy at law.

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

25 **B. RESPONDENTS**

26 27. Respondent CALIFORNIA DEPARTMENT OF TRANSPORTATION  
27 ("Caltrans") is a public and state agency within the State of California. Caltrans is the lead agency  
28 for the Proposed Project under CEQA.

1           28.     Respondent TONY TAVARES is the Director of the California Department of  
2 Transportation. As Director, Mr. Tavares is responsible for maintenance and operations of  
3 roadways comprising the California state highway system. Mr. Tavares is sued in his official  
4 capacity.

5     **III.     JURISDICTION AND VENUE**

6           29.     The jurisdiction of this Court is invoked pursuant to California Code of Civil  
7 Procedure §§ 526, 1085, and 1094.5, as well as California Public Resources Code §§ 21168 and  
8 21168.5.

9           30.     Venue is proper in this Court under Code of Civil Procedure § 395.

10          31.     Petitioners complied with the requirements of Public Resources Code section  
11 21167.5 by serving a written notice of Petitioners' intention to commence this action on the  
12 Respondents on March 7, 2023. A copy of this written notice is attached hereto as **Exhibit 1**.

13          32.     Petitioners have complied with the requirements of Public Resources Code section  
14 21167.6 by concurrently notifying Respondents of Petitioners' request to prepare the record of  
15 administrative proceedings related to this action. A copy of Petitioners' Request for Record of  
16 Proceedings is attached hereto as **Exhibit 2**.

17          33.     Petitioners have performed any and all conditions precedent to filing this instant  
18 action and have exhausted any and all administrative remedies to the extent required by law,  
19 including, but not limited to, timely submitting extensive comments objecting to approval of the  
20 Proposed Project and specifically identifying deficiencies in the 2017 Addendum and FEIR.

21          34.     This Petition is timely filed in accordance with Public Resources Code section  
22 21167 and CEQA Guidelines section 15112.

23     **IV.     FACTUAL AND PROCEDURAL BACKGROUND: OUR RICHARDSON GROVE**  
24     **AND CALTRANS' PLAN FOR ITS DESTRUCTION**

25     **A.     DRIVING THROUGH HISTORY**

26          35.     In 1922, Henry Devoy transferred 120 acres to the State of California, to establish  
27 what ultimately became the Richardson Grove State Park. At that time, a narrow dirt road wound  
28 through this iconic redwood grove. It was not until 1927, after creation of the Richardson Grove

1 State Park, that the road was first surfaced. Subsequently, thousands of visitors came to see these  
2 majestic redwoods and the name “Richardson Grove” became synonymous with ancient redwoods.  
3 Over time, Richardson Grove expanded to over 2,000 acres. Richardson Grove State Park is the  
4 gateway to the magnificent redwood forests of Northern California, with the towering girth of  
5 these oldest living things on earth, their age estimated at 1,000 to 3,000 years, sheltering the  
6 roadway from both sides.

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

15 37. Redwood root systems are shallow and inter-related, extending 3 to 10 times  
16 beyond the diameter of the individual tree. Roots that have spent literally centuries successfully  
17 navigating their place under and through the soil must be protected to ensure water uptake, nutrient  
18 capacity, and structural stability. The California State Department of Parks and Recreation (the  
19 “State Parks”) instructs all Richardson Grove visitors that “all park features are protected by law  
20 and must not be disturbed.” State Parks has declared: “Any project that affects the historic patina  
21 and the natural fabric of Richardson Grove State Park can have far reaching impacts to millions of  
22 people as they enter the Redwood Region.”

23 38. The Richardson Grove is home and/or provides habitat for many wildlife species,  
24 including blue herons, osprey, acorn woodpeckers, belted kingfishers, the protected marbled  
25 murrelet, and the protected northern spotted owl, and provides critical and essential habitat for  
26 SONCC coho, listed as threatened under federal and state law, CC Chinook, federally listed as  
27 threatened, and NC steelhead, federally listed as threatened.  
28

1           39.     The area is also rich with cultural resources, including those of Native American  
2 people, the first known inhabitants of the region, who hunted, fished, gathered food, and collected  
3 native materials for basket weaving. The South Fork of the Eel River threads through the  
4 Richardson Grove and along Highway 101, and is designated as a Wild and Scenic River under  
5 California law (1972) and the Federal Wild and Scenic Rivers Act (1981). The South Fork of the  
6 Eel River flows north 105 miles (169 km) from Laytonville to Weott, where it joins the Eel River  
7 on the left bank. The South Fork’s watershed of about 689 square miles (1,780 km<sup>2</sup>) drains a long  
8 and narrow portion of the Coast Range of California, covering parts of Mendocino and Humboldt  
9 counties. For much of its length, the Eel River parallels U.S. Route 101, including through  
10 Richardson Grove State Park.

11                   **B. DESTROYING OUR REDWOODS**

12           40.     California’s State Parks are havens for California’s unparalleled natural and cultural  
13 resources. As an economic engine for recreation and tourism, California’s State Parks also  
14 generate billions of dollars a year in spending in local communities and support over 100,000 jobs  
15 statewide. California cannot withstand threats of any kind to such an immensely valuable source of  
16 jobs and revenue. Yet these treasured parklands are facing an unprecedented barrage of assaults,  
17 not only from the lack of funding, but from projects such as the one challenged herein, which  
18 would encroach upon park land and devastate natural resources.

19           41.     The ancient redwoods in Richardson Grove State Park are protected trees, within  
20 which State Parks declares “it is impossible to install a new facility without causing damage.”  
21 Accordingly, State Parks further advises that:

22                   There should be no construction activities in the Structural Root Zone of a  
23 protected tree ... Any Intrusion into this zone is usually accompanied by significant  
24 injury to roots further from the trunk; this will shorten the useful life of the tree in  
25 the developed area by reducing vigor and introducing root disease. Furthermore,  
26 damage to any structural roots may cause an already structurally compromised tree  
27 to become hazardous.  
28

1           42.     Yet, Caltrans’ 2023 approvals propose to do just what State Parks advises against,  
2 by placing these ancient redwoods at risk with cutting, compacting, and placing fill on the roots of  
3 these ancient trees, endangering their very survival.

4           43.     Because of the renowned and iconic status of Richardson Grove, the Proposed  
5 Project’s influence extends well beyond its borders, exposing a state and national public treasure  
6 to risk of harm. Because the Proposed Project is intended to provide STAA trucks with new access  
7 through the Grove solely for “goods movement,” and because Richardson Grove is treasured by  
8 visitors from throughout California and the nation, this Proposed Project has impacts extending  
9 well beyond Humboldt County. The Proposed Project as designed would result in a devastating  
10 legacy.

11           44.     Furthermore, the watershed of the South Fork of the Eel River, including its  
12 tributaries, is designated critical habitat under the ESA for the SONCC coho.

13           45.     The watershed of the South Fork of the Eel River, including its tributaries, is also  
14 designated as essential fish habitat (“EFH”) for both coho and Chinook salmon under the  
15 Magnuson-Stevens Fishery Conservation and Management Act, codified at 16 U.S.C. § 1801 *et*  
16 *seq.* (the “MSA”).

17           46.     All of the work that Caltrans proposes to do would be upslope from the South Fork  
18 of the Eel River, including cut slope work that would expose significant areas of soil to erosion.  
19 The Proposed Project would also likely increase the amount of truck traffic through the Grove,  
20 thereby increasing the risk of accidents and related toxic spills into the South Fork of the Eel River  
21 and areas hydrologically connected thereto, as well as increasing contamination of the South Fork  
22 of the Eel River and areas hydrologically connected thereto related to truck exhaust, truck tire, and  
23 truck brake wear. Contaminants from such sources, including, without limitation, copper and poly-  
24 aromatic hydrocarbons (“PAHs”), have devastating effects on salmonids. The Proposed Project  
25 would also disturb lead contaminated soil, to be used within the Project area, and which could in  
26 turn erode into the South Fork of the Eel River and areas hydrologically connected thereto.



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C. THE GROVE IS THREATENED BY TRUCKS

47. Caltrans' 2023 approvals would widen Highway 101 through Richardson Grove by increasing the width of paved road in both directions and widening shoulders along the side of the highway, to change curve radii along the one-mile section. The road alignment would be shifted by as much as 14-17 feet toward some old-growth redwoods trees in the Park. The Proposed Project also would include installation of a retaining wall and barrier rail outside of the Park on the north to allow the road widening, excavating at least 20 feet down, and placing a retaining wall closer to and above the Eel River.

48. To accomplish this road widening and realignment, Caltrans' Proposed Project would remove 38 trees and work within and impact the roots and root zones of 109 old-growth redwoods, 78 of which would have project work occur within the structural root zone of those trees. Many of these old-growth redwoods are as large as 18 feet in diameter, located immediately adjacent to Highway 101. The following photos vividly depict how close the redwoods are to Highway 101 in the Grove and how dangerous the road widening Project would be to these trees:





GROSS KLEIN PC  
THE EMBARCADERO  
PIER 9, SUITE 100  
SAN FRANCISCO, CA 94111

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1           49.     The Proposed Project would also entail ground disturbance, removal and  
2 replacement of pavement, slope and road excavation, culvert work, excavation and movement of  
3 lead-contaminated soils, potential temporary stream diversion, night work with night lighting,  
4 disposal/barrow sites, equipment staging areas, permanent right-of-way acquisitions from State  
5 Parks and private landowners, temporary construction easements, and vegetation and tree removal.

6           50.     Beneficiaries of the Proposed Project would almost exclusively be a small number  
7 of non-local corporate giants. Caltrans’ stated justification for widening highway 101 through the  
8 Grove is that the road must be wider to allow STAA trucks to pass one another in opposite  
9 directions on this section of the highway. So-called STAA trucks are truck and trailer  
10 combinations that tend to be somewhat larger than the “California legal” truck and trailer  
11 combination.

12           51.     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 phenomenon in which a truck’s rear tires may follow a  
15 shorter path than the front tires when turning.

16           52.     However, STAA trucks are currently permitted to drive through Richardson Grove.  
17 STAA truck access is currently allowed by statute for livestock trucks and moving vans on  
18 Highway 101 through Richardson Grove State Park. Caltrans cites no evidence in its 2023  
19 approval documents that these STAA trucks are unable to safely pass in opposite directions.  
20 Similarly, Caltrans cites no evidence indicating that, in practice runs, any STAA trucks are off-  
21 tracking when traveling through the Richardson Grove. Caltrans’ 2017 Addendum does not  
22 provide analysis concerning STAA vehicle accidents.

23           53.     The Proposed Project fails to bring the stretch of Highway 101 through Richardson  
24 Grove up to highways standards for which it is deficient, including: minimum design speed and  
25 curve radii, shoulder width, minimum super-elevation rate, stopping site distance, minimum  
26 distance to fixed objects, and corner sight distance.

1           **D. CALTRANS 2010 APPROVAL AND LOTUS**

2           54. Caltrans initiated its original version of the Richardson Grove Project in 2007,  
3 which culminated in Caltrans' May 2010 approval of the that project, with its combined and joint  
4 Final Environmental Impact Report/Environmental Assessment and Finding of No significant  
5 Impact ("2010 FEIR/EA/FONSI").

6           55. The 2010 FEIR did not remedy the numerous informational and analytical flaws  
7 identified in public comments on the draft EIR, specifically extensive comments concerning the  
8 Project's significant impacts on old-growth redwood trees and their root systems.

9           56. Caltrans proposed to protect the redwoods by using an air spade to dig up roots,  
10 adding brow logs to minimize the impact of fill on the trunks of the trees, and watering the trees  
11 weekly once excavation below the finish grade occurred. Caltrans also proposed increasing the  
12 removal of invasive plants as a mitigation measure to offset impacts to these mature redwood trees  
13 where construction occurs within their structural root zone. Caltrans did not provide any  
14 documentation to establish how these measures or other measures would be effective and  
15 sufficient to protect these trees from harm, or to supply sufficient support, water, and nutrients to  
16 meet their demands. The 2010 FEIR failed to provide adequate detail to assess the Richardson  
17 Grove Project's impacts on the redwoods and their root systems. At the time of approval, Caltrans  
18 did not establish that the mitigation measures it did identify in an attempt to protect the old-growth  
19 redwood trees would be implemented and properly reported. The 2010 FEIR never adequately  
20 addressed widespread concern that the proposed Richardson Grove Project will eventually cause  
21 tree mortality along the highway and within the Grove.

22           57. Consistent with these public concerns, after a previous denial by the Superior  
23 Court, on January 30, 2014, the California Court of Appeal granted a petition for writ of mandate  
24 setting aside the 2010 Project approvals. *Lotus v. Department of Transportation* ("*Lotus*"), 223  
25 Cal.App.4th 645 (2014). Specifically, the *Lotus* court ruled the FEIR's analysis of impacts to old-  
26 growth redwood trees was inadequate, and thus in violation of CEQA.

1           58.     The *Lotus* court required a writ of mandate setting aside the 2010 Project approval  
2 and EIR certification (“*Lotus Writ*”). Accordingly, on June 26, 2014, Caltrans rescinded its Project  
3 approval and certification of the 2010 FEIR.

4           **E. CALTRANS’ 2017 APPROVAL AND *BAIR I***

5           59.     On May 22, 2017, after nearly three years of supposedly revising various  
6 documentation for the Project, yet without providing any opportunity for the public to review and  
7 comment on the development of numerous documents and claimed analyses comprising hundreds  
8 of pages intended to justify its decisions, Caltrans “approved” the changed Richardson Grove  
9 Project, without validly re-certifying its 2010 FEIR, or otherwise providing a revised, subsequent  
10 or supplement to a valid EIR. Instead, Caltrans approved the 2017 Addendum to the 2010 FEIR,  
11 which purports to revise the portions of the 2010 FEIR found invalid in *Lotus*.

12           60.     The 2017 Project Report provides an overall cost estimate of more than 20 million  
13 dollars, for a project which Caltrans has repeatedly characterized as making only “minor  
14 adjustments” to a one-mile segment of Highway 101.

15           61.     The Project Report’s Attachment E is the “Environmental Document” for the  
16 Richardson Grove Project. It provided two documents which Caltrans approved on May 1, 2017:  
17 the 2017 Addendum; and a separate 2017 Finding of No Significant Impact (“2017 FONSI”).  
18 These two documents, in different and conflicting ways, purported to revise the previously de-  
19 certified and invalid combined 2010 FEIR/EA/FONSI.

20           62.     The 2017 Addendum is apparently intended to summarize Caltrans’ revised impacts  
21 analyses for old-growth redwoods, revise portions of the decertified 2010 FEIR with “minor”  
22 updates to the project description, and provide additional information and analyses. The 2017  
23 Addendum includes changes to Proposed Project as presented in the 2010 FEIR, including  
24 reductions in (1) the number of trees to be removed; (2) the total amount of disturbed soil; (3) the  
25 amount of new impervious surface; and (4) the volume of excavated material. The 2017  
26 Addendum does not provide or reference supporting calculations or analyses to document these  
27 changes. The 2017 Addendum does not provide a valid analysis of the potential for significant  
28 environmental impacts which may occur from these and other changes. Elsewhere in the multiple

1 documents that Caltrans’ appears to rely on for its Proposed Project approval—but the legal status  
2 of which under CEQA is questionable at best—there is evidence that the Proposed Project will  
3 require a greater volume of excavated material than stated in the 2017 Addendum, and the culvert  
4 work will be different than claimed in the 2017 Addendum.

5 63. Simultaneous with its re-certification of the 2010 FEIR, as purportedly changed by  
6 the 2017 Addendum, Caltrans approved a 2017 FONSI in connection with its responsibilities  
7 under the federal National Environmental Policy Act (“NEPA”). The 2017 FONSI also purports to  
8 make changes to the same 2010 FEIR (which also serves as the Proposed Project’s environmental  
9 assessment under NEPA), but those changes are different from, and inconsistent with, the changes  
10 to the same 2010 FEIR that are identified in the 2017 Addendum.

11 64. The 2017 Addendum’s change includes an *increase* of the number of old-growth  
12 redwood trees for which Caltrans claims work will be done within their structural or root health  
13 zones relative to what was described in the 2010 FEIR. According to the 2017 Addendum, 109  
14 old-growth redwood trees would have project work within their root health zones. Of these, 78  
15 would have ground disturbing work within their structural root zones, and 72 of these are located  
16 within Richardson Grove State Park.

17 65. The 2017 Addendum lists, *but does not incorporate or attach*, a Technical Study  
18 dated August 14, 2015, entitled Final Report - An Evaluation of Potential Effects on Old-Growth  
19 Redwoods from Implementation of the Richardson Grove Operational Improvement Project, by  
20 Dennis Yniguez of Tree Decisions (“Tree Report”). This Tree Report appears to rely on project  
21 maps intended to depict old growth redwoods in the Proposed Project, dated August 13, 2015, and  
22 Individual Tree Details, dated August 12, 2015, both prepared by Caltrans. The Tree Report  
23 simply concludes there will be no significant environmental effect on these trees. The Individual  
24 Tree Details document does not identify any avoidance or mitigation measures for work in and  
25 around the root zones of the old-growth redwoods.

26 66. Neither the 2017 Addendum nor the Tree Report provide a consolidated set of plans  
27 which identifies location of old-growth redwood trees and the nature and extent of project work  
28

1 proposed within the root zones of old growth redwood trees. The Tree Report is not included as an  
2 attachment to or incorporated by reference in the Project Report or the 2017 Addendum.

3 67. The 2017 Addendum states that “the significance determinations reported in the  
4 CEQA Checklist section of the 2010 Final EIR have not changed”; and “[a]ll minimization  
5 measures described in the 2010 Final EIR would be implemented for this project.”

6 68. Other Attachments to the 2017 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 Site  
17 Assessment, but without including the actual assessment (Attachment J);
- 18 • an October 20, 2014 Caltrans Memorandum recommending different  
19 strategies for roadway surface materials (Attachment K);
- 20 • an undated Caltrans Risk Register, which among other things admits that the  
21 “sensitive location makes even minor design changes susceptible to major  
22 environmental work” (Attachment L); and
- 23 • an undated and unsigned Caltrans Storm Water Data Report (Attachment  
24 M).

25 69. Caltrans did not provide any opportunity for the public to review and comment on  
26 the Project Report or any of these attachments, including the 2017 Addendum, the 2017 FONSI,  
27 and the Tree Report.  
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1           70.     Instead, without any public scrutiny or conversation, from which Caltrans’ analyses  
2 and conclusions could be evaluated and properly informed, and without remedying those legal  
3 errors identified by the *Lotus* court or its federal counterpart, Caltrans approved the changed  
4 Richardson Grove Project based on illegitimate analysis and CEQA documentation.

5           71.     As with the 2010 FEIR, Caltrans did not make or adopt CEQA findings for its 2017  
6 approval of the Proposed Project.

7           72.     Caltrans issued its Notice of Determination on May 23, 2017, which was posted on  
8 May 24, 2017. On June 22, 2017, Petitioners filed a timely challenge to the 2017 FEIR and 2017  
9 Addendum in this Court. *Bair et. al. v. Department of Transportation et. al.* (“*Bair I*”), Case No.  
10 CV170543.

11           73.     Petitioners alleged in *Bair I* that, inter alia, the 2017 Addendum was an improper  
12 vehicle for fixing the flawed 2010 FEIR, and that a revised or subsequent EIR was required.  
13 Petitioners further alleged that Caltrans violated CEQA by failing to circulate the 2017 Addendum  
14 for public comment, a failure made particularly egregious because of the alleged changes to the  
15 scope of the Proposed Project contained within the 2017 approvals that went unanalyzed.  
16 Petitioners also challenged the Addendum on the bases that it failed to adequately disclose,  
17 analyze and mitigate the Proposed Project’s impacts on the root zones of old-growth redwood  
18 trees.

19           74.     On August 15, 2017, Caltrans filed a return to peremptory writ of mandate (“*Lotus*  
20 Return”), seeking a discharge of the *Lotus* Writ based on the assertion that Caltrans had complied  
21 with the *Lotus* Writ, and CEQA, by preparing and approving the 2017 Addendum and re-certifying  
22 the 2017 FEIR.

23           75.     On May 15, 2018, this Court denied Caltrans request to discharge the *Lotus* Writ,  
24 ruling that whether the 2017 Addendum complied with CEQA was central to Caltrans’ compliance  
25 with the *Lotus* Writ, and since the substantive adequacy of the 2017 Addendum was at issue in the  
26 *Bair I* litigation, the motion to discharge would be denied until a final determination was reached  
27 in *Bair I*.



1           76.     On June 5, 2019, this Court issued a ruling and order granting the petition for writ  
2 of mandate in *Bair I*. The ruling listed three ways in which Petitioners argued Caltrans violated  
3 CEQA. First, Caltrans’ choice to prepare and approve an addendum to the 2010 FEIR, instead of a  
4 revised or subsequent EIR, violated CEQA. Second, the use of an addendum “deprived the public  
5 its right to review and comment on the contents of the [2017] Addendum.” Third, the 2017  
6 Addendum made substantial changes to the project that result in significant impacts that were  
7 unaddressed in the review documents. This Court explicitly rejected the third contention, finding  
8 any changes and modifications did not “alter the scope of purpose of the project.” As for the  
9 second argument, this Court found that Caltrans did violate CEQA by failing to circulate the 2017  
10 Addendum for public comment and agency consultation. This Court reasoned that because the  
11 2017 Addendum, and the Tree Report on which it was largely based, had never been circulated,  
12 the Tree Report’s rating system and methodology used for the significance determination had not  
13 been critiqued. Such critique by the public and expert agencies was essential because, as this Court  
14 stated, “the rating system devised by the arborist may or may not rest on sound scientific footing.”  
15 As to the first issue, this Court did not explicitly address whether Caltrans’ use of an addendum to  
16 remedy the FEIR’s flawed analysis of impacts to old-growth redwood trees was appropriate.

17           77.     The ruling discussed the necessity of public and agency comment and critique of  
18 the Tree Report’s rating system but did not address the question of whether the substance of the  
19 2017 Addendum met CEQA’s informational and analytical requirements.

20           78.     On July 9, 2018, this Court issued a second Writ of Mandate (“*Bair I* Writ”),  
21 ordering Caltrans to set aside the May 2017 approval of the Project and certification of the 2017  
22 FEIR and 2017 Addendum, and to “circulate for public review and comment **the 2017 FEIR and**  
23 **the Addendum**” and to “include consultation with the Department of Parks and Recreation.”  
24 (emphasis added).

25           79.     On August 23, 2018, Caltrans rescinded its approval of the Proposed Project, which  
26 included the 2017 Addendum, and rescinded its certification of the 2017 FEIR.

1           **F. CALTRANS' 2023 APPROVAL OF THE PROPOSED PROJECT**

2           80.     On October 21, 2021, Caltrans circulated the 2017 Addendum, unchanged from the  
3 document at issue in *Bair I*, for public comment and agency consultation. The Public Notice  
4 stated: “The Addendum to the EIR is being circulated for public review and comment. **The**  
5 **original 2010 Final EIR is being provided for background and context only.** Written comments  
6 **on the Addendum** will be accepted during a 45-day public review period.” (emphasis added). The  
7 Tree Report was not mentioned in the Public Notice, but was available at the same Caltrans  
8 landing page, linked in the Public Notice, as the 2017 Addendum, but the Tree Report was listed in  
9 a different section among documents such as the Project Fact Sheet and Informational Brochure.

10           81.     Petitioners the Center, EPIC and CATs submitted extensive comments, in response,  
11 on November 19, 2021. The comments highlighted how the 2017 Addendum and Tree Report  
12 violated CEQA by, inter alia, omitting an accurate baseline account of the health of old-growth  
13 redwood trees impacted by the Proposed Project, utilizing shifting and unsupported thresholds of  
14 significance for impacts to old-growth redwood trees, measuring tree impacts via a rating system  
15 that resulted in significance determinations unsupported by substantial evidence, failing to  
16 implement adequate mitigation measures, and failing to include in the approval documents the  
17 mitigation measures purported to reduce the Proposed Project’s impacts on old-growth redwoods  
18 and their root zones. The comments also attached three expert reports critiquing the 2017  
19 Addendum and the Tree Report.

20           82.     Caltrans received 288 written comments, from both individuals and organizations,  
21 on the 2017 Addendum and Tree Report.

22           83.     On or about January 26, 2023, Caltrans completed its Responses to Comments on  
23 the Addendum to the FEIR (“Responses to Comment”). Despite having requested long ago that  
24 their counsel be served with any public Project documents, Petitioners were not notified of the  
25 availability of the Responses to Comment, and only discovered the document while checking  
26 Caltrans’ project website on February 6, 2023.

27           84.     The Responses to Comment do not include the full list of public comments  
28 received, nor did it include any of the received comment letters. Instead, the Responses to

1 Comment summarized issues raised by certain letters, and provided Caltrans’ response thereto, in  
2 addition to general responses at the beginning of the Responses to Comment.

3 85. The Responses to Comment moreover states, “Only comments relating to the FEIR  
4 Addendum circulated by order of the court are addressed in this document.” Because Caltrans did  
5 not make available all the comments received, it is impossible to determine which letters, or  
6 portions thereof, were ignored based on Caltrans’ stated limitation of the scope of its duty to  
7 respond to public comment pursuant to this Court’s instruction and CEQA’s directive.

8 86. Despite the fact that over 5 years had passed since the 2017 Addendum was drafted,  
9 and voluminous public comment was received in the fall of 2021, Caltrans has, to date, made no  
10 changes to the 2017 Addendum.

11 87. On January 30, 2023, Caltrans certified the FEIR and approved the Supplemental  
12 Project Report (again, failing to serve it on Petitioners’ counsel). Neither approval decision  
13 document mentioned the 2017 Addendum, let alone provided an explicit approval of the 2017  
14 Addendum.

15 88. On February 6, 2023, Caltrans’ Notice of Decision (“NOD”) approving the  
16 Proposed Project was posted to the State Clearinghouse (again, failing to serve it on Petitioners’  
17 counsel). The NOD did not mention the 2017 Addendum.

18 89. On February 21, 2023, Caltrans filed a Return to Peremptory Writ and Request for  
19 Discharge (the “Return”) in this Court, seeking to discharge both the *Lotus* Writ and the *Bair I*  
20 Writ (filing serving this on Petitioners’ counsel). In support of its Return, Caltrans provided the  
21 Responses to Comment, in addition to its approval documents. Despite its mandate to demonstrate  
22 compliance with CEQA, Caltrans did not include either the 2017 Addendum or Tree Report in  
23 support of its Return.

24 90. Petitioners have, concurrent with the filing of this petition, filed an objection to  
25 Caltrans’ Return on the grounds that Caltrans has: failed to comply with the plain language of the  
26 *Bair I* Writ by failing to circulate the FEIR for public review and comment, improperly used an  
27 addendum to fix an invalid EIR, failed to properly approve the 2017 Addendum which renders the  
28 FEIR incomplete and in violation of CEQA, and that Caltrans has failed to comply with both writs

1 because the 2017 Addendum is legally inadequate as an informational and analytical document  
2 under CEQA.

3 **V. PETITIONERS HAVE COMPLIED WITH ALL PROCEDURAL**  
4 **REQUIREMENTS**

5 **A. IRREPARABLE HARM AND ARBITRARY AND CAPRICIOUS ACTION**

6 91. At all times mentioned herein, Respondents have been able to deny the approvals  
7 and develop a legally-compliant FEIR for the Richardson Grove Project. Notwithstanding such  
8 ability, Respondents have failed and continues to fail to perform their duty to deny and reject the  
9 Richardson Grove Project.

10 92. If Respondent is not ordered to withdraw their January 30, 2023 approval of the  
11 Richardson Grove Project, and their Project Report, the People of California, as well as the land,  
12 watershed, wildlife, economic, and environmental values subject to and affected by the Richardson  
13 Grove Project, will suffer immediate, irreparable, and permanent damage.

14 93. Petitioners bring this action on the ground that each Petitioner and Petitioners'  
15 members, as residents, landowners, citizens, and taxpayers of the State of California, will suffer  
16 irreparable injuries if Respondents' actions herein are not set aside immediately. Such injuries  
17 include, but are not limited to, deterioration of protected State Park land and its environmental  
18 setting, damage to ancient redwood groves protected within the State Park, degradation of wildlife  
19 and fisheries habitat, including for the Marbled Murrelet, the Northern Spotted Owl, and  
20 anadromous salmonids, impacts associated with noise and light, impacts associated with toxic  
21 materials handling and disposal, and impacts to air quality.

22 **B. EXHAUSTION OF ADMINISTRATIVE REMEDIES AND STANDING**

23 94. Petitioners through their representatives and members have performed all  
24 conditions precedent to the filing of this Petition by raising each and every issue known to them  
25 before Respondent in compliance with Public Resources Code § 21177, including by participating  
26 in those early public meetings and hearings, to the extent provided by Caltrans, and by submitting  
27 written comments when afforded the opportunity by Respondent. To the extent any conditions  
28 precedent were not performed (which is not conceded), Petitioners do not believe they are required

1 to exhaust administrative remedies for these challenged approvals, as none were provided, and  
2 because to attempt to do so would be futile, because Petitioners do not have adequate  
3 administrative remedies, because Petitioners lacked a full and fair opportunity to exhaust certain  
4 claims, and/or because there is no certified final environmental impact report concerning which  
5 such administrative remedies could be taken.

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

16 **VI. CLAIMS FOR RELIEF**

17 **FIRST CAUSE OF ACTION**

18 **(Violation of CEQA – Invalid Use of An Addendum)**

19 96. Petitioners incorporate by reference all the allegations contained in the previous  
20 paragraphs as though fully set forth herein.

21 97. CEQA permits the use of addendum in limited circumstances, to address minor  
22 changes which do not require a new, subsequent, or supplemental environmental impact report.  
23 Cal. Code Regs., tit. 14, §§ 15164, 15162.

24 98. By law, an addendum depends on the existence of a valid certified EIR. Cal. Code  
25 Regs., tit. 14, § 15164.

26 99. A lead agency may not use an addendum to cure an EIR that was never validly  
27 certified, or is no longer certified. To allow use of an addendum in the absence of a validly  
28

1 approved and certified EIR is not allowed, and would undermine CEQA’s fundamental principles  
2 of public accountability.

3 100. No court has previously decided whether the use of an addendum by Respondents  
4 in this circumstance was an appropriate method to comply with CEQA or with previously issued  
5 writs of mandate.

6 101. Respondents rescinded their certification of the 2010 FEIR and 2017 FEIR, and the  
7 2017 Addendum is purportedly intended to replace the flawed analysis that led to invalidation of  
8 those EIRs.

9 102. Respondents have prejudicially abused their discretion and failed to proceed in a  
10 manner required by law and have not supported their decisions by substantial evidence by relying  
11 on the 2017 Addendum to comply with writs of mandate of this Court and CEQA, instead of  
12 preparing and circulating for public comment and review a revised or supplemental EIR.

13 WHEREFORE, Petitioners pray for relief as hereinafter set forth.

14 **SECOND CAUSE OF ACTION**

15 **(Violation of CEQA – Failure to Prepare and Adopt an EIR)**

16 103. Petitioners incorporate by reference all the allegations contained in the previous  
17 paragraphs as though fully set forth herein.

18 104. CEQA requires a lead agency to prepare an EIR if a discretionary project may  
19 cause a significant effect on the environment. Pub. Res. Code § 21100l; Cal. Code Regs., tit. 14, §  
20 15064. A significant effect on the environment, by CEQA definition, is a “substantial or  
21 potentially substantial adverse change on the environment.” Pub. Res. Code § 21068; Cal. Code  
22 Regs., tit. 14, §15382.

23 105. An EIR is required for the Proposed Project.

24 106. Respondents initially certified a 2010 FEIR in May 2010 for the Project.

25 107. On June 26, 2014 Respondents rescinded certification of the May 2010 FEIR. The  
26 2010 FEIR required changes to comply with *Lotus*.

27 108. Respondents drafted the 2017 Addendum to replace the sections of the 2010 FEIR  
28 that *Lotus* invalidated.

1 109. Respondents approved the 2017 Addendum and certified the 2017 FEIR in order to  
2 comply with *Lotus*, but both approvals were rescinded on August 23, 2019, pursuant to the *Bair I*  
3 Writ.

4 110. While Respondents approved the Supplemental Project Report on January 30,  
5 2023, the 2017 Addendum was not attached to, nor referenced in the Supplemental Project Report,  
6 nor was the 2017 Addendum separately approved. Therefore, the 2017 Addendum has not been  
7 approved by Respondent, in violation of CEQA. And because the 2017 Addendum wasn't  
8 approved, the 2017 EIR does not include the analysis required by *Lotus*, and therefore violates the  
9 *Bair I* writ and CEQA.

10 111. Respondents have prejudicially abused their discretion and failed to proceed in a  
11 manner required by law and have not supported their decisions by substantial evidence by, among  
12 other things, failing to properly revise the 2010/2017 FEIR to contain analysis of the Proposed  
13 Project's impacts on old-growth redwood trees, and failing to certify a valid EIR in 2023, as  
14 required by *Lotus*, and as required by CEQA.

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

16 **THIRD CAUSE OF ACTION**

17 **(Violation of CEQA - Failure to Evaluate Significant Environmental Impacts)**

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

20 113. Respondents are required to disclose and analyze significant adverse effects upon  
21 the environment, and to discuss and adopt feasible alternatives and mitigation measures to  
22 eliminate or substantially reduce all significant impacts upon the environment.

23 114. Respondents have prejudicially abused their discretion and failed to proceed in a  
24 manner required by law, and not supported their decisions by substantial evidence, by relying on  
25 the 2017 Addendum. The 2017 Addendum's disclosure, analysis and mitigation of the Proposed  
26 Project's adverse impacts to old-growth redwood trees and their root systems is flawed in the  
27 following ways:  
28

- 1 A. The 2017 Addendum fails to accurately describe the baseline conditions of the  
2 old-growth redwood trees;
- 3 B. The 2017 Addendum’s analysis of the Proposed Project’s impacts relies on  
4 undefined and unsupported thresholds of significance;
- 5 C. The 2017 Addendum’s significance determination is not supported by  
6 substantial evidence, because it is based on an arbitrary, and heretofore unused  
7 and tested, tree rating system that produced inconsistent and subjective  
8 findings;
- 9 D. 2017 Addendum it fails to adopt feasible mitigation measures to reduce the  
10 Proposed Project’s significant impacts. To the extent the 2017 Addendum does  
11 reference mitigation measures that will reduce impacts to old-growth redwoods,  
12 Respondents failed to incorporate such measures into the 2023 approval  
13 documents, rendering any mitigation measures unenforceable;

14 115. Respondents have also failed to adequately respond to public comments raising the  
15 substantive failings of the 2017 Addendum listed above. By failing to include complete copies of  
16 public comments in its Responses to Comment, instead paraphrasing what Respondents deemed to  
17 be the issues raised, Respondents ignored certain issues raised by the public, circumventing  
18 CEQA’s fundamental goal of furthering public review and informed decision making.

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

20 **FOURTH CAUSE OF ACTION**

21 **(Violation of CEQA - Failure to Adopt Mitigation Measures )**

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

24 117. Public Resources Code § 21002 creates a substantive policy by which agencies are  
25 forbidden to approve projects that have significant environmental impacts when feasible mitigation  
26 measures can substantially lessen or avoid such impacts.

27 118. A legally adequate EIR must describe mitigation measures that could feasibly  
28 substantially reduce or avoid each identified significant effect. “If a mitigation measure would



1 cause one or more significant effects in addition that would be caused by the project as proposed,  
2 the effects of the mitigation measure shall be discussed but in less detail than the significant effects  
3 of the project as proposed.” Cal. Code Regs., tit. 14, § 15126, subd. (c).

4 119. In approving the Richardson Grove Project in 2023, Respondents prejudicially  
5 abused their discretion and failed to proceed in a manner required by law because they relied on  
6 the 2017 Addendum without adequate and effective mitigation measures to address the Project’s  
7 significant environmental effects, including those effects that exist due to actions taken by  
8 Respondent subsequent to entry of the *Lotus* judgment and/or which are the result of events that  
9 have occurred since the Proposed Project’s approval in 2010.

10 120. Respondents failed to adopt effective and enforceable mitigation measures that will,  
11 inter alia: (a) protect and prevent harm to the ancient redwood trees and their root systems which  
12 will be subjected to Proposed Project activity; (b) prevent impacts from the work associated with  
13 and from installation of new rail barriers and crash cushion at the Richardson Grove  
14 undercrossing, prevent impacts from the newly added lane width design exception; and (c) prevent  
15 impacts from changes related to cut and fill and culverts.

16 121. Respondents also failed to proceed according to the law and prejudicially abused  
17 their discretion in that, to the extent it did adopt mitigation measures in its 2017 Addendum, those  
18 measures are not effective or enforceable, are not supported by substantial evidence in the record,  
19 and are not supported by legally required findings.

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

21 **FIFTH CAUSE OF ACTION**

22 **(Violation of CEQA - Failure to Adopt a Mitigation Monitoring Plan )**

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

25 123. CEQA requires that whenever an agency finds that potential adverse impacts exist  
26 which can be mitigated, it is required to adopt a mitigation monitoring and reporting program to  
27 ensure that the mitigation measures are followed. Pub. Res. Code §21081.6.  
28



1 Respondent failed to make findings for each of the significant environmental effects of the  
2 Richardson Grove Project related to changes to the 2010 project and from new information,  
3 without making written findings for each of these significant effects as required by California  
4 Code of Regulations, title 14, § 15091.

5 130. In so doing with its 2023 approval of the Richardson Grove Project based on the  
6 2017 Addendum, Respondents have not eliminated or substantially lessened these significant  
7 effects on the environment where feasible or determined that remaining significant effects on the  
8 environment are acceptable due to overriding concerns as required by California Code of  
9 Regulations, title 14, § 15092.

10 131. Respondents have failed to issue a statement of overriding considerations to  
11 accompany its 2017 Addendum and 2023 Project approval as required by California Code of  
12 Regulations, title 14, § 15093.

13 WHEREFORE, Petitioners pray for relief as hereinafter set forth.

14 **SEVENTH CAUSE OF ACTION**

15 **(Declaratory Relief)**

16 132. Petitioners incorporate by reference all the allegations contained in the previous  
17 paragraphs as though fully set forth herein.

18 133. An actual and present controversy has arisen and now exists between the Petitioners  
19 and Caltrans concerning Caltrans' approval of the Project. Petitioners contend that Caltrans did not  
20 approve the 2017 Addendum when approving the Project and re-certifying the FEIR. Petitioners  
21 also contend that, even if the 2017 were properly approved, Caltrans' reliance thereon is improper  
22 because Caltrans may not adopt an addendum in the absence of a valid and certified EIR, which  
23 did not exist at the time Caltrans purported to approve the 2017 Addendum. Cal. Code Regs., tit.  
24 14, § 15164; *Ukiah Citizens for Safety First v. City of Ukiah*, 248 Cal.App.4th 256 (2016).  
25 Petitioners further contend the 2017 Addendum fails to adequately disclose, analyze and mitigate  
26 the Proposed Project's impacts to old-growth redwood trees, and therefore fails as an  
27 environmental review document as required by CEQA.  
28



1 all applicable California regulations and statutes, including requirements of the California  
2 Environmental Quality Act;

3 3. For interlocutory and permanent injunctive relief retraining Respondents from  
4 approving and implementing any actions to carry out the Richardson Grove Project pending, and  
5 following, the hearing of this matter;

6 4. A judicial determination and declaration that Respondents failed to approve the  
7 2017 Addendum in its 2023 approvals, improperly relied on the 2017 Addendum without a valid  
8 and certified EIR, and violated CEQA by failing to adequately disclose, analyze and mitigation the  
9 Project's significant impacts on old-growth redwood trees;

10 5. For reasonable attorneys' fees as authorized by California Code of Civil Procedure  
11 §1021.5 and other provisions of law;

12 6. For costs of suit, including under California Code of Civil Procedure §§ 1032 and  
13 1033.5; and

14 67 For such other and further equitable or legal relief as the Court deems proper.

15  
16 DATED: March 8, 2023

GROSS KLEIN PC



17  
18  
19 By: \_\_\_\_\_  
STUART G. GROSS

*Attorneys for Petitioners*

GROSS KLEIN PC  
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SAN FRANCISCO, CA 94111

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**VERIFICATION**

I, Stuart G. Gross, am an attorney for Petitioners in this action. I make this verification on behalf of Petitioners because such parties and their representatives are absent from the county in which my office is located. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The facts therein are true and correct to the best of my knowledge and belief, and are based on documents within the records of Respondents underlying their approvals of the Richardson Grove Project herein challenged.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed on March 7, 2023.



---

STUART G. GROSS

# **EXHIBIT 1**



San Francisco | New York | Sebastopol  
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www.grosskleinlaw.com

sender's email: sgross@grosskleinlaw.com

March 7, 2023

*Via Email and Mail*

Director Tony Tavares  
California Department of Transportation  
P.O. Box 942873  
Sacramento, CA 94273-0001  
Caltrans.Director@dot.ca.gov

**Re: *Notice of Intent to File Suit Challenging Approval of Richardson Grove  
Operational Improvement Project***

Dear Director Tavares and California Department of Transportation:

This is to advise you that this office has been retained to and will file claims against the California Department of Transportation ("Caltrans") on behalf of Bess Bair, Trisha Lotus, Jeffrey Hedin, the Center for Biological Diversity, Environmental Protection Information Center, Californians for Alternatives to Toxics, and Friends of Del Norte ("Petitioners") challenging Caltrans' January 30, 2023 approval of the Richardson Grove Operational Improvement Project (the "Project") and certification of an Environmental Impact Report for the Project. This notice is sent to you pursuant to Public Resources Code 21167.5.

This action will commence on or before March 8, 2017 and will be based upon Caltrans' failure to comply with the California Environmental Quality Act (Public Resources Code § 21000, *et seq.*) in adopting the Environmental Impact Report and approving the Project.

Very Truly Yours,

/s/ Stuart G. Gross

STUART G. GROSS

cc: Matthew Brady, Caltrans District 1 Director (via email only [matt.brady@dot.ca.gov](mailto:matt.brady@dot.ca.gov))



**PROOF OF SERVICE**

I, Ross A. Middlemiss, 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 Pier 9, Suite 100, The Embarcadero, San Francisco, California 94111. I am a resident of or employed in the County of San Francisco, California.

On March 7, 2023, I served a true and correct copy of the following document(s):

**NOTICE OF INTENT TO FILE SUIT CHALLENGING APPROVAL OF RICHARDSON GROVE OPERATIONAL IMPROVEMENT PROJECT PURSUANT TO CEQA**

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 San Francisco, 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.

The envelope was addressed as follows:

Director Tony Tavares  
California Department of Transportation  
P.O. Box 942873  
Sacramento, CA 94273-0001

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 March 7, 2023.



\_\_\_\_\_  
ROSS A. MIDDLEMISS

# **EXHIBIT 2**

1 STUART G. GROSS (#251019)  
2 sgross@grosskleinlaw.com  
3 ROSS A. MIDDLEMISS (#323737)  
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8 San Francisco, CA 94111  
9 t (415) 671-4628  
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11 *Attorneys for Petitioners*

12 **THE SUPERIOR COURT OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF HUMBOLDT**

14 BESS BAIR; et al.,

15 **Petitioners,**

16 v.

17 CALIFORNIA DEPARTMENT OF  
18 TRANSPORTATION; TONY TAVARES, et al.,

19 **Respondents.**

Case No.

**REQUEST FOR RECORD OF  
PROCEEDINGS**

[Pub. Res. Code § 21167.6]

GROSS KLEIN PC  
THE EMBARCADERO  
PIER 9, SUITE 100  
SAN FRANCISCO, CA 94111

1 TO: RESPONDENTS, CALIFORNIA DEPARTMENT OF TRANSPORTATION AND  
2 TONY TAVARES, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF  
3 TRANSPORTATION:

4 Petitioners herein request, as set forth below, for submission to the court the complete  
5 administrative record for the project known as “Richardson Grove Operational Improvement  
6 Project.”

7 Please first promptly provide Petitioners with a written estimate of the cost of preparation  
8 of the record by Respondents. Upon receipt of the written estimate, Petitioners may elect to  
9 prepare the record of proceedings, or, in the alternative, may agree with Respondents to an  
10 alternative method of preparation of the record of proceedings pursuant to Public Resources Code  
11 Section 21167.6(b)(2), subject to certification of the accuracy of the record of proceedings by  
12 Respondents, or may request that the agency Respondents prepare the record of the proceedings  
13 and duplicate the files which comprise the administrative record as described above. Respondents  
14 will then need to certify the records.

15 This request includes all items identified in Public Resources Code section 21167.6(e),  
16 including all minutes, transcripts, memoranda, agenda, correspondence, proposals and requests for  
17 proposals, transcriptions of meetings held, evidence (whether accepted or rejected) and staff  
18 reports, studies, comments, logs, charts, relevant to the approval for the above-referenced  
19 Richardson Grove Operational Improvement Project.

20  
21 DATED: March 8, 2023

GROSS KLEIN PC



22  
23  
24 By: \_\_\_\_\_

STUART G. GROSS

*Attorneys for Petitioners*