

JOSEPH W. COTCHETT
(36324; jcotchett@cpmlegal.com)
PHILIP L. GREGORY
(95217; pgregory@cpmlegal.com)
PAUL N. MCCLOSKEY
(24541; pmccloskey@cpmlegal.com)
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577

STUART G. GROSS
(251019; sgross@gross-law.com)
GROSS LAW
The Embarcadero
Pier 9, Suite 100
San Francisco, CA 94111
Telephone: (415) 671-4628
Facsimile: (415) 480-6688

SHARON E. DUGGAN
(105108; foxsduggan@aol.com)
ATTORNEY AT LAW
336 Adeline Street
Oakland, CA 94607
Telephone: (510) 271-0825
Facsimile: By Request

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**BESS BAIR; TRISHA LEE LOTUS;
BRUCE EDWARDS; JEFFREY HEDIN;
DAVID SPREEN; ENVIRONMENTAL
PROTECTION INFORMATION
CENTER, a non-profit corporation;
CENTER FOR BIOLOGICAL
DIVERSITY, a non-profit corporation, and
CALIFORNIANS FOR ALTERNATIVES
TO TOXICS, a non-profit corporation,**

Plaintiffs,

v.

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

Defendants.

Case No.

COMPLAINT

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

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. INTRODUCTION..... | 1 |
| II. PARTIES | 8 |
| A. Plaintiffs | 8 |
| B. Defendants | 12 |
| III. JURISDICTION | 13 |
| IV. VENUE..... | 13 |
| V. INTRADISTRICT ASSIGNMENT | 14 |
| VI. OUR RICHARDSON GROVE AND CALTRANS' PLAN FOR ITS DESTRUCTION | 14 |
| A. Driving Through History | 14 |
| B. Destroying Our Redwoods | 16 |
| C. The Grove is Threatened by Trucks | 18 |
| D. Caltrans Failed to Properly Provide for Public Review..... | 23 |
| E. Caltrans' EA Was Deficient..... | 24 |
| F. The EA/FONSI Failed to Remedy the Draft EA's Deficiencies..... | 28 |
| G. Caltrans Failed to Correct Its Errors Identified by the <i>Bair</i> Court or Otherwise Address the Shortcomings in the EA/FONSI..... | 32 |
| VII. PLAINTIFFS HAVE COMPLIED WITH ALL PROCEDURAL REQUIREMENTS..... | 36 |
| A. Irreparable Harm and Arbitrary and Capricious Action | 36 |
| B. Exhaustion of Administrative Remedies..... | 37 |
| C. Standing | 37 |
| D. Attorneys' Fees..... | 38 |

| | | |
|----|---|-----------|
| 1 | VIII. CLAIMS FOR RELIEF | 38 |
| 2 | FIRST CLAIM FOR RELIEF | 38 |
| 3 | (Violation of NEPA)..... | 38 |
| 4 | SECOND CLAIM FOR RELIEF | 39 |
| 5 | (Violation of NEPA - Purpose and Need) | 39 |
| 6 | THIRD CLAIM FOR RELIEF | 40 |
| 7 | (Violation of NEPA - Failure to Evaluate Impacts)..... | 40 |
| 8 | FOURTH CLAIM FOR RELIEF | 42 |
| 9 | (Violation of NEPA - Failure to Evaluate Alternatives)..... | 42 |
| 10 | FIFTH CLAIM FOR RELIEF | 43 |
| 11 | (Violation of NEPA - Response to Comments)..... | 43 |
| 12 | SIXTH CLAIM FOR RELIEF | 44 |
| 13 | (Violation of NEPA - Failure to Circulate EA Prior to Adoption of FONSI) | 44 |
| 14 | SEVENTH CLAIM FOR RELIEF | 45 |
| 15 | (Violation of NEPA - Failure to Prepare an EIS) | 45 |
| 16 | EIGHTH CLAIM FOR RELIEF | 46 |
| 17 | (Violation of Section 4(f)) | 46 |
| 18 | NINTH CLAIM FOR RELIEF | 48 |
| 19 | (Wild and Scenic Rivers Act)..... | 48 |
| 20 | TENTH CLAIM FOR RELIEF | 49 |
| 21 | (Magnuson-Stevens Act)..... | 49 |
| 22 | ELEVENTH CLAIM FOR RELIEF | 49 |
| 23 | (Violations of APA)..... | 49 |
| 24 | TWELFTH CLAIM FOR RELIEF | 50 |
| 25 | (Injunctive Relief) | 50 |
| 26 | PRAYER FOR RELIEF..... | 51 |

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

I. INTRODUCTION

1. In this ongoing battle of trucks versus trees, on September 18, 2013, the California Department of Transportation (“Caltrans”) issued a document it titled “Supplement to the Final Environmental Assessment” (“Supplement to the Final EA”) for a proposed highway widening project (the “Proposed Project”), through the ancient old growth redwoods of Richardson Grove State Park (“Richardson Grove” or the “Park”), which Caltrans has misnamed the “Richardson Grove Operational Improvement Project.” On January 24, 2014, Caltrans approved its Supplement to the Final EA, finding that its original Environmental Assessment (“EA”) Finding of No Significant Impact (“FONSI,” collectively with “EA, EA/FONSI”), approved on May 18, 2010, remained valid. Caltrans published notice of its approval of the Proposed Project based thereon in the Federal Register on February 26, 2014.

2. Plaintiffs in this case challenged these now “reevaluated” May 18, 2010 decisions by Caltrans in *Bair v. State of California Department of Transportation*, U.S. District Court for the Northern District of California, Case No. C-10-04360 WHA. The *Bair* Court first issued a preliminary injunction stopping the project, and on April 4, 2012, issued an Order granting summary judgment to the Plaintiffs (the “*Bair* Order”) due to serious questions about whether Caltrans “truly took ‘a ‘hard look’ at the effects of the project” and made an informed decision,” as required by NEPA. *Bair* Order at 8, 9. The Court ordered that Caltrans prepare:

“a revised EA that corrects the data inaccuracies identified above and assesses the impacts of the project through the lens of a correct analysis . . . Alternatively, Caltrans may proceed directly to conducting an EIS.”

Id., at 10.

3. As the foregoing makes clear, the *Bair* Court’s concern was not limited to the data inaccuracies in-and-of-themselves: rather, it was concerned with the effects that such erroneous

1 data had on the analyses based thereon. Thus, in remanding the matter to Caltrans “to prepare a
2 revised EA and record in accordance with the instructions above,” *id.* at 12, the *Bair* Court
3 intended Caltrans not simply correct its data errors but also correct the analyses based on that
4 data. The *Bair* Court further instructed: “In its revised EA (or EIS), Caltrans should give serious
5 consideration to the other significant arguments made by plaintiffs in their motion.” *Id.* at 10.

6 4. Caltrans ignored the instructions of the *Bair* Court, and instead issued a
7 *supplement* to the EA/FONSI in which it sought to correct some of the data errors but did not
8 address the analyses that were based on the erroneous data. Indeed, those analyses and the
9 conclusions based thereon remain unchanged and were explicitly revalidated by Caltrans.
10 Furthermore, there is nothing in the Supplement to the Final EA that indicates Caltrans
11 considered any of the other issues raised by Plaintiffs in *Bair*. Indeed, the Supplement to the
12 Final EA states that—aside from data corrections, revisions to its analysis concerning the
13 Proposed Project's impacts on marbled murrelet, and revision concerning a guardrail contained
14 therein—“all other information and chapters in the original Final EA remain accurate.”
15 Furthermore, Caltrans expressly refused to consider or respond to public comments and concerns
16 about the very same significant arguments raised by the Plaintiffs in *Bair*.

17 5. The shortcomings in Caltrans' response to the *Bair* Order are symptomatic of the
18 haphazard and slipshod manner in which Caltrans has observed (or failed to observe) its
19 obligations to analyze the environmental impacts of the Proposed Project. Caltrans insists on
20 improperly risking destruction of California's most important public resources, ancient
21 redwoods, in order to make it easier for large commercial trucks to pass through state parks, and
22 refuses to meet its legal obligations to adequately analyze the environmental impacts thereof.

23 6. Visitors to Richardson Grove State Park stroll among old growth redwoods that
24 have stood for as many as 3,000 years, measure as much as 18 feet in diameter, and reach heights
25 of 300 feet. Willing to recklessly put these old growth redwoods at risk of destruction, Caltrans
26 has proposed a project to widen the one mile stretch of U.S. Highway 101 that passes through
27 Richardson Grove Park.

1 7. By Caltrans' own admission, the Proposed Project threatens to destroy ancient,
2 irreplaceable redwoods in Richardson Grove by cutting the roots or compacting hundreds of
3 cubic yards of soil and paving over the roots. The EA/FONSI states: "This work will involve the
4 structural root zones of approximately 66 old growth redwood trees ranging from 3 to 18 feet in
5 diameter..." (EA p. 21). The EA/FONSI continues: "Additional paving and the placement of
6 shoulder backing could cause soil compaction and disturbance within the structural root zones of
7 old growth redwoods. Studies have shown that compaction of the soil within the root zone can
8 have an adverse effect on these trees (Arnold 1973). *Adverse effects to old growth trees may be*
9 *a significant impact to this unique natural community.*" (*Id.*, p. 22). (Emphasis added).
10 In the Supplement to the Final EA, Caltrans has raised the number of old growth redwoods
11 whose root zones would "intersect [with] the proposed ground disturbance areas of the project"
12 to 116. Though paradoxically, Caltrans felt no need to revisit the analyses, and its conclusion
13 based thereon, that the Proposed Project "would not significantly impact the root health of the
14 oldgrowth trees adjacent to the construction" contained in the EA/FONSI.

15 8. Caltrans justifies this risk for a single purpose: by widening the road, it will allow
16 lifting a general restriction on the passage through Richardson Grove of large, commercial
17 Surface Transportation Assistance Act of 1982 (or "STAA") trucks. STAA trucks carry trailers
18 that are 8 to 13 feet longer than what are known as "California Legal" trailers. Presently, these
19 elongated trucks are generally prohibited from going through Richardson Grove Park: However,
20 as Caltrans acknowledges STAA trucks already regularly pass through the Grove, by virtue of
21 granted exemptions, and do so without incident, making the Proposed Project unnecessary.

22 9. Richardson Grove State Park provides the gateway to majestic old growth
23 redwoods unique to California's northern coast. U.S. Highway 101 threads through Richardson
24 Grove Park for approximately a mile. Rated as one of the 100 finest state parks in America,
25 thousands of visitors annually trek to this historic gem, seeking to enjoy the awe, reverence, and
26 spirituality of the Richardson Grove. Visitors are offered a true glimpse of history as they drive
27 amidst old-growth redwoods ranging between 1,000 and 3,000 years old, some as large as 18 feet
28 in diameter, immediately adjacent to or abutting Highway 101. In some areas the redwoods and

1 other trees cause the narrowing of the two-lane highway to only 22 feet in width, with shoulders
2 of 2 feet or less.

3 10. Despite the probable destruction that Caltrans admits would likely be caused to
4 the ancient redwoods in the Grove and other impacts on the human environment the Project
5 would create, Caltrans has, through its adoption and revalidation of a FONSI, attempted to
6 railroad the Proposed Project through without adequately studying its potentially severe and
7 permanent human environmental consequences and without explaining or justifying the
8 Proposed Project's purpose or need.

9 11. Indeed, Caltrans failed to meet a laundry list of requirements under the National
10 Environmental Policy Act ("NEPA") (42 U.S.C. § 4321 *et seq.*) and Section 4(f) of the
11 Department of Transportation Act of 1966, 49 U.S.C. § 303, also codified at 28 U.S. § 138, the
12 Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*), and the Magnuson-Stevens Fishery
13 Conservation and Management Act, 16 U.S.C. §§ 1801, *et seq.* Despite these failures, on May
14 18, 2010, Caltrans first certified the EA and adopted a FONSI approving the Proposed Project.

15 12. As mentioned herein, the Court in *Bair* agreed with Plaintiffs that Caltrans failed
16 to take the required hard look at the Proposed Project's environmental impacts and remanded the
17 matter to Caltrans to prepare a revised EA or prepare an EIS.

18 13. Rather than comply with the *Bair* Order, Caltrans chose not to prepare a revised
19 EA, and instead issued an unauthorized "Supplement" to its May 2010 EA/FONSI. The
20 "Supplement" to the final EA only changed a portion of Chapter 2 of the EA with information
21 about subsequent surveys for the marbled murrelet, revised tree data, and new proposed rail
22 modifications. A minor change was also made to Chapter 1's project description to address new
23 federal standards for proposed barrier rails. The "Supplement" concludes: "all other information
24 and chapters in the original Final EA remain accurate." Notably, the "Environmental
25 Consequences" section of the EA/FONSI is among those that Caltrans apparently claims remains
26 accurate.

27 14. In the *Bair* Order, the Court also stated that Caltrans "should give serious
28 consideration to the other significant arguments made by plaintiffs in their motion." *Bair* Order,

1 at 10. Yet the “Supplement” shows that Caltrans failed to give any “consideration to the other
2 significant arguments made by plaintiffs in their motion” and expressly refused to consider or
3 respond to public comments and concerns about the very same significant arguments the
4 Plaintiffs in *Bair* had raised.

5 15. On January 24, 2014, Caltrans approved its “Supplement” to the Final EA and
6 Reevaluation of the FONSI, finding that its original EA and FONSI remained valid. Caltrans
7 published notice of its approval in the Federal Register on February 26, 2014. This case
8 challenges those actions and reasserts claims from 2010 because Caltrans continues to violate the
9 law in its reliance on and validation of its 2010 actions. This case challenges the final agency
10 actions as announced in the Federal Register on February 26, 2014, 79 Fed. Reg. No. 38, at
11 10870.

12 16. The cover of Caltrans’s EA/FONSI and its “Supplement” (displayed below)
13 illustrates the Proposed Project’s essential problem – the road through the Grove at its current
14 width already cuts so close to the old-growth trees that any widening would cause a devastating
15 impact.



1 17. While far less obvious, the impact that the Proposed Project would have on the
2 root zones of the old-growth redwoods which lay in the path of the Proposed Project would be
3 equally devastating.

4 18. Indeed, Comment No. 9 submitted by the California State Department of Parks
5 and Recreation North Coast Redwoods District (“State Parks”) to the Draft Environmental
6 Impact Report/Environmental Assessment (“Draft EA”) states: “The hardened surface associated
7 with the roadbed and shoulder is a significant adverse effect on the health of any mature tree,
8 including old-growth redwood, where it encroaches into that tree’s critical root zone . . .
9 However the [Draft EA] does not document whether or not the proposed action will increase the
10 cumulative amount of hardened surface on the critical root zone or decrease it. Unless such a
11 detail analysis is conducted, the significance of the proposed action on old-growth redwoods
12 cannot be evaluated. Once this information is provided, it can be evaluated for the significance
13 of the impact to the trees. If that information is not provided, there is not enough substantial
14 evidence to make a finding of significant or less than significant.”

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

23 20. Caltrans, however, not only ignored these Comments and numerous other likely
24 environmental consequences of its Proposed Project, but also denied Plaintiffs and the hundreds,
25 if not thousands, of other concerned persons a meaningful opportunity to review and comment
26 upon the Proposed Project and its stated justifications. Caltrans also gave no meaningful
27 consideration to the numerous alternatives that existed to its destructive plans, including simply
28

1 granting more exceptions to operators of STAA trucks that desired to pass through the Grove,
2 and failed to properly consider or explain the Project's purpose or need.

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

8 22. In an inept attempt to mask the true purpose of the Project, which is lifting the
9 general limitation on passage of STAA trucks through the Grove, Caltrans initially tried to
10 justify the Proposed Project on safety concerns. However, Caltrans was not able to offer any
11 evidence in support of those purported concerns, other than the results of a computer model.
12 These computer results were contrary to the evidence, such as accident reports, which failed to
13 support any such safety issues. Despite (or because of) this divergence between observed reality
14 and the results of its computer model, Caltrans never provided the public with information
15 regarding how the computer model was constructed; thus, the public was never given the
16 opportunity to meaningfully challenge the computer model's results.

17 23. Nonetheless, Caltrans ultimately admitted the Proposed Project would not solve
18 any safety problems, real or imagined. Rather, the EA states: "The project is not a safety
19 project, but an operational improvement project to lift the STAA restriction at this location. . . .
20 The primary purpose of the Project is to lift the restriction on STAA vehicles on the portion" of
21 Highway 101 that runs through Richardson Grove State Park.

22 24. By use of the "Supplement," Caltrans proposes to engage in a multimillion dollar
23 Project and to endanger the survival of giant old-growth redwoods that have towered over the
24 area for millennia, not to solve any safety issues, but rather to let bigger commercial trucks pass
25 through a one mile stretch of road without the hassle of seeking an exemption. The short-
26 sightedness of this Project is dumbfounding and contrary to state and federal law.

27 25. Plaintiffs hereby challenge Caltrans' approval of the Proposed Project and its
28 approval of the EA/FONSI, including, but not limited to, the "Supplement" to the EA and

1 Reevaluation of the FONSI, as violations of NEPA, the Department of Transportation Act, the
2 Wild and Scenic Rivers Act, Magnuson-Stevens Fishery Conservation and Management Act, and
3 other applicable law, and seek an order by this Court enjoining Caltrans from taking any further
4 action on the Proposed Project until it meets all applicable legal requirements and complies with
5 the *Bair* Order. These individual Plaintiffs and the organizational Plaintiffs' members are
6 committed to taking all possible steps to preserve Richardson Grove State Park's old-growth
7 redwoods for posterity. These individual Plaintiffs and the organizational Plaintiffs' members
8 are informed and believe Caltrans' Project would cause irreparable harm to those redwoods.
9 Plaintiff have exchanged any and all administrative remedies prior to filing this Complaint, to the
10 extent legally required to do so.

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

14 **II. PARTIES**

15 **A. Plaintiffs**

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

27 28. Plaintiff TRISHA LEE LOTUS is the great granddaughter of Henry Devoy, who
28 in 1922 transferred to the State of California the 120 acres which became the initial acreage of

1 the Richardson Grove State Park. Trisha was born in Santa Rosa and every summer as a child
2 visited the redwoods in and around the Richardson Grove State Park. She continues to visit
3 these same redwoods as an adult and intends to do so in the future. Since 1998, Trisha has been
4 a resident of Humboldt County, California.

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

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

15 31. Plaintiff DAVID SPREEN has lived in Humboldt County for decades After
16 graduating from Humboldt State University (Math '76). After graduation, David and his wife
17 decided to live and raise a family in Humboldt County. David accepted a position with a
18 wholesale floor covering distributor based in the San Francisco Bay Area and was promoted to
19 Eureka warehouse branch manager, which required coordinating logistics between local retail
20 clients and numerous manufacturers located in California and around the nation. In 2001, David
21 opened Dave Spreen Enterprises to offer consulting services to clients in the flooring industry
22 interested in doing business in China. David has served on the Freshwater Educational
23 Foundation, Freshwater School Board, and the Eureka Adult School Business Advisory Council.
24 On July 25, 2014, David went to Caltrans offices in Eureka California for the purpose of
25 reviewing the Richardson Grove Project records as referenced in the February 26, 2014 Federal
26 Register Notice. David asked specifically to review the January 24, 2014 decisions for the
27 Proposed Project, as referenced in the February 26, 2014 Federal Register Notice. Caltrans
28 would not make the records available, were unable to identify where the Richardson Grove

Project records were located, and made no attempt or offer to search out the records for Mr. Spreen's review while he was present in the office on July 25, 2014.

32. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER ("EPIC") is a non-profit public interest organization formed to promote environmental values and environmental protection. EPIC is located in the State of California and has approximately 2,000 members, who live throughout California. EPIC is beneficially interested in the aesthetic enjoyment and continued productivity of land, forest and other water resources, in the preservation of wildlife and protected species including the Marbled Murrelet, the Northern Spotted Owl and anadromous salmonids at self-perpetuating population levels, in protection of ancient redwoods, watersheds, and in protection of other natural resources and our environment. Members of EPIC travel throughout California for personal, aesthetic and recreational pursuits, including hiking, bird watching and enjoying California's incredible beauty. Members of EPIC regularly visit and enjoy California State Parks, including the remarkably beautiful and majestic Richardson Grove State. EPIC's members depend for their livelihood, health, culture and well-being on the viability of vegetation and land throughout California. EPIC's members rely upon water from throughout California. Members of EPIC also observe, study, recreate, gather or otherwise enjoy the unique biologic, scientific and aesthetic benefits of Richardson Grove State Park, which EPIC members experience as important and unique State and public resources. EPIC's members intend to continue visiting Richardson Grove State Park in the future, in pursuit of these interests and benefits.

33. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("CBD") is a non-profit New Mexico corporation with offices in Alaska, Arizona, California, Illinois, Minnesota, Nevada, New Mexico, Oregon, Vermont, and Washington, D.C. CBD is actively involved in wildlife and habitat protection issues throughout the United States, and has members throughout our country, thousands of whom reside in California. CBD's members and staff include individuals with educational, scientific, spiritual, recreational and other interests in protection of ancient redwoods and the species which depend on those trees, including the Marbled Murrelet and the Northern Spotted Owl. CBD's members and staff enjoy the biological, recreational and

1 aesthetic values of the California parks where species such as the Marbled Murrelet and the
2 Northern Spotted Owl live, including the Richardson Grove State Park. CBD's members and
3 staff have participated in efforts to protect and preserve the habitat essential to the continued
4 survival of the Marbled Murrelet and the Northern Spotted Owl. CBD's members and staff
5 intend to visit Richardson Grove State Park in the future to enjoy, appreciate, view, and study the
6 ancient redwoods and to seek out and observe the Northern Spotted Owl and Marbled Murrelet
7 in their natural habitat. CBD brings this action on its own behalf and on behalf of its adversely
8 affected members and staff.

9 34. Plaintiff CALIFORNIANS FOR ALTERNATIVES TO TOXICS ("CATs") is a
10 non-profit public interest corporation, which has advocated for thirty years on behalf of its
11 members to enable their control over toxic chemicals in the environment. CATs seeks to advise
12 and advocate public concerns regarding toxic chemicals in the environment through organizing,
13 educating, advocating, and building community leadership. This mission is grounded in a
14 broader concern for the sustainability of the environment. CATs and its members are actively
15 involved in local, regional, national, and international government and regulatory processes
16 concerning the exposure, use and removal of toxic chemicals, including toxic lead and its
17 constituents. CATs is a region wide organization with its office in Humboldt County, California.
18 Members of CATs depend for their livelihood, health, culture, and well-being on the viability of
19 healthy environmental conditions throughout California. Its members live throughout California.
20 Members also observe, study, recreate, gather, or otherwise enjoy the biologic, scientific, and
21 aesthetic benefits of clean water and land throughout California. Members of CATs recreate
22 within and along the Wild and Scenic Eel River and in Richardson Grove State Park, and intend
23 to continue doing so in the future. Members of CATs have an interest in knowing California
24 remains alive with wildlife and natural wonders, always beautiful and available to enjoy and
25 utilize.

26 35. The above-described health, recreational, scientific, cultural, inspirational,
27 educational, aesthetic, and other interests of Plaintiffs would be adversely and irreparably injured
28 by Defendants' failure to comply with NEPA, Section 4(f) of the Department of Transportation

1 Act, 49 U.S.C. § 303 and 23 U.S.C. § 138, their implementing regulations, and other applicable
2 law. These are actual, concrete injuries to Plaintiffs and their members that would be redressed
3 by the relief sought herein. Plaintiffs have no adequate remedy at law.

4 36. Plaintiffs sue on behalf of themselves, their members, and their supporters.
5 Plaintiffs are comprised of residents of the State of California who are united by the following
6 common interests of law and fact: Each Plaintiff is an “interested person” in the aesthetic
7 enjoyment and protection of California’s public lands, including State Parks such as Richardson
8 Grove State Park, in the preservation of ancient redwoods, fish and wildlife species at self-
9 perpetuating population levels, in the protection of our environment, and in the protection of
10 water and air quality.

11 **B. Defendants**

12 37. Defendant CALIFORNIA DEPARTMENT OF TRANSPORTATION
13 (“Caltrans”) is a public and state agency within the State of California. Caltrans is the lead
14 agency for the Proposed Project under NEPA. Caltrans is using federal funding from the Federal
15 Highway Administration (“FHWA”). Caltrans has executed a Memorandum of Understanding
16 Between the Federal Highway Administration and the California Department of Transportation
17 (the “MOU”) under which FHWA assigned to and Caltrans assumed the delegation of authority,
18 pursuant to 23 U.S.C. § 327, to provide environmental review, consultation, or other such action
19 pertaining to the review or approval of a specific project such as Richardson Grove, as required
20 by federal environmental laws, including NEPA, 42 U.S.C. § 4331 *et seq.*, and Section 4(f) of
21 the Department of Transportation Act of 1966, codified at 23 U.S.C. § 138 and 49 U.S.C. § 303,
22 and implementing regulations at 23 C.F.R. Part 774, the Wild and Scenic Rivers Act, 16 U.S.C. §
23 1271 *et seq.*, and the Magnuson –Stevens Fishery Conservation and Management Act, 16 U.S.C.
24 § 1801 *et seq.* Pursuant to this MOU, Caltrans is the agency which prepared and adopted the
25 EA/FONSI for the Proposed Project. Caltrans approved the Richardson Grove Project and
26 adopted the final EA/FONSI on May 18, 2010. On January 24, 2014, Caltrans approved a
27 “Supplement to the Final EA and Reevaluation of the FONSI” described as final agency actions
28 in a February 26, 2014 Federal Register Notice.

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

III. JURISDICTION

39. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States. This Court also has jurisdiction to review Caltrans' actions in this case pursuant to 23 U.S.C. § 327(d) and the MOU. As stated in the MOU, Caltrans has consented to and accepted the exclusive jurisdiction of the Federal courts for any matter arising out of or relating to action for compliance, and/or enforcement of any of the responsibilities assigned by the FHWA and assumed by Caltrans, including compliance of NEPA and Section 4(f) of the Department of Transportation Act and the Wild and Scenic Rivers Act. The State of California has consented to federal jurisdiction and waived any claim of sovereign immunity pursuant to California Streets and Highways Code § 820.1.

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

IV. VENUE

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

1 **V. INTRADISTRICT ASSIGNMENT**

2 42. A substantial part of the events and omissions giving rise to the claims in this case
3 impact all of Northern California and have occurred in various counties throughout the Northern
4 District, including the County of San Francisco.

5 **VI. OUR RICHARDSON GROVE AND CALTRANS' PLAN FOR ITS**
6 **DESTRUCTION**

7 **A. Driving Through History**

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

17 44. Highway 101 threads through the Richardson Grove State Park, providing a
18 transportation route for residents, visitors, tourists, commerce, and safety vehicles.

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

27 46. Redwood root systems are shallow and inter-related, extending 3 to 10 times
28 beyond the diameter of the individual tree. Roots that have spent literally centuries successfully

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

9 47. The Richardson Grove is home and/or provides habitat for many wildlife species,
10 including blue herons, osprey, acorn woodpeckers, belted kingfishers, the protected Marbled
11 Murrelet, and the protected Northern Spotted Owl, and provides critical and essential habitat for
12 the Southern Oregon Northern California Coast Evolutionary Significant Unit of coho salmon
13 (“SONCC coho”)coho, federally listed as threatened (May 6, 1997, 62 FR 24588), Coastal
14 California Evolutionary Significant Unit of Chinook salmon (“CC Chinook”), federally listed as
15 threatened (September 16, 1999, 64 FR 50393), and Northern California Evolutionary
16 Significant Unit of steelhead (“NC Steelhead”) federally listed as threatened (June 7, 2000, 65 FR
17 36074).

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

1 **B. Destroying Our Redwoods**

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

10 50. Richardson Grove State Park is directly threatened by such assaults. Caltrans
11 proposes to widen and realign Highway 101 through the Richardson Grove State Park, by
12 removing trees and cutting and impacting the root systems of ancient redwood along a one-mile
13 section of the highway.

14 51. Caltrans is placing these ancient redwoods at risk with this Project, particularly by
15 cutting, compacting, and placing fill on the roots of these ancient trees, endangering their very
16 survival. The Project contradicts Caltrans’ own acknowledgment of “the importance of
17 redwoods.” The ancient redwoods in Richardson Grove State Park are protected trees, for which
18 State Parks declares that in “dense forests where drip lines of trees touch each other it is
19 impossible to install a new facility without causing damage.” State Parks advises that:

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

24 52. Because of the renowned and iconic status of Richardson Grove, the Proposed
25 Project’s influence extends well beyond its borders, exposing a state and national public treasure
26 to risk of harm. Because the Proposed Project is intended to provide STAA trucks with new
27 access through the Grove solely for “goods movement,” and because Richardson Grove is
28 treasured by visitors from throughout California and the nation, this Project has impacts

1 extending well beyond Humboldt County. The Proposed Project as designed would result in a
2 devastating legacy.

3 53. Furthermore, the watershed of the South Fork of the Eel River, including its
4 tributaries, is designated critical habitat under the Endangered Species Act (“ESA”), 16 U.S.C.
5 §§ 1533 *et seq.*, for the SONCC coho (May 5, 1999; 64 FR 24049).

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

10 55. Caltrans admits in the Final EA that threatened steelhead, threatened coho
11 salmon, and threatened Chinook salmon are “likely present in Durphy Creek,” which flows into
12 the South Fork of the Eel River and thus is part of its watershed designated as EFH for coho and
13 Chinook salmon. The Final EA also admits “[t]hese species are also present in the South Fork of
14 the Eel River.”

15 56. Durphy Creek is within the area of the Proposed Project. Caltrans plans to
16 conducted significant soil disturbing activities in the immediate vicinity thereof. Moreover, all of
17 the work that Caltrans proposes to do would be upslope from the South Fork of the Eel River,
18 including large amounts of 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
21 River and areas hydrologically connected thereto, as well as increased contamination of the
22 South Fork of the Eel River and areas hydrologically connected thereto related to truck exhaust
23 and truck tire wear. The Proposed Project would also disturb large deposits of lead contaminated
24 soil, which would in turn erode into the South Fork of the Eel River and areas hydrologically
25 connected thereto. Thus, the Proposed Project would likely adversely affect these salmonid
26 species and their habitat.

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

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

8 58. To accomplish this road widening and realignment, according to the estimate in
9 its “Supplement,” Caltrans would remove 56 trees and work within and impact the roots and root
10 zones of 116 old growth redwoods. Many of these old growth redwoods are as large as 18 feet in
11 diameter, located immediately adjacent to Highway 101. The following photos vividly depict
12 how close the redwoods are to Highway 101 in the Grove and how dangerous the road widening
13 Project would be to these trees:





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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

6 60. Beneficiaries of the Proposed Project include corporate giants whose trucks would
7 make 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 STAA trucks to pass one
9 another in opposite directions on this section of the highway. So-called STAA trucks are truck-
10 and-trailer combinations that tend to be somewhat longer than the "California legal" truck-and-
11 trailer combination.

12 61. Caltrans has specifically stated that the Proposed Project "**is not a safety**
13 **project.**"

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

18 63. However, some STAA trucks are currently allowed through the Richardson
19 Grove. Caltrans cites no evidence in its Draft Environmental Assessment ("Draft EA") (defined
20 below), EA/FONSI, or Supplement to the Final EA and Reevaluation of the FONSI indicating
21 that these STAA trucks are unable to safely pass in opposite directions. Similarly, Caltrans cites
22 no evidence in its Draft EA, EA/FONSI, or Supplement to the Final EA and Reevaluation of the
23 FONSI indicating that in practice run any STAA trucks are off-tracking when traveling through
24 the Richardson Grove.

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

1 65. Indeed, there is no evidence that any of these six accidents involved STAA trucks.
2 According to a California Highway Patrol report in existence at the time of the EA, there is no
3 record of any collisions, citations, verbal warnings, or even complaints involving STAA trucks
4 traveling through the Richardson Grove.

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

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

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

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

21 70. Caltrans’ failure to identify the data used in its Proposed Project model also
22 deprived the public of an opportunity to investigate better alternatives to the Proposed Project.

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

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

73. Not surprisingly, by the time Caltrans released the EA/FONSI, it conceded the Proposed Project was not about safety at all: “The project is not a safety project, but an operational improvement project to lift the STAA restriction at this location.” “Improved safety is a secondary objective to this project.” Caltrans had to disclose that the primary purpose of the Proposed Project was to allow STAA trucks to come barreling through the Grove: “The primary purpose of the Project is to lift the restriction on STAA vehicles on the portion” of Highway 101 that runs through Richardson Grove State Park. Through its Supplement to the Final EA and Reevaluation of the FONSI, Caltrans reaffirmed this concession.

D. Caltrans Failed to Properly Provide for Public Review

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

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

76. On July 26, 2007, Caltrans issued a press release announcing that the movement of goods through Richardson Grove would be “dramatically improved” under a realignment plan developed by Caltrans. Caltrans apparently consulted regional government representatives from

1 Humboldt, Del Norte, and Mendocino counties, as well as State and federal legislators in the
2 development of this realignment plan, but did not disclose or provide an opportunity for public
3 review and input on the proposed road realignment.

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

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

18 **E. Caltrans’ EA Was Deficient**

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

26 80. Caltrans’ Draft EA was dramatically deficient. In particular, the Draft EA lacked
27 data and information necessary to evaluate the impact of the Proposed Project to State Park
28 resources, its significant and cumulative effects particularly in relation to its purpose and need,

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

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

23 82. Alternatively, the Proposed Project purpose and need as ultimately defined in the
24 Draft EA – opening Richardson Grove to large trucks – was so narrowly stated as to preclude
25 meaningful analysis of a range of reasonable alternatives.

26 83. As the comments on the Draft EA repeatedly pointed out, Caltrans failed to
27 identify and adequately evaluate the Proposed Project's significant environmental impacts,
28 including: effects on the ancient redwood trees adjacent to the highway throughout the Proposed

1 Project site; effects on protected fish and wildlife species and other biological resources, not only
2 from tree damage and removal but also from increased noise and light during and after
3 construction and from release and disposal of toxic materials; greenhouse gas emissions; and the
4 cumulative and growth-inducing effects associated with expanding STAA truck access and
5 goods movement throughout Humboldt, Mendocino, and Del Norte counties.

6 84. The Draft EA failed to provide, for example, documentation and analysis about
7 how the Proposed Project would increase or decrease the cumulative amount of hardened surface
8 on the critical structural root zones of the redwoods, which for many trees extend several feet on
9 either side of the road. The Draft EA failed to evaluate the effects of constructing the Proposed
10 Project and altering the road's drainage pattern on water transport and availability to the old-
11 growth redwoods. In fact, the Draft EA merely listed 41 trees as having "potential tree root
12 effects," yet failed to provide an assessment of the number of these trees that would have their
13 structural root zone compromised through placement of impervious surface, fill, and/or cutting of
14 their roots.

15 85. Roots are the life lines of the redwood tree. Any disturbance of the roots can
16 threaten a tree's health and longevity. Redwoods breathe through their roots, requiring soil that
17 is loose enough to allow ample air flow and nutrients underground. Roots act as a conveyance
18 and storage system for water and nutrients. Roots also serve as the structural system for entire
19 groves of redwoods. Redwoods lack a deep tap root, and instead rely on a dense and far-
20 reaching network of shallow, interconnected roots for mutual stability, forming symbiotic root
21 systems among groves. Soil compaction and fill disrupt the respiration process, effectively
22 cutting off air to these trees. The Proposed Project will sever redwood roots, and soil
23 compaction would be unavoidable as the combined effects of construction, roadbed material, and
24 an increase in paved surfaces adjacent to the road threaten to devastate these trees. The proposed
25 root cutting may significantly impact the nutrient and water acquisition of the trees, reduce their
26 stability, and inhibit asexual reproduction through stump sprouting. Even Caltrans
27 acknowledges that "[i]t is not possible to know where roots may be encountered."
28

1 86. The Draft EA failed to properly disclose and analyze construction impacts on
2 tourism and park visitors, particularly in terms of increased noise and light associated with
3 nighttime work and the summer construction phases. The Draft EA did not evaluate whether the
4 road widening would result in a degraded park experience for future park visitors, given the
5 removal of understory vegetation, increased exposure to the highway in areas of tree removal,
6 and increased noise and light impacts as a result of these changes. In many respects, the Draft
7 EA made sweeping, conclusory statements that the Proposed Project's environmental effects
8 would not be significant, without providing any criteria or meaningful explanation why, for
9 example, the Proposed Project would not diminish State Park values and resources for those
10 millions of travelers who pass through the Grove.

11 87. While proposing the Proposed Project to advance the economic interests of a
12 small group of businesses, including large non-local companies, the Draft EA failed to identify
13 and evaluate the related impacts associated with this purpose, including any negative economic
14 impacts to tourism, the cumulative effects associated with other STAA access projects Caltrans
15 is undertaking in northern Humboldt and adjacent counties, and any growth-inducing impacts.

16 88. The Draft EA failed to consider and evaluate feasible alternatives to the Proposed
17 Project that would achieve the purpose behind the Proposed Project, and yet not expose public
18 resources to environmental risk, including slowing traffic speed through the Grove or providing
19 alternative transportation measures. Caltrans did not document an examination of all prudent
20 and feasible alternatives and all possible planning measures to minimize harm to Richardson
21 Grove.

22 89. The Draft EA failed to provide adequate mitigation measures for most of these
23 and other impacts. The limited planning and mitigation measures that were identified were
24 improperly deferred, ineffective, unenforceable, and vague. For example, Caltrans failed to
25 provide technical reports or other documentation to demonstrate that the ancient redwoods,
26 biological resources and other State Park resources would be fully and adequately protected from
27 impact. Caltrans also failed to conduct any field studies or surveys for the federally protected
28 Marbled Murrelet and the Northern Spotted Owl, despite recognition that the Proposed Project

1 “may affect, and is likely to adversely affect” these species. Caltrans admits construction night
2 lighting “could affect Northern spotted owls.” Instead, Caltrans deferred collection of data
3 essential to analysis of these effects until *after* implementation of the Proposed Project.

4 90. The Draft EA thus indicated that the Proposed Project may have a significant
5 effect on the environment. At the very least, the Draft EA’s inconsistencies and other failures
6 raised a substantial question as to whether the Proposed Project may have a significant effect on
7 the environment.

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

9 91. After the close of public comment, Caltrans developed additional data about the
10 Proposed Project, including facts and information, changes, and evaluation that had not been
11 provided in the EA. On May 18, 2010, more than a year after the close of public comment on
12 the Draft EA, Caltrans released the Proposed Project’s Final Environmental Impact
13 Report/Environmental Assessment and Programmatic Section 4(f) Evaluation (“EA/FONSI”).
14 On the same date, Caltrans approved the Proposed Project with no further opportunity for public
15 review or input.

16 92. Despite information in the Draft EA indicating that the Project as proposed may
17 have a significant effect on the environment, or at the very least raising a substantial question as
18 to whether the Proposed Project may have a significant effect on the environment, Caltrans failed
19 to prepare an Environmental Impact Statement for the Proposed Project as NEPA requires.
20 Instead, Caltrans adopted the EA/FONSI.

21 93. The EA/FONSI fails to remedy the Draft EA’s dramatic deficiencies. Rather than
22 do as hundreds of comments had requested and provide the public with an opportunity to review
23 a revised environmental analysis that corrected the Draft EA’s extensive informational and
24 analytical errors and omissions, Caltrans simply certified the EA/FONSI and immediately
25 approved the Proposed Project. The public had no opportunity to review and comment on the
26 EA/FONSI and the new information and analysis Caltrans included therein. In this way,
27 Caltrans’ process deprived the public of its opportunity to review the Proposed Project’s purpose
28

1 and need, its significant environmental effects, proposed alternatives and mitigation measures,
2 and the information relied upon by Caltrans to approve the Proposed Project.

3 94. Notably, the EA/FONSI does not remedy many of the informational and
4 analytical deficiencies found in the Draft EA, including its failure to provide a legally sufficient
5 statement of purpose and need for the Proposed Project, an adequate project description and
6 project plans, an evaluation of significant environmental effects, a sufficient cumulative impact
7 analysis and evaluation of growth inducing impacts, technical studies and documentation to
8 support conclusions that impacts would be less than significant, an adequate analysis of feasible
9 and prudent alternatives, and identification of enforceable and effective mitigation measures.

10 95. Caltrans also significantly changed the Proposed Project in the EA/FONSI from
11 what was described in the Draft EA and made available for public review. After close of public
12 comment, and with no opportunity for review by the public or other agencies, Caltrans added an
13 additional 46 trees to the original 41 trees identified in the Draft EA as having potential root
14 impacts. Most of these trees are large redwoods; 73 are 30 inches or greater in diameter (the
15 standard Caltrans uses to define “old-growth”), and 40 are between 7 and 18 feet in diameter.
16 According to the EA/FONSI, “[c]onstruction activities in close proximity to these trees could
17 result in impacts to the root systems. There would be both cut and fill activities occurring within
18 the structural root zone. The maximum depth of excavation would be approximately two feet
19 and the maximum fill depth would be approximately three and a half feet.” (EA/FONSI pp. 40-
20 41.) The EA/FONSI identifies 68 of the 87 total trees that would have cut and fill activities
21 within their root zone, but does not provide any technical study or documentation assessing how
22 these trees would have their structural root zone compromised through placement of impervious
23 surface, fill, or cutting of their roots. Caltrans acknowledges in the EA/FONSI that “it may not
24 be possible to avoid cutting roots greater than two inches.” Caltrans also admits that it did not
25 conduct any field studies of the redwoods’ structural root systems affected by this Proposed
26 Project, and does not know where roots may be encountered. Thus, Caltrans by its own
27 admission does not know what the ultimate effects of the Proposed Project will be on the
28 redwoods or the root systems.

1 96. Caltrans proposes to protect these trees by using an air spade to dig up roots,
2 adding brow logs to minimize the impact of fill on the trunks of the trees, and watering the trees
3 weekly once excavation below the finish grade occurs. Caltrans also proposes increasing the
4 removal of invasive plants as a mitigation measure to offset impacts to these mature redwoods
5 where construction occurs within their structural root zone. However, the EA/FONSI fails to
6 provide any documentation to establish now these measures or other measures would be
7 effective and sufficient to protect these trees from harm, or to supply sufficient support, water,
8 and nutrients to meet their demands. The EA/FONSI fails to provide adequate detail to assess
9 the Proposed Project's impacts on the redwoods and their root systems. Nor did Caltrans provide
10 at the time of approval a mitigation monitoring plan to establish that the mitigation measures it
11 did identify would be implemented and properly reported. The EA/FONSI never adequately
12 addresses widespread concern that the Proposed Project would eventually cause tree mortality
13 along the highway and within the Grove.

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

25 98. Caltrans also revised its plans for the Proposed Project after issuance of the Draft
26 EA to include deeper excavation in areas with lead-contaminated soils. Yet the EA/FONSI
27 failed to disclose or analyze whether removal and disposal of these soils—which Caltrans
28 proposes to stockpile in a roadside area that ultimately drains to the South Fork of the Eel

1 River—would comply with hazardous materials handling laws or pose any risk of significant
2 impacts to water quality, aquatic species, or public health.

3 99. Other changes in the EA/FONSI included: new but still fundamentally
4 contradictory information concerning whether the Proposed Project would fulfill its purpose and
5 need and whether the Proposed Project would induce significant growth or development
6 elsewhere in Humboldt County; new but still internally inconsistent and contradictory
7 information about the increase in impervious area resulting from the Proposed Project; a new
8 mitigation measure—removal of an unused restroom in the State Park—the impacts and
9 effectiveness of which were not properly disclosed or analyzed; changes in the proposed method
10 of culvert replacement (from a cast-in-place resin liner to full culvert replacement), without any
11 discussion or analysis of the potential environmental impacts of these changes; new but
12 impermissibly deferred mitigation measures for impacts to water quality; new information
13 concerning the United States Fish and Wildlife Service’s “Biological Opinion” finding that the
14 Proposed Project would “adversely affect” and result in “harassment” of federally protected
15 species, without any revision to the EA/FONSI’s conclusion that the Proposed Project would
16 have no significant effects on listed wildlife; new, internally inconsistent, and contradictory
17 information about impacts associated with night-time construction; and a new but still
18 fundamentally deficient discussion of the cumulative impacts of the Proposed Project in relation
19 to other past, present, and reasonably foreseeable future projects affecting old-growth redwood
20 forests.

21 100. The EA/FONSI included responses to comments, which were deficient in their
22 failure to identify and respond to all comments and concerns raised, as required by NEPA. The
23 numerous changes to the EA/FONSI failed to provide the public with sufficient information to
24 permit members of the public to weigh in on the Proposed Project and inform decision-makers of
25 their concerns.

26 101. The EA/FONSI, as revised by Caltrans, demonstrates that the Proposed Project
27 may have a significant impact on the environment. At the very least, the EA/FONSI, in
28 combination with Caltrans’ response to public comments and other information in the record,

1 raises a substantial question as to whether the Proposed Project may have a significant impact on
2 the environment.

3 102. Caltrans issued its Finding of No Significant Impact and decision on May 18,
4 2010, and filed a notice of decision with the California State Clearinghouse pursuant to
5 California state law on May 19, 2010.

6 **G. Caltrans Failed to Correct Its Errors Identified by the *Bair* Court or**
7 **Otherwise Address the Shortcomings in the EA/FONSI**

8 103. Several of Plaintiffs in this case successfully challenged Caltrans May 18, 2010
9 approvals in *Bair v. California State Department of Transportation*, U.S. District Court for the
10 Northern District of California., No. C 10-04360 (“*Bair*”). The Court in *Bair* granted summary
11 judgment to the Plaintiffs in its Order on Cross-Motions for Summary Judgment, Motion to
12 Strike, and Motion for Sanctions (the “*Bair* Order”), due to the serious questions about whether
13 Caltrans truly took “a ‘hard look’ at the effects of the project” and made “an informed decision,”
14 as required by NEPA. *Bair* Order at 8, 9. The Court ordered that

15 “a revised EA that corrects the data inaccuracies identified above
16 and assesses the impacts of the project through the lens of a correct
17 analysis is necessary, even if this reevaluation ultimately reveals
18 that the EA/FONSI remains valid. Alternatively, Caltrans may
19 proceed directly to conducting an EIS.” *Bair* Order, at 10.

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

25 105. The Court instructed that “Caltrans should give serious consideration to the other
26 significant arguments made by plaintiffs in their motion.” *Bair* Order, at 10.

27 106. On September 18, 2013, Caltrans approved a “Supplement to the Final
28 Environmental Assessment” (the “Supplement”), representing it as “in compliance with the April
4, 2012 *Bair* Order to prepare updated old growth redwood tree maps and analysis.” The
Supplement purports to “revise[] a portion of Chapter 2 of the original document presenting

1 results of subsequent surveys for marble murrelets and analyzing potential tree impacts based on
2 revised tree data and new proposed barrier rail modifications.” Supplement at 1.

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

7 108. The Supplement included three Attachments: A) maps intending to identify old
8 growth redwoods in the Proposed Project; B) an intended “Individual Tree Analysis”; and C) a
9 Table intending to cross-reference trees mapped in Attachment A with tree numbers presented in
10 the May 2010 Final EA. In addition, Caltrans published a “Final Report and Evaluation of
11 Potential Effects on Old-Growth Redwoods from Implementation of the Richardson Grove
12 Operational Improvement Project,” dated September 16, 2013 (the “Tree Report”).

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

17 110. The Supplement did not remedy the deficiencies of the Final EA/FONSI and did
18 not comply with the *Bair* Order in several respects. Caltrans failed to provide a valid NEPA
19 document. A “supplement to an environmental assessment” is not a type of NEPA document.
20 40 C.F.R. § 1508.20. The *Bair* Court, in evaluating Caltrans’ failure to prepare an EIS,
21 determined that “there are a number of discrepancies and omissions that raise serious questions
22 about whether Caltrans truly took a ‘hard look’ at the effects of the project and made an
23 informed decision.” *Bair* Order, at 8. The *Bair* Court set forth specific errors, and stated that a
24 “revised EA ... is necessary” to correct the data inaccuracies, and that “[a]lternatively, Caltrans
25 may proceed directly to conducting an EIS.” *Bair* Order, at 10. By issuing only the Supplement,
26 Caltrans did neither - it failed to prepare and issue a “revised” EA and failed to prepare an EIS.

1 111. The Supplement fails take a “hard look” at the Project’s environmental impacts
2 and demonstrate that the impacts to the old growth redwoods would not be significant. The
3 Supplement fails to correct the data inaccuracies and omissions about Proposed Project impacts
4 on the old growth redwoods. The Supplement and the Tree Report fail to provide any metric for
5 measuring the effect of root zone disturbance or damage to foliage, relying on the subjective
6 conclusions of an arborist, unconnected to any concrete root disturbance criteria. The individual
7 tree analysis presents a summary of conclusions, lacking adequate explanation for how those
8 conclusions were reached for any given tree. In addition, the Supplement greatly expands an
9 exception from the handwork restrictions identified in the EA/FONSI, allowing the use of
10 mechanized equipment in root zones not only for culvert work, but also for soldier pile, gabion
11 and barrier wall installation, and cutting back roadside slopes. Further exacerbating the Final
12 EA/FONSI’s inconsistency as to whether and where roots greater than two inches in diameter
13 would be cut, the Supplement lists additional “areas of proposed cuts (culvert work, wall work
14 and cutting back roadside slopes)” in which these large roots may be cut.

15 112. The Supplement creates more inaccuracies and confusion by failing to discuss the
16 ten percent root loss threshold for old, low-vigor trees identified in the California Department of
17 Parks and Recreation Natural Resources Handbook, recommended by Caltrans’ own arborist,
18 and relied upon extensively in the re-validated EA/FONSI. The Supplement assumes that all
19 redwoods are resilient enough to withstand significant root damage, which represents a change in
20 rationale from and further inconsistency with the “re-validated” Final EA/FONSI’s reliance on
21 the State Parks Natural Resources handbook.

22 113. The Supplement’s “individual tree analysis” in Attachment B omits information
23 critical to an evaluation of the Proposed Project’s impacts, including information about the
24 location or depth of planned excavation in each tree’s root zones. The Final EA’s Table 10 is not
25 mentioned or considered. Cut areas are not depicted on the maps. The Supplement is misleading
26 because it only discloses placement of materials, and not the excavation of materials. Nor do the
27 maps calculate the percentage of each tree’s root zone that would be covered by impervious
28 surface, instead relying on an average impervious area increase across all root zones. The Tree

Report does not even identify the Supplement as reviewed material, and fails to evaluate the expanded potential for damage from mechanized equipment.

114. The Supplement also fails in remedying the other extensive errors which the *Bair* Plaintiffs had argued and which the *Bair* Court instructed Caltrans to give “serious consideration” in a “revised EA” or “EIS.” These are discussed above, and include the failure to justify the purpose and need for the Proposed Project; failure to address potential impacts and hazards related to excavation of lead-contaminated soils, particularly with respect to air spade excavation; significant gaps in the manner in which Caltrans’s attempted to assess toxicity levels in soils; failure to evaluate the impact on the Northern Spotted Owl, particularly because of the increase presence of Barred Owls in or adjacent to Project areas; failure to correctly assess impacts to the Eel River watershed and the listed salmonid species that inhabit it, particularly in relation to cumulative impacts from increased marijuana production; failure to correctly address impacts to state park resources and visitor experiences, particularly given the service reductions and budget cuts throughout the State Park system since 2010; failure to provide adequate assessment of the Proposed Project impacts to public safety; failure to address the cumulative impacts of the related STAA projects, and the significance of the overall project for STAA access in Northern California; failure to provide valid economic analysis related to the Proposed Project impacts; failure to establish the effectiveness of mitigation measures, and relying on mitigation that is no longer valid; and failure to evaluate impacts to the human environment, particularly health and safety associated with increased use of STAA trucks.

115. On January 23, 2014, Caltrans issued “Responses to Comments on the Supplement to the Final Environmental Assessment” (the “Supplement Responses”). Caltrans limited its Supplement Responses to comments pertaining to information in the Supplement or that brought forward new information. Caltrans expressly refused to and did not respond to comments concerning many issues, including “other significant arguments” Plaintiffs had made in their Motion in *Bair*, as directed in the *Bair* Order. Thus Caltrans did not and refused to respond to comments concerning a number of issues, including the purpose and need for the Project, the need for an EIS, potential impacts on the visitor experience at Richardson Grove

1 State Park, bicycle access, construction impacts of noise, nuisance odors and traffic congestion,
2 alternatives, potential impacts to threatened coho salmon, threatened Chinook Salmon, and
3 threatened steelhead, cumulative impacts, adverse effects on emergency services, and financial
4 and economic impacts.

5 116. On February 26, 2014, Caltrans caused a notice to be published in the Federal
6 Register, announcing Caltrans had taken “actions ... by issuing licenses, permits and approvals”
7 for the Richardson Grove Operational Improvement Project, as described in the Final
8 Environmental Assessment Finding of No Significant Impact (“FONSI”) for the Project,
9 approved on May 18, 2010; the Supplement to the Final EA and Reevaluation of the FONSI,
10 approved on January 24, 2014; and other documents in the FHWA project records. 79 FR No.
11 38 at 10870. On January 24, 2014, Caltrans executed a “NEPA/CEQA Re-Validation Form”
12 (“Reevaluation of FONSI”), finding the original EA was in need of updating, and that with the
13 additional documentation in the Supplement, the original EA and FONSI “remains valid.”

14 117. This action is timely filed.

15 **VII. PLAINTIFFS HAVE COMPLIED WITH ALL PROCEDURAL**
16 **REQUIREMENTS**

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

18 118. At all times mentioned herein, Caltrans has been able to deny the approvals and
19 reject certification of the EA/FONSI, Supplement, and Reevaluation of the FONSI for the
20 Proposed Project. Notwithstanding such ability, Caltrans has failed and continues to fail to
21 perform its duty to deny and reject the Proposed Project.

22 119. If Caltrans is not ordered to withdraw its approval of the Proposed Project, the
23 EA/FONSI, Supplement, and Reevaluation of FONSI, the People of California, as well as the
24 land, watershed, wildlife, economic, and environmental values subject to and affected by the
25 Richardson Grove Project, would suffer immediate, irreparable, and permanent damage.

26 120. Plaintiffs bring this action on the ground that each individual Plaintiff and each
27 organizational Plaintiff’s members and staff would suffer irreparable injuries if Defendants’
28 actions herein are not set aside immediately. Such injuries include, but are not limited to,

injuries to Plaintiffs' aesthetic, spiritual, scientific, recreational, and educational interests caused by deterioration of protected State Park land and its environmental setting, damage to ancient redwood groves protected within the State Park, degradation of wildlife and fisheries habitat, including for the Marbled Murrelet, the Northern Spotted Owl, and threatened anadromous salmonids, impacts associated with noise and light, impacts associated with toxic materials handling and disposal, impacts to air quality, and impacts to the designated wild and scenic Eel River.

B. Exhaustion of Administrative Remedies

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

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

C. Standing

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

1 **D. Attorneys' Fees**

2 124. In pursuing this action, Plaintiffs are entitled to their reasonable fees, costs and
3 expenses associated with this litigation pursuant, *inter alia*, to the Equal Access to Justice Act,
4 28 U.S.C. § 2412.

5 **VIII. CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

7 **(Violation of NEPA)**

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

10 126. NEPA establishes a national policy to “prevent or eliminate damage to the
11 environment and biosphere.” 42 U.S.C § 4321. NEPA recognizes that “the critical importance
12 of restoring and maintaining environmental quality,” declares that the federal government has a
13 continuing responsibility to use “all practicable means” to minimize environmental degradation,
14 and directs that “to the fullest extent possible ... the policies, regulations and public laws of the
15 United States shall be interpreted and administered in accordance with the policies set forth in
16 this Act.” 42 U.S.C. §§ 4331(a), 4332(1). NEPA also recognizes the right of each person to
17 enjoy a healthful environment. 42 U.S.C. § 4331(c). Pursuant to the MOU, Caltrans was
18 obligated to comply with NEPA for highway projects, including the Proposed Project.

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

24 128. Caltrans has violated these fundamental principles of NEPA in several ways,
25 including by not limited to, failing to establish the purpose and need for the Project, disclose and
26 evaluate the significant environmental effects, explore and evaluate reasonable alternatives to the
27 Proposed Project, adequately document public comments and concerns and responses to those
28 comments, and failing to prepare an Environmental Impact Statement (“EIS”) for the Proposed

1 Project, and issuing and approving a “Supplement to the Final Environmental Assessment,”
2 which is not a “revised EA” as directed by the *Bair* Court and is not any type of NEPA
3 document. 40 C.F.R. § 1508.10.

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

5 **SECOND CLAIM FOR RELIEF**

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

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

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

11 131. Caltrans violated NEPA by failing to provide a valid discussion or document in
12 the EA/FONSI, Supplement, and Reevaluation of the FONSI, the purpose and need of the
13 Proposed Project, by among things, failing to (1) present an adequate description of the proposed
14 action, (2) present a clear statement of the objectives that the Proposed Project is intended to
15 achieve, including evidence of safety concerns, (3) document that the Proposed Project was
16 necessary in the absence of safety issues, and (4) involve the public adequately in defining the
17 ultimate purpose and need for the Proposed Project. Caltrans’ failure to provide a clear
18 statement of the purpose of the proposed action included, but was not limited to, its failure to
19 adequately disclose key components of the Proposed Project such as the engineering and design
20 criteria used to develop and define the Proposed Project, information about and location of tree
21 root structures within the Proposed Project area, the acquisition criteria for State Park lands, and
22 the interrelationships among the Proposed Project and other Caltrans STAA truck access projects
23 in Northern California.

24 132. In the alternative, by jettisoning the original safety rationale for the Proposed
25 Project, and by adopting a project purpose focused solely on STAA truck access, Caltrans
26 improperly defined the Proposed Project’s purpose and need so narrowly as to preclude analysis
27 of a reasonable range of alternatives that would avoid significant environmental impacts.

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

1 **THIRD CLAIM FOR RELIEF**

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

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

5 134. NEPA requires Caltrans to adequately consider, analyze, and disclose the
6 individual and cumulative environmental impacts of the proposed action and alternatives to it.
7 42 U.S.C. § 4332(2)(c); 23 C.F.R. §§ 771.105, 771.119; 40 C.F.R. §§ 1508.9, 1502.16.

8 135. Caltrans violated NEPA by issuing and approving the EA/FONSI, Supplement,
9 and Reevaluation of the FONSI which fails to provide the required analysis of individual and
10 cumulative environmental effects of the Proposed Project, including but not limited to, the
11 effects:

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

14 b. on fish and wildlife species and other biological resources, including
15 special status threatened and endangered species such as the Marbled Murrelet and the Northern
16 Spotted Owl,

17 c. from tree removal,

18 d. from increased noise and light (particularly nighttime light) during and
19 after construction,

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

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

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

27 h. on greenhouse gas emissions,

28 i. on cultural resources,

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

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

5 136. Caltrans also violated NEPA because the Proposed Project's EA/FONSI,
6 Supplement, and Reevaluation of the FONSI fail to adequately identify and discuss cumulative
7 impacts related to the Proposed Project, including but not limited to:

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

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

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

13 d. proposed development projects and Humboldt Bay port development
14 which require STAA truck access, and

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

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

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

1 **FOURTH CLAIM FOR RELIEF**

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

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

5 139. NEPA requires that agencies rigorously explore and objectively evaluate all
6 reasonable alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(iii); 23 C.F.R § 771.105;
7 40 C.F.R. §§ 1508.9, 1502.14. A proper analysis of alternatives requires appropriate mitigation
8 measures not already included in the proposed action or alternatives. See 23 C.F.R. §
9 771.119(b); 40 C.F.R § 1502.14(f).

10 140. Caltrans violated NEPA because the EA/FONSI, Supplement, and Reevaluation
11 of the FONSI contains an inadequate range of alternatives. Among other reasonable alternatives,
12 Caltrans failed to consider reasonable alternatives that would reduce the significant adverse
13 environmental effects of the Proposed Project, including but not limited to:

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

25 141. Caltrans also violated NEPA by failing to provide the required appropriate
26 mitigation measures, including but not limited to measures that would:

- 27 a. protect the ancient redwoods and their root systems,
- 28

- 1 a. the Proposed Project purpose and need,
- 2 b. the Proposed Project description,
- 3 c. Project impacts related to ancient redwoods, traffic, noise, light, water
- 4 quality, air quality, cultural resources, toxic materials, protected species, and growth inducement,
- 5 d. the lack of adequate study and documentation to support the EA/FONSI,
- 6 e. the inadequate Section 4(f) analysis,
- 7 f. the lack of a valid and adequate public review and comment process,
- 8 g. the need for reissuance and recirculation of the Draft EA because of its
- 9 inconsistencies and lack of disclosure and analysis,
- 10 h. the lack of response to scientific data and evidence submitted, and
- 11 i. Other significant arguments made by the *Bair* plaintiffs.

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

13 **SIXTH CLAIM FOR RELIEF**

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

15 146. Plaintiffs incorporate by reference all the allegations contained in the previous

16 paragraphs as though fully set forth herein.

17 147. Under certain circumstances, NEPA requires that an EA must be available to the

18 public for a minimum of 30 days before the finding of no significant impact is made and the

19 action is approved. 40 C.F.R. §§ 1505.1, 1501.4(e)(2).

20 148. This Project, due to its significant effects on the environment, is the type of

21 project that normally would require an EIS. This Project also is without precedent, in that it

22 involves widening and realigning a state highway through an ancient redwood grove, in a

23 popular California State Park, in a manner that could damage the root systems of the ancient

24 trees and degrade park resources. Accordingly, Caltrans was required to make the EA available

25 for 30 days prior to adoption of a FONSI pursuant to 40 C.F.R. § 1501.4(e)(2)(i) and (ii).

26 149. Caltrans also violated NEPA by failing to provide the required 30-day public

27 review period for the EA/FONSI, which included substantial new impacts, and increased the

28 severity of existing impacts from the Proposed Project, in a manner that significantly altered the

1 scope of the Proposed Project's impacts without providing effective mitigation. These include,
2 but are not limited to:

3 a. more than doubling the number of trees, averaging 7 feet in diameter,
4 whose structural root zone would be impacted by the Proposed Project,

5 b. changing the location and nature of the retaining wall to now serve as
6 roadbed, without providing any analysis or mitigation for that change or engaging Section 7
7 consultation under the Wild and Scenic Rivers Act,

8 c. proposing as a new mitigation measure the removal of a State Park
9 restroom without any analysis of the impacts of implementing this measure, and

10 d. proposing new methods of culvert replacement without any analysis of the
11 impacts of the change.

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

13 **SEVENTH CLAIM FOR RELIEF**

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

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

17 151. NEPA requires all agencies to prepare a detailed environmental impact statement
18 ("EIS") on every proposal for a major federal action significantly affecting the quality of the
19 human environment. 42 U.S.C. § 4322(2)(c). Under NEPA, an agency must prepare an EIS
20 when an action may have a significant environmental effect, 40 C.F.R. § 1508.3, or where there
21 is a substantial question raised as to whether an action may have an environmental effect. The
22 EIS must contain a detailed discussion of environmental impacts, 40 C.F.R. §1502.16, and of
23 alternatives. 40 C.F.R. § 1502.14.

24 152. The Proposed Project is a major federal action significantly affecting the quality
25 of the human environment for which Caltrans must prepare an EIS. It is an action requiring an
26 EIS because, among other things:

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

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

3 c. The Draft EA, EA/FONSI, Supplement, and Reevaluation of the FONSI,
4 in conjunction with Caltrans' responses to comments and other information in the record, raise a
5 substantial question as to whether the Proposed Project may have a significant effect on the
6 environment.

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

8 **EIGHTH CLAIM FOR RELIEF**

9 **(Violation of Section 4(f))**

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

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

21 155. Caltrans' Proposed Project includes acquisition of and impact on lands within the
22 Richardson Grove State Park. Caltrans used a "programmatic" Section 4(f) determination for the
23 Proposed Project, rather than conduct a complete analysis, claiming among other things that the
24 Proposed Project is a federally funded improvement of an existing highway and that the amount
25 and location of land used does not impair the use of the remaining section 4(f) land, i.e. the rest
26 of the Richardson Grove State Park. By using the programmatic Section 4(f) determination,
27 Caltrans limited its analysis of alternatives to three standard alternatives: (1) no build option, (2)
28 an improvement of the highway without using the Section 4(f) land, or (3) building a new facility

on an alternative location without using the Section 4(f) land. Caltrans rejected all three alternatives in its EA/FONSI.

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

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

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

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

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

1 **NINTH CLAIM FOR RELIEF**

2 **(Wild and Scenic Rivers Act)**

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

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

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

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

25 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.
26
27
28

1 **TENTH CLAIM FOR RELIEF**

2 **(Magnuson-Stevens Act)**

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

5 163. The Proposed Project may adversely affect designated EFH for coho and Chinook
6 salmon in the watershed of the South Fork of the Eel River.

7 164. Caltrans was therefore required to initiate consultation, and consult, with the
8 National Marine Fisheries Service (“NMFS”), under the Magnuson–Stevens Act, 16 U.S.C.
9 §1855(b)(2) and its enabling regulations, 50 C.F.R. §§ 600.920 *et seq.*, so as to protect that
10 designated EFH from such adverse effects.

11 165. Caltrans failed to initiate such consultation, and did not so consult, with NMFS.

12 166. Therefore, Caltrans acted in a manner that was arbitrary, capricious, and unlawful,
13 in violation of 5 U.S.C. §706(2)(A), and without observance of procedures required by law in
14 violation of 5 U.S.C. §706(2)(D).

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

16 **ELEVENTH CLAIM FOR RELIEF**

17 **(Violations of APA)**

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

20 168. The Administrative Procedure Act (“APA”), 5 U.S.C. § 701, *et seq.*, entitles a
21 party to seek judicial review of an agency action where a legal wrong is alleged and the party
22 alleging the violation is adversely affected or aggrieved by the agency action. Pursuant to 5
23 U.S.C. § 706(2)(A), a reviewing court shall hold unlawful and set aside an agency action found
24 to be arbitrary, capricious, or otherwise not in accordance with the law. In addition, pursuant to
25 5 U.S.C. § 706(2)(D), a reviewing court shall hold unlawful and set aside agency action,
26 findings, and conclusions found to be without observance of procedure required by law.
27 Defendants acted illegally for all the reasons set forth above.

1 169. Caltrans acted illegally and in violation of the APA by approving and adopting
2 the EA/FONSI, the Supplement, and Reevaluation of the FONSI, and Proposed Project which do
3 not fully comply with NEPA and Section 4(f) of the Department of Transportation Act as set
4 forth above.

5 170. Due to Defendants' knowing and conscious failure to comply with NEPA, Section
6 4(f), and the Magnuson-Stevens Act, Plaintiffs have suffered legal wrongs because of agency
7 action and are adversely affected and aggrieved by agency action within the meaning of the
8 Administrative Procedure Act, 5 U.S.C. § 702.

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

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

15 **TWELFTH CLAIM FOR RELIEF**

16 **(Injunctive Relief)**

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

19 173. The Proposed Project as approved by Caltrans would cause irreparable injury and
20 harm to State Park resources, to Plaintiffs and to the public at large. Its significant
21 environmental impacts have not been adequately evaluated, much less mitigated to a less than
22 significant level, and feasible and reasonable alternatives have not been properly evaluated by
23 Caltrans, as required by law and as set forth in this Complaint.

24 174. The errors and arbitrary and capricious conduct by Caltrans constitute the bases
25 for injunctive relief to prevent this irreparable injury pursuant to Rule 65 of the Federal Rules of
26 Civil Procedure and other applicable law.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, and each of them, pray for judgment and further relief as
3 follows:

4 1. Declare that Defendants have violated the NEPA, Federal Highway statutes, the
5 Wild and Scenic River Act, and the Magnuson-Stevens Act as alleged herein;

6 2. Declare that Defendants' violation of NEPA, Federal Highway statutes, the Wild
7 and Scenic Rivers Act, and the Magnuson-Stevens Act constitute agency action unlawfully
8 withheld or unreasonably delayed, or are arbitrary, capricious, an abuse of discretion, or
9 otherwise not in accordance with law, under the Administrative Procedure Act;

10 3. Declare that Defendants have failed to observe procedures required by law in their
11 approval, EA/FONSI, Supplement and Reevaluation of the FONSI, and Decision Notice
12 including certification of the Final Environmental Impact Report/Environmental Assessment and
13 Section 4(f) Evaluation, and all related findings and approvals.

14 4. Declare that Defendants have failed to observe procedures required by law in their
15 failure to initiate consultation, or consult, with the NMFS, under the Magnuson-Stevens Act,
16 concerning the Proposed Project's on essential fish habitat of coho and Chinook salmon in the
17 South Fork of the Eel River Watershed.

18 5. Set aside Defendants' approval, EA/FONSI, Supplement, Reevaluation of the
19 FONSI, and Decision Notice including certification of the Final Environmental Impact
20 Report/Environmental Assessment and Section 4(f) Evaluation, and all related findings and
21 approvals, and require Defendants to follow federal statutes and regulations, including NEPA
22 and Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. § 138, 49 U.S.C. §
23 309, and implementing regulations at 23 C.F.R. Part 774, Section 7 of the Wild and Scenic
24 Rivers Act in any review of and decision for the Proposed Project;

25 6. Grant interlocutory and permanent injunctive relief enjoining Defendants, and
26 each of them, from engaging in any activity pursuant to the Proposed Project until the Proposed
27 Project complies with the *Bair* Order, and all applicable federal regulations and statutes,
28 including requirements of the National Environmental Policy Act, the Department of

1 Transportation Act of 1966, the Wild and Scenic Rivers Act, and the Magnuson–Stevens Act;
2 and (b) to initiate consultation, and consult, with the NMFS, under the Magnuson–Stevens Act,
3 concerning the Proposed Project's on essential fish habitat of coho and Chinook salmon in the
4 South Fork of the Eel River Watershed.

5 7. Award costs of suit herein, including attorney fees, pursuant to the Equal Access
6 to Justice Act, 28 U.S.C. § 2412, or other authority; and

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

9 DATED: July 28, 2014

COTCHETT, PITRE & McCARTHY, LLP

10
11 By: _____

PHILIP L. GREGORY

Attorneys for Plaintiffs