

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 251019 NAME: Stuart G. Gross FIRM NAME: Gross Klein PC STREET ADDRESS: 3800 Twig Ave. CITY: Sebastopol STATE: CA ZIP CODE: 00009-5472 TELEPHONE NO.: (415) 671-4628 FAX NO.: EMAIL ADDRESS: sgross@grosskleinlaw.com ATTORNEY FOR (name): Petitioners	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold;">FILED</div> <div style="font-size: 1.5em; font-weight: bold;">JAN FEB 07 2025</div> SUPERIOR COURT OF CALIFORNIA COUNTY OF HUMBOLDT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT STREET ADDRESS: 825 5th Street MAILING ADDRESS: CITY AND ZIP CODE: Eureka, CA 95501 BRANCH NAME:	
PLAINTIFF/PETITIONER: Bess Bair, et al. DEFENDANT/RESPONDENT: California Department of Transportation, et al.	
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: CV2300375

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that:

- a. (Name): Petitioners Bess Bair, et al. appeals from a judgment or order in this case.
- b. The judgment or order was entered on (list the date or dates the judgment and each order being appealed were entered):
December 3, 2024, November 13, 2024
- c. The appeal is from the following order or judgment (check all that apply):
- ☐ Judgment after jury trial
 - ☐ Judgment after court trial
 - ☐ Default judgment
 - ☐ Judgment after an order granting a summary judgment motion
 - ☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
 - ☐ Judgment of dismissal after an order sustaining a demurrer
 - ☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
 - ☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
 - ☒ Other (describe and specify the code section or other authority that authorizes this appeal):
Judgment denying petition for writ of mandate in a CEQA action. Code of Civil Procedure, § 904.1(a)(1)

- d. ☐ The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney (name): appeals.

2. For cross-appeals only:

- a. Date notice of appeal was filed in original appeal:
- b. Date superior court clerk mailed notice of original appeal:
- c. Court of Appeal case number (if known):

3. ☒ The judgment or order being appealed is attached (optional).

Date: February 7, 2025

Stuart G. Gross

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

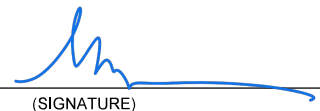
ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Alina Stark FIRM NAME: California Department of Transportation Bay Area Legal Office STREET ADDRESS: 111 Grand Avenue, Ste. 11-100 CITY: Oakland TELEPHONE NO.: 510.433.9100 EMAIL ADDRESS: alina.stark@dot.ca.gov ATTORNEY FOR (name): Respondents, California Department of Transportation, et al. SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT STREET ADDRESS: 825 5th Street MAILING ADDRESS: CITY AND ZIP CODE: Eureka, CA 95501 BRANCH NAME:	STATE BAR NUMBER: (SBN 236463) STATE: CA ZIP CODE: 94612 FAX NO.: 510.433.9167	FOR COURT USE ONLY
PLAINTIFF/PETITIONER: Bess Bair, et al. DEFENDANT/RESPONDENT: California Department of Transportation, et al.		
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$35,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$35,000 or less)		CASE NUMBER: CV2300375

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): **December 03, 2024**
2. A copy of the judgment, decree, or order is attached to this notice.

Date: Deceember 09, 2024

Alina Stark
 (TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)



 (SIGNATURE)

PLAINTIFF/PETITIONER: Bess Bair, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: California Department of Transportation	CV2300375

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

California Department of Transportation
111 Grand Avenue, Ste. 11-100
Oakland, CA 94612

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):

- a. ☐ deposited the sealed envelope with the United States Postal Service.
b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:

- a. on (*date*): December 09, 2024
b. from (*city and state*): Oakland, CA

4. The envelope was addressed and mailed as follows:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <p>a. Name of person served:
Stuart G. Gross; Ross Middlemiss, GROSS KLEIN PC
Street address: The Embarcadero, Pier 9, Ste. 100
City: San Francisco
State and zip code:
CA 94111</p> | <p>c. Name of person served:

Street address:
City:
State and zip code:</p> |
| <p>b. Name of person served:

Street address:
City:
State and zip code:</p> | <p>d. Name of person served:

Street address:
City:
State and zip code:</p> |

☒ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached: 1

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 09, 2024

Meghan Dryden
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

1 **Case Name: *Bess Bair, et al. v. California Department of Transportation***
2 **Case No.: Humboldt County Superior Court Case No. CV2300375**

3 PROOF OF SERVICE

4 I am employed in the City of Oakland, County of Alameda, over the age of 18 years and not
5 a party to this action. My business address is 111 Grand Avenue, Suite 11-100, Oakland, California
6 94612; mailing address: P.O. Box 24325, Oakland, CA 94623-1325. On the date set forth below, I
7 served the following:

8 **NOTICE OF ENTRY OF JUDGMENT OR ORDER**

9 on the interested parties listed below to said action by the following means:

- 10 ☒ **(BY ELECTRONIC-MAIL)** by attaching a copy of the document(s) in PDF format sent
11 from meghan.dryden@dot.ca.gov to the email addresses of the parties listed immediately
12 below, pursuant to Code of Civil Procedure section 1010.6, permitting electronic service of
13 notices or documents that may be served by mail, express mail, overnight delivery, or
14 facsimile transmission. No hard copies will follow.

15 COUNSEL OF RECORD

16 **Stuart G. Gross**
17 **Ross Middlemiss**

18 GROSS KLEIN PC
19 The Embarcadero
20 Pier 9, Suite 100
21 San Francisco, CA 94111

22 SERVICE ADDRESS

23 sgross@grosskleinlaw.com
24 rmiddlemiss@grosskleinlaw.com
25 iatkinsonyoung@grosskleinlaw.com

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct.

28 Executed on December 09, 2024, at Oakland, California.

By: Meghan Dryden
MEGHAN DRYDEN, Declarant

ERIN HOLBROOK, Chief Counsel
G. MICHAEL HARRINGTON, Deputy Chief Counsel
LUCILLE Y. BACA, Assistant Chief Counsel
ALINA STARK, Attorney Supervisor (SBN 236436)
111 Grand Avenue, Suite 11-100
Oakland, California 94612
Tel.: (510) 433-9100, Fax: (510) 433-9167

FILED

DEC 03 2024

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

(NO FILING FEE PURSUANT TO GOV'T CODE § 6103)

Attorneys for Respondents
California Department of Transportation
and Tony Tavares

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF HUMBOLDT

BESS BAIR, et al.,

Petitioners,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION, et al.,

Respondents.

) Case No. CV2300375

) ~~PROPOSED~~ JUDGMENT DENYING
) PETITIONERS' VERIFIED PETITION
) FOR WRIT OF MANDATE AND
) COMPLAINT FOR DECLARATORY AND
) INJUNCTIVE RELIEF IN FULL

) [CEQA]

) Action filed: March 8, 2023
) Hon. Timothy Canning

JUDGMENT

The Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed in this matter came on regularly for hearing before this Court on August 20, 2024, with the Honorable Timothy Canning presiding. Ross Middlemiss appeared on behalf of Petitioners Bess Bair; Trisha Lee Lotus; Jeffrey Hedin; The Center for Biological Diversity; Environmental Protection Information Center; Californians for Alternatives to Toxics; and Friends of Del Norte (collectively, "Petitioners"). Alina Stark appeared on behalf of Respondents California Department of Transportation and Tony Tavares, in his official capacity as Director of the California Department of Transportation (collectively, "Respondents" or "Caltrans").

1 After oral argument, the Court took the matter under submission. Upon due consideration of
2 the augmented administrative record, evidence, briefs, and arguments submitted by the parties, as
3 well as matters for which judicial notice was granted, the Court issued its order and ruling on
4 November 13, 2024.

5 For the reasons stated in the Court's November 13, 2024 Order and Ruling on Petition for
6 Writ of Mandate and for Declaratory and Injunctive Relief, a copy of which is attached hereto as
7 **Exhibit A** and incorporated herein by reference, it is ORDERED:

8 Judgment is entered in favor of Respondents California Department of Transportation and
9 Tony Tavares, in his official capacity as Director of the California Department of Transportation,
10 and against Petitioners Bess Bair; Trisha Lee Lotus; Jeffrey Hedin; The Center for Biological
11 Diversity; Environmental Protection Information Center; Californians for Alternatives to Toxics; and
12 Friends of Del Norte.

13 Petitioners' Verified Petition for Writ of Mandate and Complaint for Declaratory and
14 Injunctive Relief is denied in full.

15 Petitioners shall take nothing from this suit.

16 Respondents are awarded their costs in this proceeding as prevailing parties, as provided by
17 law. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1151–1152; *Yolo Land*
18 *and Water Defense v. County of Yolo* (2024) 105 Cal.App.5th 710.)

19 **IT IS SO ORDERED.**

20
21 Dated: DEC 10 3 2024

22
23 **TIMOTHY A. CANNING**

24 Honorable Timothy Canning
25 Judge of the Superior Court
26
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EXHIBIT A

STARK
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SUPERIOR COURT
COUNTY OF HUMBOLDT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

BESS BAIR, et al.,

CASE NO. CV2300375

Petitioners,

vs

ORDER AND RULING ON
PETITION FOR WRIT OF
MANDATE AND FOR
DECLARATORY AND INJUNCTIVE
RELIEF

CALIFORNIA DEPARTMENT OF
TRANSPORTATION, et al.,

[CEQA]

Respondents.

The petition by Bess Bair, Trisha Lee Lotus, Jeffrey Hedin, The Center for Biological Diversity, Environmental Protection Information Center, Californians for Alternatives to Toxics, and Friends of Del Norte (Petitioners) to compel California Department of Transportation and Tony Tavares (Caltrans or Respondents) to comply with their obligations under CEQA came on for hearing before Judge Timothy A. Canning on August 20, 2024. Attorney Ross Middlemiss appeared on behalf of Petitioners, and attorney Alina Stark appeared on behalf of Respondents.

The Court has considered the entire augmented administrative record in this matter, the Petition, Petitioners' Opening Brief, Respondent's Opposition, Petitioners' Reply, as well as the material of which the Petitioners have requested the Court take judicial notice (a request which was granted at the hearing), and considering the oral argument, and good cause appearing, the

1 Court rules as follows.

2 This is the third petition challenging Caltrans' Richardson Grove Improvement Project
3 (Project), by which Caltrans seeks to straighten curves on a 1.1-mile-long two lane section of
4 U.S. 101 through Richardson Grove State Park in Humboldt County. See *Lotus v. California*
5 *Dept. of Transportation* (2014) 223 Cal.App.4th 645, and the underlying trial court proceedings
6 in Humboldt County Superior Court case no. CV110002 (*Lotus*); *Bair v. Caltrans* (N.D. Cal.
7 2012) 867 F.Supp.2d 1058, 1066; and *Bair v. Caltrans*, Humboldt County Superior Court case
8 no. CV170543 (*Bair I*). This straightening of the roadway is sought so that trucking industry
9 standard-sized tractor-trailers can safely navigate that section of the highway. Currently, because
10 of the curves in the roadway, the maximum tractor-trailer combination length allowed on that
11 section of U.S. 101 is shorter than industry standard (with some exceptions). See *Lotus v.*
12 *California Dept. of Transportation, supra*, 223 Cal.App.4th at 648.

13 The administrative record establishes that the Project will effect 0.67 acres of soil and .4
14 acres of pavement in specific locations, but will not require removing any old-growth redwood
15 trees.

16 The concerns raised about this Project primarily center on the impact the construction and
17 operation of the Project will have on the tree root system of old growth redwoods, other
18 redwoods, and other trees in the area of the Project, as well as removal of non-old growth trees.
19 Petitioners also raise concerns about the shrinking old growth redwood forests, the impact on
20 wildlife, and the cultural significance of the redwood forests for Native Americans and others.
21 *Lotus v. California Dept. of Transportation, supra*, 223 Cal.App.4th at 648.

22 After the Court's discharge of the previous two writs which attacked various portions of
23 the Project's EIR, this Court concludes that the only issue remaining is whether Caltrans'
24 responses to the comments to the Addendum and its 2023 FEIR recertification and Project
25 approval complies with CEQA requirements. Issues that were or could have been raised in *Lotus*

1 or *Bair I* are now barred, except the issues surrounding Caltrans' circulating the Addendum for
2 public review and comment, and its further consultation with State Parks.

3 The Court finds that the Addendum, comments thereto, and Caltrans' responses to those
4 comments as well as the State Parks' response, are part of the 2023 FEIR, even if the Addendum
5 was not specifically referenced. 14 Cal.Code Regs. §15132. The Court further finds that the
6 Notice of Determination (NOD) fully complied with CEQA requirements. Pub. Resources Code
7 §§21108, 21152. CEQA does not require an explicit reference, and the Court cannot add
8 procedural or substantive requirements for EIR certification beyond those explicitly stated in the
9 Public Resources Code or CEQA guidelines. Pub. Resources Code §21083.1 (CEQA Guidelines
10 are found at 14 Cal.Code Regs §§15000 et seq.)

11 As to the comments to the Addendum, the Court finds that Caltrans was not required to
12 include the comments verbatim, but was authorized by the Guidelines to summarize the
13 comments received, which it did. 14 Cal.Code Regs. §15132(b). The Court further finds that
14 Caltrans' summaries of those comments are accurate. To the extent that the comments raised
15 significant environmental issues, the Court finds that Caltrans' responses were adequate, as the
16 points of disagreements were also accurately summarized. To the extent there was disagreement
17 between Caltrans' analysis and that of the commentators, the Court will not intervene to resolve
18 those disagreements. *San Francisco Baykeeper v. State Lands Com.* (2015) 242 Cal.App. 4th 202,
19 225.

20 Even if the substantive adequacy of the Addendum or the underlying Project under
21 CEQA could be raised at this point, the Court finds that the Addendum and the underlying
22 Project meets CEQA requirements. Petitioners have not shown that Caltrans' decisions or
23 determinations in connection with the Project were not supported by substantial evidence, as
24 defined in the Guidelines (14 Cal.Code Regs §15384). Simply because there are other legitimate
25 methodologies that Caltrans could have used – such as the tree root study -- does not mean that

1 Caltrans violated CEQA by making its determination in the manner that it did. *Laurel Heights*
2 *Improvement Assoc. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 (“CEQA does not,
3 indeed cannot, guarantee that these decisions will always be those which favor environmental
4 considerations.”)

5 Further, the Court finds that Caltrans was not required to adopt thresholds of
6 significance, though it could have done so had it thought it appropriate. 14 Cal.Code Regs.
7 §§15064(b)(2), 15064.7(a); *Oakland Heritage Alliance v. City of Oakland* (2011) 195
8 Cal.App.4th 884, 896. The administrative record reflects that Caltrans based its determination of
9 no significant impacts on data contained in the Tree Report and the Addendum; nothing in the
10 comments required Caltrans to change its determinations.

11 In CEQA cases, a court may consider the public interest in deciding whether to issue an
12 injunction. To grant an injunction on this basis, a “significant” showing of irreparable injury is
13 required because there is a “general rule against enjoining public officers or agencies from
14 performing their duties.” *Tahoe Keys v. State Water Resources Control Bd.* (1994) 23
15 Cal.App.4th 1459, 1473. “It is well established that when injunctive relief is sought,
16 consideration of public policy is not only permissible but mandatory.” *Saltonstall v. City of*
17 *Sacramento* (2014) 231 Cal.App.4th 837, 854.

18 Here, commentators raised concerns about the impact the Project will have on old growth
19 redwood trees’ root system in the area of the Project, as well as impacts to wildlife, culture, and
20 recreation should the Project effect old growth redwoods. The loss of old growth redwoods
21 would be irreplaceable and irreparable. However, Caltrans disagrees with those commentators’
22 conclusions as far as harm is concerned, and specifically asserts that no old growth redwood
23 trees will be lost. Future events may well prove Caltrans wrong; but perfection in prediction is
24 not the standard for CEQA review. See generally *California Native Plant Society v. City of Santa*
25 *Cruz* (2009) 177 Cal.App.4th 957, 979 (“Technical perfection is not required; the courts have

1 looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at
2 full disclosure.”)

3 Caltrans also points to the benefit the Project will provide for transportation of goods and
4 materials in and out of Humboldt County. On balance, the Court finds that petitioners have not
5 made a significant showing of irreparable injury to the public interest should the Project go
6 forward compared to the benefit to the public of the Project.

7 The Court has considered all other arguments raised by Petitioners, to the extent not
8 addressed above, and finds in favor of Caltrans on those arguments. The Court finds that
9 Petitioners did not satisfy their burden to show that Caltrans’ response to comments to the 2017
10 addendum were legally insufficient. *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th
11 1261, 1266.

12 For the foregoing reasons,

13 IT IS HEREBY ORDERED THAT Petitioners’ petition for writ of mandate and request
14 for declaratory and injunctive relief is denied, and the writ is discharged. Respondent shall
15 prepare the judgment.

16
17 Dated: November 12, 2024

18 **TIMOTHY A. CANNING**
Timothy A. Canning
19 Judge of the California Superior Court, Humboldt County
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PROOF OF SERVICE BY MAIL

I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, 825 5th St., Eureka, California, 95501; that I served a true copy of the attached ORDER AND RULING ON PETITION FOR WRIT OF MANDATE AND FOR DECLARATORY AND INJUNCTIVE RELIEF by placing said copies in the attorney's mail delivery box in the Court Operations Office at Eureka, California on the date indicated below, or by placing said copies in envelope(s) and then placing the envelope(s) for collection and mailing on the date indicated below following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Eureka, California in a sealed envelope with postage prepaid. These copies were addressed to:

Ross Middlemiss – Gross Klein PC – 3800 Twig Ave., Sebastopol, CA 95472

Alina Stark - California Department of Transportation, Legal Division – 111 Grand Avenue, Suite 11-100, Oakland, CA 94612

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 13th day of November 2024, at the City of Eureka, California.

Meara C. Hattan, Clerk of the Court

By Belinda M
Deputy Clerk

1 Case Name: *Bess Bair, et al. v. California Department of Transportation*
2 Case No.: Humboldt County Superior Court Case No. CV2300375

3 PROOF OF SERVICE

4 I am employed in the City of Oakland, County of Alameda, over the age of 18 years and not
5 a party to this action. My business address is 111 Grand Avenue, Suite 11-100, Oakland, California
6 94612; mailing address: P.O. Box 24325, Oakland, CA 94623-1325. On the date set forth below, I
7 served the following:

8 **[PROPOSED] JUDGMENT DENYING PETITIONERS' VERIFIED PETITION
9 FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND
10 INJUNCTIVE RELIEF IN FULL**

11 on the interested parties listed below to said action by the following means:

- 12 ☒ (BY ELECTRONIC-MAIL) by attaching a copy of the document(s) in PDF format sent
13 from meghan.dryden@dot.ca.gov to the email addresses of the parties listed immediately
14 below, pursuant to Code of Civil Procedure section 1010.6, permitting electronic service of
15 notices or documents that may be served by mail, express mail, overnight delivery, or
16 facsimile transmission. No hard copies will follow.

17 COUNSEL OF RECORD

18 **Stuart G. Gross**
19 **Ross Middlemiss**

20 **GROSS KLEIN PC**
21 **The Embarcadero**
22 **Pier 9, Suite 100**
23 **San Francisco, CA 94111**

24 SERVICE ADDRESS

25 sgross@grosskleinlaw.com
26 rmiddlemiss@grosskleinlaw.com
27 iatkinsonyoung@grosskleinlaw.com

28 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

Executed on November 27, 2024, at Concord, California.

By: Meghan Dryden
MEGHAN DRYDEN, Declarant

PROOF OF SERVICE

I, Ian Atkinson-Young, declare:

I am a citizen of the United States and employed in San Francisco, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3800 Twig Ave., Sebastopol, CA 95472. On February 7, 2025, I served a copy of the following documents:

PETITIONERS' NOTICE OF APPEAL

☒ **BY EMAIL:** Pursuant to CCP § 1010.6., by emailing a true and correct copy to counsel at the email addresses set forth below.

Alina Stark	<i>Counsel for Respondents</i>
Janet Y. Wong	
California Department of Transportation	
111 Grand Avenue, Suite 11-100	
Oakland, CA 94612	
alina.stark@dot.ca.gov	
janet.wong@dot.ca.gov	

I declare under the penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed February 7, 2025.

By: 
Ian Atkinson-Young