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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

16 TRISHA LEE LOTUS; BRUCE
EDWARDS; JEFFREY HEDIN;
17 LOREEN ELIASON;
ENVIRONMENTAL PROTECTION
18 INFORMATION CENTER, a non-profit
corporation; CENTER FOR
19 BIOLOGICAL DIVERSITY, a non-profit
corporation; and CALIFORNIANS FOR
20 ALTERNATIVES TO TOXICS, a
non-profit corporation,

21 Petitioners and Plaintiffs,

22 v.

23 STATE OF CALIFORNIA
DEPARTMENT OF
24 TRANSPORTATION, CINDY McKIM,
in her official capacity as Director of the
25 State of California Department of
Transportation, and DOES 1 through 20,

26 Respondents and Defendants.
27

ENDORSED
FILED
Superior Court of California
County of San Francisco
JUN 17 2010
CLERK OF THE COURT
BY: RUSSALY DEL...
Clerk

Case No. **CPF - 10 - 510507**

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

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

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1 Petitioners and Plaintiffs TRISHA LEE LOTUS, BRUCE EDWARDS, JEFFREY
2 HEDIN, LOREEN ELIASON, ENVIRONMENTAL PROTECTION INFORMATION
3 CENTER, CENTER FOR BIOLOGICAL DIVERSITY and CALIFORNIANS FOR
4 ALTERNATIVES TO TOXICS (hereinafter collectively referred to as “Petitioners” or
5 “Plaintiffs”) allege as follows:

6 **I. INTRODUCTION**

7 1. This is a case of trucks versus trees. The State of California Department of
8 Transportation (“Caltrans”) wants to allow massive trucks to deliver products to stores in
9 Humboldt County. The only obstacles in the way of these enormous trucks are nature’s
10 giants: historic old-growth Redwoods along Highway 101 in Richardson Grove State Park.
11 Caltrans wants to widen the road through the Grove and destroy these old-growth Redwoods
12 so that over-sized trucks can tear through the Park. This Project must be stopped.

13 2. California’s Richardson Grove State Park provides the gateway to majestic old
14 growth Redwoods unique to California’s northern coast. U.S. Highway 101 threads through
15 Richardson Grove Park for approximately a mile. Rated as one of the 100 finest state parks
16 in America, thousands of visitors annually trek to this historic gem, seeking to enjoy the awe,
17 reverence and spirituality of Richardson Grove State Park. Visitors are offered a true glimpse
18 of history as they drive amidst old-growth Redwoods ranging between 1,000 and 3,000 years
19 old, some as large as 18 feet in diameter, immediately adjacent to or abutting the highway.
20 In some areas the Redwoods and other trees cause the narrowing of the two-lane highway to
21 only 22 feet in width, with shoulders of 2 feet or less.

22 3. Caltrans would threaten this monumental grove for only one reason: to allow
23 enormous STAA trucks, 8 ½ feet in width, that deliver materials for big-box and other stores.
24 These elongated trucks are presently prohibited from going through Richardson Grove Park,
25 although exemptions for cattle hauling trucks and household moving vans, comparable in
26 size to the commercial trucks, exist.

27 4. At a time in which Californians face one of the most difficult fiscal crises in
28 the State’s history and while bearing witness to the disappearance of the State’s natural

1 wonders at an alarming and accelerating rate, the Caltrans is attempting to plow through a
2 destructive and needless highway widening project that will both waste millions of taxpayer
3 dollars and likely destroy one of the last remaining irreplaceable stands of ancient old-growth
4 Redwoods, without studying the severe and permanent environmental consequences.

5 5. Despite its failure to meet a laundry list of requirements under the California
6 Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000, *et. seq.*), on May 18,
7 2010, Caltrans certified the Final Environmental Impact Report/Environmental Assessment
8 and Programmatic Section 4(f) Evaluation (“FEIR”) approving the so-called “Richardson
9 Grove Operational Improvement Project.” This Project proposes to:

- 10 a. Widen Highway 101 for the enormous trucks;
- 11 b. Remove Redwoods and other trees; and
- 12 c. Most importantly, cut the roots or compact soil and pavement over the roots
13 of 72 old-growth Redwoods– forty-seven of which are over 6 feet in diameter,
14 and seven over 12 feet in diameter.

15 6. The cover of Caltrans’s FEIR (displayed below) approving the road widening
16 illustrates the Project’s essential problem – the road at its current width already cuts so close
17 to the old-growth trees that any widening would cause a devastating impact.



1 7. Primarily to benefit the over-sized trucks required by big-box and other
2 retailers, Caltrans is moving forward with an ill-advised highway widening project, called
3 the Richardson Grove Operational Improvement Project (“Richardson Grove Project” or
4 “Project”). This ill-fated Project will widen and reroute the stretch of Highway 101 that
5 passes through Richardson Grove State Park. By Caltrans’ own estimates, the Richardson
6 Grove Project would result in the certain destruction of fifty-four trees. The Project would
7 impact, and severely threaten the survival of, at least eighty-seven additional trees many of
8 which are between 1,000 and 3,000 years old with trunks as large as 18 feet in diameter,
9 whose roots and root zones would almost certainly be impacted.

10 8. Caltrans, however, not only ignored these and numerous other likely
11 environmental consequences of its Richardson Grove Project, but also denied Petitioners and
12 the hundreds, if not thousands, of other concerned persons the meaningful opportunity to
13 review and comment upon the Richardson Grove Project and its stated justifications. Caltrans
14 also gave no meaningful consideration to the numerous alternatives that existed to its
15 destructive plans.

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

21 10. Making its actions in this regard all the more incomprehensible, Caltrans first
22 justified the Richardson Grove Project on safety concerns, for which no evidence existed in
23 support other than the results of a computer model, which purportedly showed the dangerous
24 conditions produced by the highway’s current route. However, the evidence, such as
25 accident reports, failed to reflect any such safety issues. Caltrans never provided the public
26 with information regarding how the computer model was constructed; thus, the public was
27 never given the opportunity to meaningfully challenge the computer model’s results based
28 on their profound divergence from observed reality or otherwise.

1 11. Ultimately, Caltrans admitted the Richardson Grove Project would not solve
2 these purported safety problems: “The project is not a safety project, but an operational
3 improvement project to lift the STAA restriction at this location.” Thus, the secret agenda
4 was made explicit: “The primary purpose of the Project is to lift the restriction on STAA
5 vehicles on the portion” of Highway 101 that runs through Richardson Grove State Park.

6 12. Petitioners hereby challenge Caltrans approval of the Richardson Grove Project
7 and Caltrans’ Final Environmental Impact Report/Environmental Assessment and
8 Programmatic Section 4(f) Evaluation as violations of CEQA and seek an order by this Court
9 enjoining Caltrans from taking any further action on the Richardson Grove Project until it
10 meets the requirements of CEQA. Petitioners and their members are committed to taking all
11 possible steps to preserve Richardson Grove State Park’s old-growth Redwoods for posterity.
12 Petitioners, and the Petitioner-organizations, members are informed and believe Caltrans’
13 Project will cause irreparable harm to those Redwoods. Petitioners allege they have standing
14 to sue and have exhausted any and all administrative remedies prior to filing this Petition.

15 13. Incredibly, even Caltrans acknowledges the adverse impact on these ancient
16 Redwoods: “the proposed project would impact old growth redwoods.” Yet Caltrans would
17 have this sacred Grove conform to the vehicles, not the vehicles conform to the Grove.

18 14. The Redwoods of Richardson Grove are a profound natural resource.
19 California law prohibits the sacrificing of these old-growth Redwoods for immense trucks
20 in such a haphazard and capricious way. The Grove should be preserved for the trees, not
21 destroyed for the trucks.

22 **II. PARTIES**

23 **A. PETITIONERS**

24 15. Petitioner and Plaintiff TRISHA LEE LOTUS is the great granddaughter of
25 Henry Devoy, who in 1922 transferred to the State of California the 120 acres which became
26 the initial acreage of the Richardson Grove State Park. Trisha was born in Santa Rosa and
27 every summer as a child visited the Redwoods in and around the Richardson Grove State
28

1 Park. She continues to visit these same Redwoods as an adult. Since 1998, Trisha has been
2 a resident of Humboldt County, California.

3 16. Petitioner and Plaintiff BRUCE EDWARDS lives in Redway, California, north
4 of Richardson Grove State Park. Bruce is a self-employed licensed contractor. Bruce
5 frequently works in Cook’s Valley, California, immediately south of Richardson Grove State
6 Park. As a result, his work requires him to drive a truck on a regular basis through
7 Richardson Grove State Park in both directions of Highway 101. Since 1994, Bruce has been
8 a resident of Humboldt County.

9 17. Petitioner and Plaintiff JEFFREY HEDIN resides in Piercy, California. Jeff
10 and is an elected commissioner with the Piercy Fire Protection District and a volunteer
11 responder to emergency calls in Humboldt and Mendocino Counties. While he is performing
12 his volunteer responder and work duties, Jeff drives on Highway 101 through Richardson
13 Grove State Park. Jeff is a retired licensed contractor and a disabled Vietnam War Veteran.

14 18. Petitioner and Plaintiff LOREEN ELIASON is the sole proprietor of
15 Riverwood Inn, the last original “roadhouse” on Highway 101 in Humboldt County. Built
16 in 1937, the Riverwood Inn provides lodging, dining, cocktails and entertainment to visitors
17 from around the world. The Riverwood Inn is located six miles north of Garberville,
18 California, at the beginning of the Avenue of the Giants. Loreen is a Humboldt County
19 native, who has spent her entire life in Northern California. Loreen believes that preservation
20 of Richardson Grove is absolutely critical to the economy of the region.

21 19. Petitioner and Plaintiff ENVIRONMENTAL PROTECTION INFORMATION
22 CENTER (“EPIC”) is a non-profit public interest organization formed to promote
23 environmental values and environmental protection. EPIC is located in the State of
24 California and has approximately 2,000 members, who live throughout California. EPIC is
25 beneficially interested in the aesthetic enjoyment and continued productivity of land, forest
26 and other water resources, in the preservation of wildlife and protected species including the
27 Marbled Murrelet, the Northern Spotted Owl and anadromous salmonids at self-perpetuating
28 population levels, in protection of ancient Redwoods, watersheds, and in protection of other

1 natural resources and our environment. Members of EPIC travel throughout California for
2 personal, aesthetic and recreational pursuits, including hiking, bird watching and enjoying
3 California's incredible beauty. Members of EPIC regularly visit and enjoy California State
4 Parks, including the remarkably beautiful and majestic the Richardson Grove State Park.
5 EPIC members' depend for their livelihood, health, culture and well-being on the viability
6 of vegetation and land throughout California. EPIC's members rely upon water from
7 throughout California. Members of EPIC also observe, study, recreate, gather or otherwise
8 enjoy the unique biologic, scientific and aesthetic benefits of Richardson Grove State Park,
9 which EPIC members experience as important and unique State and public resources.

10 20. Petitioner and Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("CBD")
11 is a non-profit New Mexico corporation with offices in Alaska, Arizona, California, Illinois,
12 Minnesota, Nevada, New Mexico, Oregon, Vermont, and Washington, D.C. CBD is actively
13 involved in wildlife and habitat protection issues throughout the United States, and has
14 members throughout our country, thousands of whom reside in California. CBD's members
15 and staff include individuals with educational, scientific, spiritual, recreational and other
16 interests in protection of ancient Redwood trees and the species which depend on those trees,
17 including the Marbled Murrelet and the Northern Spotted Owl. CBD's members and staff
18 enjoy the biological, recreational and aesthetic values of the California parks where species
19 such as the Marbled Murrelet and the Northern Spotted Owl live, including the Richardson
20 Grove State Park. CBD's members and staff have participated in efforts to protect and
21 preserve the habitat essential to the continued survival of the Marbled Murrelet and the
22 Northern Spotted Owl. CBD brings this action on its own behalf and on behalf of its
23 adversely affected members and staff.

24 21. Petitioner and Plaintiff CALIFORNIANS FOR ALTERNATIVES TO
25 TOXICS ("CATs") is a non-profit public interest corporation, which has advocated for thirty
26 years on behalf of its members to enable their control over toxic chemicals in the
27 environment. CATs seeks to advise and advocate public concerns regarding toxic chemicals
28 in the environment through organizing, educating, advocating and building community

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

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

18 23. Petitioners sue on behalf of themselves, their members and their supporters.
19 Petitioners 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
22 as Richardson Grove State Park, in the preservation of ancient Redwoods, fish and wildlife
23 species at self-perpetuating population levels, in protection of our environment, and in the
24 protection of water and air quality.

25 24. Petitioners for whom this action is commenced are so numerous that it is
26 impractical at this time to bring them all into this action individually as parties hereto. Proof
27 of a common or single state of facts and law will establish the rights of each member
28 wronged by the acts of Respondents, as more particularly alleged herein.

1 **B. RESPONDENTS**

2 25. Respondent and Defendant STATE OF CALIFORNIA DEPARTMENT OF
3 TRANSPORTATION (“Caltrans”) is a public and state agency within the State of California,
4 with its headquarters in Sacramento, California. Caltrans is the lead agency for the
5 Richardson Grove Project under CEQA. Caltrans obtained federal funding from the Federal
6 Highway Administration (“FHWA”) and is the lead federal agency for the Richardson Grove
7 Project based on the delegation of authority to Caltrans by FHWA, pursuant to 23 U.S.C.
8 327, to provide environmental review pursuant to the National Environmental Policy Act 42
9 U.S.C. 4331 (“NEPA”), consultation and any other action on behalf of the FHWA. Caltrans
10 is the agency which prepared and certified a Final Environmental Impact
11 Report/Environmental Assessment and Programmatic Section 4(f) Evaluation (“FEIR”) for
12 the Richardson Grove Project. Caltrans approved the Richardson Grove Project on May 18,
13 2010, and thereafter submitted to the State Clearinghouse for posting a CEQA Notice of
14 Determination and NEPA “Finding of No Significant Impact” (“FONSI”).

15 26. Respondent and Defendant CINDY McKIM is the Director of the State of
16 California Department of Transportation, and in this capacity resides in the County of
17 Sacramento. As Director, Ms. McKim is responsible for maintenance and operations of
18 roadways comprising the California state highway system. Ms. McKim is sued in her official
19 capacity.

20 27. Petitioners do not know the true names and capacities of Respondents and
21 Defendants fictitiously named herein as DOES 1 through 20, inclusive. Petitioners are
22 informed and believe, and thereon allege, that such fictitiously named Respondents and
23 Defendants are responsible in some manner for the acts or omissions complained of or
24 pending herein. Petitioner will amend this Petition to allege the fictitiously named
25 Respondents' and Defendants' true names and capacities when ascertained.

26 **III. JURISDICTION AND VENUE**

27 28. Jurisdiction of this Court is invoked pursuant to California Code of Civil
28 Procedure §§ 526 and 1094.5, as well as California Public Resources Code § 21168.

1 29. Venue is proper in this Court under Code of Civil Procedure §§ 395 and
2 401(1).

3 **IV. OUR RICHARDSON GROVE**
4 **AND CALTRANS' PLAN FOR ITS DESTRUCTION**

5 **A. DRIVING THROUGH HISTORY**

6 30. In 1922, Henry Devoy transferred 120 acres to the State of California, to
7 establish what became the Richardson Grove State Park. At that time, a narrow dirt road
8 wound through this iconic Redwood grove. It was not until 1927, after creation of the Park,
9 that the road was first surfaced. With improvement of roads and increased vehicle traffic,
10 thousands of visitors came to see these majestic Redwoods and the name “Richardson
11 Grove” became synonymous with the Redwoods. Over time, Richardson Grove has
12 expanded to more than 2,000 acres. Richardson Grove State Park is the gateway to the
13 magnificent Redwood forests of Northern California, with the towering girth of these oldest
14 living things on earth, their age estimated at 1,000 to 3,000 years, sheltering the roadway
15 from both sides.

16 31. 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
18 successfully navigating their place under and through the soil must be protected to ensure
19 water uptake, nutrient capacity, and structural stability. The California State Department of
20 Parks and Recreation (the “State Parks”) instructs all Richardson Grove visitors that “all park
21 features are protected by law and must not be disturbed.” Commenting on the Richardson
22 Grove Project, the State Parks declared that “[a]ny project that affects the historic patina and
23 the natural fabric of Richardson Grove State Park can have far reaching impacts to millions
24 of people as they enter the Redwood Region.” In fact, even Caltrans admits that “[i]t is not
25 possible to know where roots may be encountered.”

26 32. Highway 101 threads through the Richardson Grove State Park, providing a
27 transportation route for residents, visitors and tourists, commerce, and safety vehicles.

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

10 34. The Richardson Grove is home for many wildlife species, including blue
11 herons, osprey, acorn woodpeckers, belted kingfishers, the protected Marbled Murrelet and
12 the protected Northern Spotted Owl, and provides habitat for the Coho and Chinook salmon.
13 The area is also rich with cultural resources, including those of the Wailaki Native
14 Americans, the first known inhabitants of the region, who hunted, fished, gathered food and
15 collected native materials for basket weaving.

16 **B. DESTROYING OUR REDWOODS**

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

25 36. Richardson Grove State Park is directly threatened by such assaults. Caltrans
26 proposes to widen and realign Highway 101 through the Richardson Grove State Park, by
27 removing trees and cutting and impacting the root systems of ancient Redwood trees along
28 a one-mile section of the highway.

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

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

14 38. Because of the renown and iconic status of Richardson Grove, the Project's
15 influence extends well beyond its borders, exposing a state and national public treasure to
16 risk of harm. Because the Richardson Grove Project is intended to provide STAA trucks with
17 new access through the Grove solely for "goods movement," this Project has impacts
18 extending well beyond Humboldt County. The Richardson Grove Project as designed will
19 result in a devastating legacy.

20 **C. THREATENED BY TRUCKS**

21 39. The Richardson Grove Project will widen Highway 101 through Richardson
22 Grove State Park by increasing the width of paved road in both directions and widening
23 shoulders along the side of the highway, to change curve radii along a one mile section. The
24 Richardson Grove Project will include installation of a retaining wall outside of the Park on
25 the north to allow the road widening. To accomplish this road widening and realignment,
26 Caltrans will remove 54 trees and work within and impact the roots and root zones of 87
27 trees. Many of these trees are old growth Redwoods, as large as 18 feet in diameter, located
28 immediately adjacent to the Highway. The following photos vividly depict how close the
Redwoods are to Highway 101 in the Grove and how dangerous the road widening Project
will be to these trees:

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1 40. The Richardson Grove Project will also entail ground disturbance, slope
2 excavation, culvert work, potential temporary stream diversion, night work with night
3 lighting, disposal/barrow sites, equipment staging areas, permanent right-of-way acquisitions
4 from State Parks and private landowners, temporary construction easements, and vegetation
5 and tree removal.

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

13 42. Caltrans has specifically stated that **the Richardson Grove Project "is not a**
14 **safety project."** (Emphasis added.)

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

19 44. However, some STAA trucks are currently allowed through the Richardson
20 Grove. Caltrans cites no evidence in its Draft or Final Environmental Impact Report
21 indicating that these STAA trucks are unable to safely pass in opposite directions. Similarly,
22 Caltrans cites to no evidence in its Draft or Final Environmental Impact Report indicating
23 that in practice any STAA trucks are off-tracking when traveling through the Richardson
24 Grove.

25 45. In its DEIR (defined below), Caltrans cited information showing that over the
26 most recent five-year period only six accidents occurred involving trucks in the Richardson
27 Grove Project area, and two of those were within one minute of each other. Moreover, only
28

1 one of these accidents involved trucks traveling opposite directions, and there is no evidence
2 that these trucks were STAA trucks.

3 46. Indeed, there is no evidence that any of these six accidents involved STAA
4 trucks. According to a California Highway Patrol report in existence at the time of the DEIR
5 (defined below), there is no record of any collisions, citations, verbal warnings or even
6 complaints involving STAA trucks traveling through the Richardson Grove.

7 47. In response to the absence of such evidence, Caltrans created a computer model
8 to show how these non-existent accidents *might possibly* happen. According to Caltrans, this
9 computer model purportedly demonstrates “where the deficiencies [in the current design of
10 the highway] were that would cause off-tracking.”

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

14 49. Caltrans, however, did not provide any information clarifying this apparent
15 discrepancy. In fact, Caltrans never disclosed any information used to develop the computer
16 model—information which also formed the basis for the Richardson Grove Project design.
17 Caltrans never provided basic information, such as curve radii, length of curves, shoulder
18 width, existing geometrics, elevations or the engineering used to develop the Richardson
19 Grove Project's computer model.

20 50. In doing so, Caltrans deprived the public of any meaningful opportunity to
21 evaluate and critique not only the very nature and impacts of the Richardson Grove Project,
22 but also whether the Richardson Grove Project as designed would accomplish what Caltrans
23 sought to achieve.

24 51. Caltrans' failure to identify the data used in its Richardson Grove Project model
25 also deprived the public of an opportunity to investigate better alternatives to the Richardson
26 Grove Project.

27 52. Because this Richardson Grove Project intends to use State Parks land, Caltrans
28 was obligated to conduct a federal Department of Transportation Section 4(f) analysis.

1 Section 4(f) bars the use of parklands for transportation projects absent exceptional
2 circumstances which, among other things, require Caltrans to demonstrate there are no
3 prudent and feasible alternatives to the Richardson Grove Project and that all possible
4 planning measures to minimize harm to Richardson Grove State Park have been considered.
5 Caltrans did not meet these obligations.

6 53. Ultimately, in fact, Caltrans conceded the safety problems purportedly found
7 by its model “cannot be improved within the scope of the proposed project.” Caltrans
8 conceded that the Richardson Grove Project failed to bring the stretch of Highway 101
9 through Richardson Grove up to standards it purportedly identified as currently deficient,
10 including: minimum design speed and curve radii, shoulder width, minimum super-elevation
11 rate, stopping site distance, minimum distance to fixed objects, and corner sight distance.

12 54. Not surprisingly, by the time Caltrans released the FEIR, it conceded the
13 Richardson Grove Project was not about safety at all: “The project is not a safety project, but
14 an operational improvement project to lift the STAA restriction at this location.” “Improved
15 safety is a secondary objective to this project.” Thus, it had to disclose that the primary
16 purpose of the Project was to provide access through the Grove for STAA trucks to come
17 barreling through: “The primary purpose of the Project is to lift the restriction on STAA
18 vehicles on the portion” of Highway 101 that runs through Richardson Grove State Park.

19 **D. CALTRANS FAILED TO PROPERLY PROVIDE FOR PUBLIC REVIEW**

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

1 56. Caltrans abandoned development of the 2007 Study in favor of computer
2 modeling for STAA access through the Richardson Grove. The computer software
3 developed conceptual designs using truck turning templates specific to the STAA truck type.

4 57. On July 26, 2007, Caltrans issued a press release announcing that the
5 movement of goods through Richardson Grove would be “dramatically improved” under a
6 realignment plan developed by Caltrans. Caltrans apparently consulted regional government
7 representatives from Humboldt, Del Norte and Mendocino counties, and State and federal
8 legislators in the development of this realignment plan, but did not disclose or provide an
9 opportunity for public review and input on the proposed road and alignment.

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

19 **E. CALTRANS’ DEIR WAS DEFICIENT**

20 59. In early December 2008, Caltrans issued its Draft Environmental Impact
21 Report/Environmental Assessment and Programmatic Section 4(f) evaluation (“DEIR”). The
22 public comment period was scheduled to close on January 29, 2009, but because Caltrans had
23 failed to notice the preparation of the DEIR to the State Clearinghouse, public comments
24 were accepted until March 12, 2009. Caltrans conducted a public hearing on the DEIR on
25 December 15, 2008. Caltrans received more than **800** comments in opposition to the
26 Richardson Grove Project and its DEIR.

27 60. Caltrans' DEIR was dramatically deficient. In particular, the DEIR lacked data
28 and information necessary to evaluate the impact of the Richardson Grove Project to State

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

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

23 62. The DEIR failed to provide, for example, documentation and analysis about
24 how the Richardson Grove Project would increase or decrease the cumulative amount of
25 hardened surface on the critical structural root zones of the Redwoods, which for many trees
26 extend several feet on either side of the road. The DEIR failed to evaluate the effects of
27 constructing the Richardson Grove Project and altering the road's drainage pattern on water
28 transport and availability to the old-growth Redwoods. In fact, the DEIR merely listed 41

1 trees as having “potential tree root effects,” yet failed to provide an assessment of the number
2 of these trees that would have their structural root zone compromised through placement of
3 impervious surface, fill, and/or cutting of their roots.

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

18 64. The DEIR failed to properly disclose and analyze construction impacts on
19 tourism and park visitors, particularly in terms of increased noise and light associated with
20 nighttime work and the summer construction phases. The DEIR did not evaluate whether the
21 road widening will in a degraded park experience for future park visitors, given the removal
22 of understory vegetation, increased exposure to the highway in areas of tree removal, and
23 increased noise and light impacts as a result of these changes. In many respects, the DEIR
24 made sweeping, conclusory statements that the Richardson Grove Project's environmental
25 effects would not be significant, without providing any criteria or meaningful explanation
26 why, for example, the Richardson Grove Project would not diminish State Park values and
27 resources for those millions of travelers who pass through.

1 65. While proposing the Richardson Grove Project to advance the economic
2 interests of a small group of large non-local companies, the DEIR failed to identify and
3 evaluate the related impacts associated with this purpose, including any negative economic
4 impacts to tourism, the cumulative effects associated with other STAA access projects
5 Caltrans is undertaking in northern Humboldt and adjacent counties, and any growth-
6 inducing impacts.

7 66. The DEIR failed to consider and evaluate feasible alternatives to the
8 Richardson Grove Project that would achieve the purpose behind the Project, and yet not
9 expose public resources to environmental risk, including slowing the speed through the
10 Grove or providing alternative transportation measures. Caltrans did not document an
11 examination of all prudent and feasible alternatives and all possible planning measures to
12 minimize harm to Richardson Grove.

13 67. The DEIR failed to provide adequate mitigation measures for most of these and
14 other impacts. The limited planning and mitigation measures that were identified were
15 improperly deferred, ineffective, unenforceable and vague. For example, Caltrans failed to
16 provide technical reports or other documentation to demonstrate that the ancient Redwood
17 trees, biological resources, and other State Park resources would be fully and adequately
18 protected from impact. Caltrans also failed to conduct any field studies or surveys for the
19 federally protected Marbled Murrelet and the Northern Spotted Owl, despite recognition that
20 the Richardson Grove Project “may affect, and is likely to adversely affect” these species.
21 Caltrans admits construction night lighting “could affect Northern spotted owls.” Instead,
22 Caltrans deferred collection of data essential to analysis of these effects until *after*
23 implementation of the Richardson Grove Project.

24 **F. THE FEIR FAILS TO REMEDY THE DEIR’S DEFICIENCIES**

25 68. After the close of public comment, Caltrans developed additional data about
26 the Richardson Grove Project, including facts and information, changes, and evaluation that
27 had not been provided in the DEIR. On May 18, 2010, more than a year after the close of
28 public comment on the DEIR, Caltrans released the Richardson Grove Project's Final

1 Environmental Impact Report/Environmental Assessment and Programmatic Section 4(f)
2 Evaluation (“FEIR”). On the same date, Caltrans approved the Richardson Grove Project
3 with no further opportunity for public review or input.

4 69. The FEIR fails to remedy the DEIR's dramatic deficiencies. Rather than do as
5 hundreds of comments requested and provide the public with an opportunity to review a
6 revised environmental analysis that corrected the DEIR's extensive informational and
7 analytical errors and omissions, Caltrans simply certified the FEIR and immediately approved
8 the Richardson Grove Project. The public had no opportunity to review and comment on the
9 FEIR and the new information and analysis Caltrans included therein. In this way, Caltrans'
10 process failed CEQA's fundamental informational goals by depriving the public of its
11 opportunity to review the Richardson Grove Project and its significant environmental effects,
12 proposed alternatives and mitigation measures, and the information relied upon by Caltrans
13 to approve the Richardson Grove Project.

14 70. Notably, the FEIR does not remedy many of the informational and analytical
15 deficiencies found in the DEIR, including its failure to provide an adequate project
16 description and project plans, evaluation of significant environmental effects, sufficient
17 cumulative impact analyses and evaluation of growth inducing impacts, technical studies and
18 documentation to support conclusions that impacts will be less than significant, analysis of
19 feasible and prudent alternatives, and identification of enforceable and effective mitigation
20 measures.

21 71. Caltrans also significantly changed the Richardson Grove Project in the FEIR
22 from what was described in the DEIR, and was thus commented on by the public. After
23 close of public comment, and with no opportunity for review by the public or other agencies,
24 Caltrans added an additional 46 trees to the original 41 trees identified in the DEIR as having
25 potential root impacts. Most of these trees are large Redwoods; 73 are 30 inches or greater
26 in diameter (the standard Caltrans uses to define “old-growth”), and 40 are between 7 and
27 18 feet in diameter. According to the FEIR, “[c]onstruction activities in close proximity to
28 these trees could result in impacts to the root systems. There would be both cut and fill

1 activities occurring within the structural root zone. The maximum depth of excavation would
2 be approximately two feet and the maximum fill depth would be approximately three and a
3 half feet.” (FEIR pp. 40-41.) The FEIR identifies 68 of the 87 total trees that will have cut
4 and fill activities within their root zone, but does not provide any technical study or
5 documentation assessing how these trees would have their structural root zone compromised
6 through placement of impervious surface, fill, or cutting of their roots. Caltrans
7 acknowledges in the FEIR that “it may not be possible to avoid cutting roots greater than two
8 inches.” Caltrans also admits that it did not conduct any field studies of the Redwood trees’
9 structural root systems affected by this Richardson Grove Project, and does not know where
10 roots may be encountered. Thus, Caltrans by its own admission does not know what the
11 ultimate effects of the Richardson Grove Project will be on the Redwoods or the root
12 systems.

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

27 73. Caltrans also significantly changed the Richardson Grove Project after issuance
28 of the DEIR by relocating the retaining wall from one side of Highway 101 to the other, and

1 placing it downslope to provide for the widening and placement of the road in the northern
2 section of the Richardson Grove Project. Yet, the FEIR failed to provide any information or
3 analysis about the significant environmental effects related to this relocation, particularly in
4 terms of geology, soils, plants and trees, and other biological and natural resources. These
5 changes to the Richardson Grove Project were made without any opportunity for the public
6 or other agencies to review and comment upon them.

7 74. Caltrans also revised its plans for the Richardson Grove Project after issuance
8 of the DEIR to include deeper excavation in areas with lead-contaminated soils. Yet, the
9 FEIR failed to disclose or analyze whether removal and disposal of these soils—which
10 Caltrans proposes to stockpile in a roadside area that ultimately drains to the South Fork of
11 the Eel River—would comply with hazardous materials handling laws or pose any risk of
12 significant impacts to water quality, aquatic species or public health.

13 75. Other changes to the FEIR included: new but still fundamentally contradictory
14 information concerning whether the Richardson Grove Project would fulfill its purpose and
15 need and whether the Richardson Grove Project would induce significant growth or
16 development elsewhere in Humboldt County; new but still internally inconsistent and
17 contradictory information about the increase in impervious area resulting from the
18 Richardson Grove Project; a new mitigation measure—removal of an unused restroom in the
19 State Park—the impacts and effectiveness of which were not properly disclosed or analyzed;
20 changes in the proposed method of culvert replacement (from a cast-in-place resin liner to
21 full culvert replacement), without any discussion or analysis of the potential environmental
22 impacts of these changes; new but impermissibly deferred mitigation measures for impacts
23 to water quality; new information concerning the United States Fish and Wildlife Service's
24 “Biological Opinion” finding that the Richardson Grove Project would “adversely affect”
25 and result in “harassment” of federally protected species, without any revision to the FEIR's
26 conclusion that the Richardson Grove Project would have no significant effects on listed
27 wildlife; new, internally inconsistent and contradictory information about impacts associated
28 with night-time construction; and a new but still fundamentally deficient discussion of the

1 cumulative impacts of the Richardson Grove Project in relation to other past, present, and
2 reasonably foreseeable future projects affecting old-growth Redwood forests.

3 76. The FEIR included responses to comments, which were deficient in their
4 failure to identify and respond to all comments and concerns raised, as required by CEQA.
5 The approvals do not provide evidence that Caltrans adopted a mitigation monitoring plan
6 as required by CEQA.

7 77. Caltrans issued its Notice of Determination and Finding of No Significant
8 Impact on the same day and those notices were posted with the State Clearinghouse on May
9 19, 2010. This action is timely filed.

10 **V. PETITIONERS HAVE COMPLIED WITH**
11 **ALL PROCEDURAL REQUIREMENTS**

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

13 78. At all times mentioned herein, Caltrans has been able to deny the approvals and
14 reject certification of the FEIR for the Richardson Grove Project. Notwithstanding such
15 ability, Caltrans has failed and continues to fail to perform its duty to deny and reject the
16 Richardson Grove Project.

17 79. If Caltrans is not ordered to withdraw its approval of the Richardson Grove
18 Project and certification of the FEIR, the People of California, as well as the land, watershed,
19 wildlife, economic and environmental values subject to and affected by the Richardson
20 Grove Project, will suffer immediate, irreparable and permanent damage.

21 80. Petitioners bring this action on the ground that each Petitioner and their
22 members, as residents, landowners, citizens and taxpayers of the State of California, will
23 suffer irreparable injuries if Respondents' actions herein are not set aside immediately. Such
24 injuries include, but are not limited to, deterioration of protected State Park land and its
25 environmental setting, damage to ancient Redwood Groves protected within the State Park,
26 degradation of wildlife and fisheries habitat, including for the Marbled Murrelet, the
27 Northern Spotted Owl, and anadromous salmonids, impacts associated with noise and light,
28 impacts associated with toxic materials handling and disposal, and impacts to air quality.

1 **B. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 81. Petitioners through their representatives and members have performed all
3 conditions precedent to the filing of this Petition by raising each and every issue known to
4 them before Caltrans in compliance with Public Resources Code § 21177, including by
5 participating in the public meetings and hearings hosted by Caltrans and submitting written
6 comments. Petitioners, however, do not believe they are required to exhaust their
7 administrative remedies, because to attempt to do so would be futile, because Petitioners do
8 not have adequate administrative remedies, and/or because Petitioners lacked a full and fair
9 opportunity to exhaust certain claims.

10 82. Prior notice of the filing of this Petition, pursuant to Public Resources Code
11 §21167.5, was provided to the state agencies on June 15, 2010. (See attached letter, **Exhibit**
12 **1.**) On the same day as the filing of this action, Petitioners are serving by mail a copy of the
13 filed Verified Petition for Writ of Mandate and Injunctive Relief on the California Attorney
14 General.

15 **C. STANDING**

16 83. Petitioners are groups of citizens, taxpayers and residents of the State of
17 California. Petitioners are individuals and organizations who have participated in the review
18 of the Richardson Grove Project and are concerned about the effects of the proposed
19 Richardson Grove Project on the environment. Petitioners have standing to bring this action.

20 **D. ATTORNEYS FEES**

21 84. In pursuing this action, Petitioners will confer a substantial benefit on the
22 People of the State of California and therefore are entitled to recover from Respondents
23 reasonable attorneys' fees pursuant to §1021.5 of the Code of Civil Procedure.

24 **E. ELECTION TO PREPARE ADMINISTRATIVE RECORD**

25 85. Petitioners elect to prepare the administrative record in this proceeding. (Pub.
26 Resources Code, § 21167.6, subd. (b)(2).) Prior to filing this Petition, Petitioners attempted
27 to review the administrative record of approvals, but Caltrans did not give Petitioners an
28 opportunity to do so.

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Violation of CEQA)**

4 86. Petitioners incorporate by reference all the allegations contained in the previous
5 paragraphs as though fully set forth herein.

6 87. In giving the Richardson Grove Project approvals described herein, Caltrans
7 prejudicially abused its discretion in violation of CEQA pursuant to Public Resources Code
8 §21168 and Code of Civil Procedure §1094.5 because:

- 9 a. Caltrans failed to proceed in the manner required by law in preparing and
10 certifying the FEIR;
- 11 b. The FEIR is inadequate as an informational document;
- 12 c. Caltrans' determinations in the FEIR are not supported by substantial evidence
13 in the record;
- 14 d. Caltrans failed to proceed in the manner required by law by failing to adopt
15 findings pursuant to Public Resources Code §21081, and even if Caltrans had
16 adopted such findings, the findings could not be supported by substantial
17 evidence in the record;
- 18 e. Caltrans failed to proceed in a manner required by law in issuing approvals
19 which are not supported by substantial evidence in the record; and
- 20 f. As more fully described in Causes of Action Two through Nine, below.

21 88. CEQA requires that an environmental impact report provide an accurate and
22 consistent project description. (Cal. Code Regs., tit. 14, §15124.) A project description that
23 omits integral components of the project may result in an EIR that fails to disclose the actual
24 impacts of the project.

25 89. Caltrans prejudicially abused its discretion and failed to proceed according to
26 the law in its failure to adequately disclose key components of the Richardson Grove Project
27 including, but not limited to, the engineering and design criteria used to develop and define
28 the Richardson Grove Project, information about and location of tree root structures within

1 the Richardson Grove Project area, the acquisition criteria for State Park lands, and the
2 interrelationships among the Richardson Grove Project and other Caltrans STAA truck
3 access projects in Northern California.

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

5 **SECOND CAUSE OF ACTION**

6 **(Violation of CEQA)**

7 90. Petitioners incorporate by reference all the allegations contained in the previous
8 paragraphs as though fully set forth herein.

9 91. Caltrans is required to disclose and analyze significant adverse effects upon the
10 environment, and to discuss and adopt feasible alternatives and mitigation measures to
11 eliminate or substantially reduce all significant impacts upon the environment. (Pub. Res.
12 Code §21081; Cal. Code of Regs., tit 14., §15064 subs. (c), (h), and 15092.)

13 92. Caltrans has prejudicially abused its discretion and failed to proceed in a
14 manner required by law and not supported its decisions by substantial evidence. Caltrans has
15 not disclosed, analyzed or mitigated the Richardson Grove Project's significant adverse
16 effects upon the environment including, but not limited to, the effects:

- 17 a. on the ancient Redwood trees which stand in close proximity to the highway
18 throughout the Richardson Grove Project site,
- 19 b. on fish and wildlife species and other biological resources, including special
20 status threatened and endangered species such as the Marbled Murrelet and the
21 Northern Spotted Owl,
- 22 c. from tree removal,
- 23 d. from increased noise and light (particularly nighttime light) during and after
24 construction,
- 25 e. from toxicity to the environment, including from the movement and storage of
26 lead-contaminated soil and other toxic materials,
- 27 f. on greenhouse gas emissions,
- 28 g. on cultural resources, and

1 h. from the growth-inducing effects or opportunities associated with advancing
2 goods movement throughout Humboldt, Mendocino and Del Norte counties.

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

4 **THIRD CAUSE OF ACTION**

5 **(Violation of CEQA)**

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

8 94. Caltrans is required to consider and adopt feasible alternatives to substantially
9 lessen significant adverse effects on the environment. (Pub. Res. Code §21002, 21102.1(a),
10 21100(b)(4); Cal. Code Regs., tit. 14, §15126(a).) CEQA requires government agencies “to
11 consider alternatives to proposed actions affecting the environment.” (Pub. Res. Code,
12 §21001, subd. (g).) Moreover, “CEQA establishes a duty for public agencies to avoid or
13 minimize environmental damage where feasible.” (Cal. Code Regs., tit. 14, §15021, subd.
14 (a); Pub. Res. Code §§21001, 21002.1.) Furthermore, because the Richardson Grove Project
15 intends to use State Park land, Caltrans is required to conduct a federal Department of
16 Transportation Section 4(f) analysis to establish there are no prudent and feasible
17 alternatives.

18 95. In enacting CEQA, the Legislature intended that the statute would help
19 “[p]revent the elimination of fish or wildlife species due to man's activities, ensure that fish
20 and wildlife populations do not drop below self-sustaining levels, and preserve for future
21 generations representations of all plant and animal communities” (Pub. Res. Code,
22 §21001, subd. (c).)

23 96. Caltrans prejudicially abused its discretion and failed to proceed in a manner
24 required by law and did not support its Richardson Grove Project approvals with substantial
25 evidence in that the Richardson Grove Project does not incorporate all feasible and prudent
26 alternatives or mitigation measures, which would substantially reduce all significant adverse
27 impacts on the environment.

1 97. The Richardson Grove Project FEIR does not contain an adequate written
2 analysis of feasible alternatives and mitigation measures designed to reduce the significant
3 adverse environmental effects of the Richardson Grove Project.

4 98. Caltrans did not perform an adequate analysis, and thus violated California
5 Code of Regulations, title 14, §§ 15021 and 15126, and Public Resources Code §§ 21001 and
6 21002.1, through its failure to consider, and evaluate, among other things:

- 7 a. an alternative to altering and cutting roots and compacting the root systems of
- 8 ancient Redwood trees averaging more than seven feet in diameter,
- 9 b. changing the Richardson Grove Project design to avoid certain Redwood trees,
- 10 c. reducing the speed limit through the Grove in light of the fact that certain
- 11 STAA trucks are already permitted to travel through the Grove and there is no
- 12 evidence of safety impacts related to such transport, and
- 13 d. providing uniform STAA truck access without disturbing the existing road
- 14 through the Richardson Grove State Park.

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

16 **FOURTH CAUSE OF ACTION**

17 **(Violation of CEQA)**

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

20 100. “Cumulative impacts” are defined as “two or more individual effects which,
21 when considered together, are considerable or which compound or increase other
22 environmental impacts.” (Cal. Code Regs., tit. 14, §15355.) “The cumulative impacts can
23 result from individually minor but collectively significant projects taking place over a period
24 of time.” (Id., subd. (b).)

25 101. The Richardson Grove Project's FEIR is deficient in that it failed to adequately
26 identify and discuss cumulative impacts related to the Richardson Grove Project, including
27 but not limited to:

- 28 a. the impacts associated with logging of Redwoods and other trees in the area,

- 1 b. the cumulative effects on wildlife and protected species from removing trees
- 2 and opening the forest along Highway 101,
- 3 c. the traffic and its related noise and air quality impacts in the City of Eureka
- 4 and other areas of Humboldt County from STAA trucks,
- 5 d. proposed development projects and Humboldt Bay port development which
- 6 require STAA truck access, and
- 7 e. increased truck traffic associated with other Caltrans STAA access projects
- 8 designed to create a STAA loop from the Del Norte County in the north to the
- 9 Richardson Grove State Park in the south.

10 102. Caltrans has prejudicially abused its discretion and failed to proceed in a
 11 manner required by law in that the agency failed adequately to discuss, analyze or provide
 12 mitigation for cumulative impacts resulting from the actions proposed by the Richardson
 13 Grove Project.

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

15 **FIFTH CAUSE OF ACTION**
 16 **(Violation of CEQA)**

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

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

22 105. A legally adequate EIR must describe mitigation measures that could feasibly
 23 substantially reduce or avoid each identified significant effect. “If a mitigation measure
 24 would cause one or more significant effects in addition that would be caused by the project
 25 as proposed, the effects of the mitigation measure shall be discussed but in less detail than
 26 the significant effects of the project as proposed.” (Cal. Code Regs., tit. 14, §15126, subd.
 27 (c).)

1 106. In approving the Richardson Grove Project, Caltrans prejudicially abused its
2 discretion and failed to proceed in a manner required by law because it failed to adopt
3 adequate and effective mitigation measures, including but not limited to measures that will:

- 4 a. protect the ancient Redwood trees and their root systems,
- 5 b. not touch any Redwoods or their root systems within the Richardson Grove
6 State Park that are 30 inches or larger in diameter,
- 7 c. not allow any roots of Redwoods to be cut,
- 8 d. document the presence or absence of protected species and other biological
9 resources and fully analyze the potential significant environmental effects
10 associated with the Richardson Grove Project before the Richardson Grove
11 Project commences,
- 12 e. avoid impacts to cultural resources, and
- 13 f. avoid impacts associated with excavation, handling, and disposal of lead-laden
14 soils.

15 107. Caltrans also failed to proceed according to the law and prejudicially abused
16 its discretion in that, to the extent it did adopt mitigation measures, those measures are not
17 effective, are not supported by substantial evidence in the record, and are not supported by
18 legally required findings.

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

20 **SIXTH CAUSE OF ACTION**

21 **(Violation of CEQA)**

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

24 109. To ensure that mitigation measures are considered and adopted, Public
25 Resources Code § 21081 and California Code of Regulations, title 14, §§ 15091 through
26 15093, require agencies to make specific findings before they can approve projects with
27 significant environmental effects. Agencies cannot approve projects with significant
28 environmental effects unless they find either that such effects can be avoided or substantially

1 lessened by the adoption of mitigation measures or project alternatives; that other agencies
2 with jurisdiction over the projects have adopted such alternatives or mitigation measures; or
3 that mitigation measures or alternatives are infeasible due to specific economic, social or
4 other considerations.

5 110. Caltrans is required to determine that the Richardson Grove Project has a
6 significant impact upon the environment if the project has the potential to substantially
7 reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop
8 below self-sustaining levels; achieve short-term environmental goals to the disadvantage of
9 long-term environmental goals; or cause environmental effects which are individually limited
10 but cumulatively considerable. (Cal. Code Regs., tit. 14, §15065 subd. (a), (b), and (c).)

11 111. Appendix G to the CEQA Guidelines also describes numerous kinds of impacts
12 for which the Resources Agency requires “mandatory findings of significance.” These
13 include “the potential to degrade the quality of the environment, substantially reduce the
14 habitat of a fish or wildlife species, ... threaten to eliminate a plant or animal community, ...
15 [or] have impacts that are individually limited, but cumulatively considerable, have
16 environmental effects which will cause substantial adverse effects on human beings, either
17 directly or indirectly.”

18 112. Numerous comments submitted to Caltrans throughout the environmental
19 review process identified the Richardson Grove Project's significant impacts. Yet, Caltrans
20 either ignored these comments or glossed over their substance with conclusory responses.
21 Due to Caltrans' disregard, the Richardson Grove Project's identified potential impacts related
22 to ancient Redwoods, fish and wildlife, water quality, air quality, cultural resources, toxic
23 materials and plant populations, as well as its cumulative impacts, must therefore still be
24 considered significant. Caltrans has not successfully mitigated the impacts of the Richardson
25 Grove Project in the manner or to the extent required by law.

26 113. Caltrans prejudicially abused its discretion and failed to proceed in a manner
27 required by law under California Code of Regulations, title 14, §§ 15091, 15092, and 15093,
28 in that:

- 1 a. Caltrans has failed to identify the significant environmental effects of the
2 Richardson Grove Project and has approved the Richardson Grove Project
3 without making written findings for each of these significant effects as
4 required by California Code of Regulations, title 14, § 15091;
- 5 b. Caltrans has approved the Richardson Grove Project and has not eliminated or
6 substantially lessened all significant effects on the environment where feasible
7 or determined that remaining significant effects on the environment are
8 acceptable due to overriding concerns as required by California Code of
9 Regulations, title 14, § 15092; and
- 10 c. Caltrans has failed to issue a statement of overriding considerations with its
11 approval as required by California Code of Regulations, title 14, § 15093.

12 114. Because of the numerous significant or presumptively significant impacts
13 enumerated above, Caltrans was required to devise specific, concrete mitigation measures
14 or alternatives which would substantially reduce or avoid those impacts. (Pub. Res. Code,
15 §§21002, 21081; Cal. Code Regs., tit. 14, §15091.) In addition, if such project modification
16 could not eliminate all significant impacts, Caltrans was required to issue a statement of
17 overriding considerations. (Cal. Code Regs., tit. 14, §15093.) Caltrans has breached these
18 duties and prejudicially abused its discretion and failed to proceed according to the law in
19 its failure to devise and require mitigation measures, alternatives and adopt findings.

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

21 **SEVENTH CAUSE OF ACTION**
22 **(Violation of CEQA)**

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

25 116. “The evaluation and response to public comments is an essential part of the
26 CEQA process. Failure to comply with the requirement can lead to disapproval of a project.”
27 (“Discussion” following Cal. Code Regs., tit. 14, §15088.) By forcing the approving agency
28 to acknowledge, summarize and respond to the public's concerns, the requirement “enable[s]

1 the public to determine the environmental and economic values of their elected and appointed
2 officials thus allowing for appropriate action come election day should a majority of the
3 voters disagree.” (Cal. Code Regs., tit. 14, §15003, subd. (e).)

4 117. Caltrans must include and respond to comments in the FEIR. (Cal. Code Regs.,
5 tit. 14, §§ 15132, 15088.) To pass legal muster, an agency's responses to comments must
6 specifically explain the reasons for rejecting suggestions received in comments and for
7 proceeding with a project despite its environmental impacts. Such explanations must be
8 supported with specific references to empirical information, scientific authority and/or
9 explanatory information. The responses, moreover, must manifest a good faith, reasoned
10 analysis; conclusory statements unsupported by factual information will not suffice. (Cal.
11 Code Regs., tit. 14, §15088.)

12 118. Caltrans did not proceed according to law and has not supported its decisions
13 by substantial evidence. Caltrans thus prejudicially abused its discretion in that the FEIR for
14 the Richardson Grove Project is inadequate in ways which include, but are not limited to, its
15 failure to provide, evaluate and respond in non-conclusory fashion to the issues and
16 comments raised during the review process. This failure includes, but is not limited to, the
17 failure to include and adequately respond to public comments regarding:

- 18 a. the Project need,
- 19 b. the Project description,
- 20 c. Project impacts related to ancient Redwoods, traffic, noise, light, water quality,
21 air quality, cultural resources, toxic materials, protected species, and growth
22 inducement,
- 23 d. the lack of adequate study and documentation to support the FEIR,
- 24 e. the inadequate Section 4(f) analysis,
- 25 f. the lack of a valid and adequate public review and comment process,
- 26 g. the need for reissuance and recirculation of the DEIR because of its
27 inconsistencies and lack of disclosure and analysis, and
- 28 h. the lack of response to scientific data and evidence submitted.

1 119. Caltrans has prejudicially abused its discretion and failed to proceed in a
2 manner required by law in that the agency did not issue evaluations and responses to
3 environmental concerns which provided, *inter alia*, a response to significant environmental
4 concerns raised. These concerns included, but are not limited to, the impacts of the
5 Richardson Grove Project upon special populations and special status species, including
6 ancient Redwood trees.

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

8 **EIGHTH CAUSE OF ACTION**

9 **(Violation of CEQA)**

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

12 121. CEQA requires that whenever an agency finds that potential adverse impacts
13 exist which can be mitigated, it is required to adopt a mitigation monitoring program to
14 ensure that the mitigation measures are followed. (Pub. Res. Code §21081.6.)

15 122. Caltrans has prejudicially abused its discretion in that it has failed to adopt a
16 legally adequate reporting or monitoring program for mitigation measures it identified for
17 the Richardson Grove Project.

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

19 **NINTH CAUSE OF ACTION**

20 **(Violation of CEQA)**

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

23 124. If subsequent to the commencement of public review and agency consultation
24 but prior to the final EIR certification, a lead agency adds “significant new information” to
25 an EIR, it must issue new notice and must recirculate the EIR, or portions of it, for additional
26 review and comment. (Pub. Res. Code § 21092.1; Cal. Code Regs., tit. 14, § 15088.5.)

27 Recirculation is required in those instances in which substantial new impacts will result from
28 the project, new mitigation measures with impacts are proposed, a substantial increase in the

1 severity of an environmental impact may occur without adequate mitigation, a feasible
2 alternative or mitigation measure that clearly would lessen the environmental impacts is
3 rejected, or new information is added which shows that the DEIR was so deficient as to
4 render public comment effectively meaningless.

5 125. The FEIR included substantial new impacts, and increased the severity of
6 existing impacts from the Richardson Grove Project, in a manner that significantly altered
7 the scope of the Project's impacts without providing effective mitigation. These include, but
8 are not limited to:

- 9 a. more than doubling the number of trees, averaging 7 feet in diameter, whose
10 structural root zone will be impacted by the Richardson Grove Project,
- 11 b. changing the location and nature of the retaining wall to now serve as roadbed,
12 without providing any analysis or mitigation for that change,
- 13 c. proposing as a new mitigation measure the removal of a State Park restroom
14 without any analysis of the impacts of implementing this measure, and
- 15 d. proposing new methods of culvert replacement without any analysis of the
16 impacts of the change.

17 126. Caltrans prejudicially abused its discretion and failed to proceed according to
18 law by changing the Richardson Grove Project without recirculating the DEIR.

19 127. Caltrans also prejudicially abused its discretion and failed to proceed according
20 to the law by failing to adopt a further reduction in speed through Richardson Grove as a
21 feasible alternative to the Richardson Grove Project, in light of the fact that certain STAA
22 trucks currently pass through the Grove without any evidence of off-tracking or other safety
23 concerns.

24 128. Caltrans' DEIR was fundamentally and dramatically deficient as noted by
25 numerous comments, including those by the California Department of Parks and Recreation,
26 California State Parks Foundation, Natural Resources Defense Council, EPIC, CATs, and
27 many others. These comments repeatedly stated that in the absence of legally required
28 information and analysis concerning the Richardson Grove Project, the public could not

1 evaluate the Project's potential for impacts, including impacts to the State Park, the ancient
2 Redwoods within Richardson Grove, and other resources. Caltrans' DEIR was so deficient
3 it rendered public comment effectively meaningless.

4 129. Caltrans prejudicially abused its discretion and failed to proceed according to
5 law by inserting extensive new information in the FEIR in an attempt to correct the extensive
6 deficiencies of the DEIR without recirculating the document.

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

8 **TENTH CAUSE OF ACTION**

9 **(Injunctive Relief)**

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

12 131. The Richardson Grove Project as approved by Caltrans will cause irreparable
13 injury and harm to State Park resources, to Petitioners and to the public at large. Its
14 significant environmental impacts have not been adequately evaluated, much less mitigated
15 to a less than significant level, and feasible and reasonable alternatives have not been
16 properly evaluated by Caltrans.

17 132. The errors and prejudicial abuse of discretion by Caltrans constitute the basis
18 for injunctive relief to prevent this irreparable injury pursuant to Code of Civil Procedure
19 §526.

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioners pray for judgment and further relief as follows:

23 1. For a Writ of Mandate ordering Respondent State of California Department of
24 Transportation to vacate and set aside its May 18, 2010 approvals for the Richardson Grove
25 Project, including its certification of the Final Environmental Impact Report/Environmental
26 Assessment and Section 4(f) Evaluation, and all related findings and approvals, and to follow
27 California regulations and statutes, including the California Environmental Quality Act, in
28 any review of and decision for the Richardson Grove Project;

- 1 2. For interlocutory and permanent injunctive relief enjoining Respondents, and
2 each of them, from engaging in any activity pursuant to the Richardson Grove Project until
3 the Project complies with all applicable California regulations and statutes, including
4 requirements of the California Environmental Quality Act;
- 5 3. For declaratory relief declaring unlawful the Richardson Grove Project, and
6 interlocutory and permanent injunctive relief retraining Respondents, and each of them, from
7 approving and implementing any actions to carry out the Richardson Grove Project pending,
8 and following, the hearing of this matter;
- 9 3. For reasonable attorneys' fees under California Code of Civil Procedure
10 §1021.5;
- 11 4. For costs of suit under California Code of Civil Procedure §§ 1032 and 1033.5;
12 and
- 13 5. For such other and further equitable or legal relief as the Court deems proper.

14
15 DATED: June 17, 2010

COTCHETT, PITRE & McCARTHY

16
17 By 

PHILIP L. GREGORY
Attorneys for Petitioners and Plaintiffs

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VERIFICATION

I, Sharon E. Duggan, am the attorney for Petitioners/Plaintiffs in this action. I make this verification on behalf of the Petitioners/Plaintiffs 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 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 Respondent Caltrans underlying its 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 in Oakland, California on June 17, 2010.



SHARON E. DUGGAN

EXHIBIT 1

LAW OFFICES OF SHARON E. DUGGAN

370 Grand Avenue Suite 5
Oakland, CA 94610
(510) 271-0825

Facsimile: (510) 271-0829

June 15, 2010

Director Cindy McKim
State of California Department of Transportation
P.O. Box 942873
Sacramento, CA 94273-0001

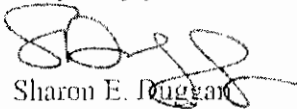
RE: Richardson Grove Operational Improvement Project and its Final
Environmental Impact Report/Environmental Assessment and
Programmatic Section 4(f) Evaluation

Dear Director McKim and the State of California Department of Transportation:

This is to advise you that this office has been retained to and will file claims against the State of California Department of Transportation Game on behalf of the Environmental Protection Information Center and others challenging the Department's approval of the Richardson Grove Operational Improvement Project and its "Final Environmental Impact Report/Environmental Assessment and Programmatic Section 4(f) Evaluation. These claims shall be filed as soon as June 17, 2010. This notice is sent to you pursuant to Public Resources Code 21167.5.

This action shall be premised upon, among other things, violations of the California Environmental Quality Act.

Very truly yours,


Sharon E. Duggan

sed/fw