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17 COUNTY OF HUMBOLDT
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19 TRISHA LEE LOTUS, et al.,
20
21 Petitioners,
22
23 v.
24 CALIFORNIA STATE DEPARTMENT OF
TRANSPORTATION, et al.,
25
26 Respondents.
27
28

Case No. CV110002

**PETITIONERS' OPENING BRIEF IN
SUPPORT OF VERIFIED PETITION FOR
WRIT OF MANDATE AND INJUNCTIVE
RELIEF**

Date: March 14, 2012
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Courtroom 8 (Hon. Dale A. Reinholdtsen)

Action Filed: June 17, 2010

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1 **INTRODUCTION**

2 This action challenges the Richardson Grove Operational Improvement Project (“Project”), a
3 proposal by Respondents California State Department of Transportation (“Caltrans”) to widen and
4 realign Highway 101 where it winds through the towering old-growth redwoods of Richardson Grove
5 State Park. Richardson Grove is the southern gateway to the Redwood Region, treasured by generations
6 of residents, recreationists, and travelers from all over the country. Yet the Project would put this
7 unique and irreplaceable grove at risk. Caltrans proposes to cut through, dig up, and pave over the roots
8 that give life and support to Richardson Grove’s ancient trees — all for the sake of allowing a few more
9 giant Surface Transportation Assistance Act (“STAA”) standard trucks to rumble through the park.

10 As described below, Caltrans failed to fully disclose, meaningfully analyze, and adequately
11 mitigate the impacts of its decision to favor trucks over trees in Richardson Grove, thus violating the
12 California Environmental Quality Act (“CEQA”), Public Resources Code § 21000, et seq., and the
13 CEQA Guidelines.¹ Indeed, the Environmental Impact Report (“EIR”) Caltrans prepared for the Project
14 is a litany of failures. Petitioners thus respectfully request that this Court issue a writ of mandate
15 directing Caltrans to set aside its approval of the Project, as well as an injunction preventing Caltrans
16 from taking any steps to implement the Project, until the agency has fully complied with CEQA.

17 **STATEMENT OF FACTS**

18 **I. The Ancient Redwoods of Richardson Grove**

19 Richardson Grove State Park (“Grove” or “Park”) is home to ancient redwoods 300 feet tall and
20 thousands of years old, including the ninth tallest Redwood known to exist. AR 20:6278, 23:7483.² The
21 Grove is of particular national importance due to the high quality and limited extent of its trees. AR
22 14:4044. Thousands of visitors annually trek to this historic gem, seeking to enjoy the awe, reverence
23 and spirituality of Richardson Grove’s giant redwoods. AR 2:403.

24
25 _____
26 ¹ All further undesignated statutory references are to the Public Resources Code. The “CEQA
27 Guidelines” referenced herein are codified at title 14, California Code of Regulations, § 15000 *et seq.*

28 ² Citations to the Administrative Record use the following format: AR [volume number]:[page number].

1 State Highway 101 winds through the Park, providing northbound travelers with their first
2 glimpse of a significant forest of large redwoods. AR 13:3759. In some areas, the highway narrows to
3 only 22 feet in width, with shoulders of two feet or less, as it passes through the redwoods. AR 1:20.
4 This segment of Highway 101 provides a “distinctive aesthetic experience . . . important to area
5 residents and travelers.” AR 11:3259. According to the California Department of Parks and Recreation,
6 people come from the furthest reaches of our nation and all corners of the planet to
7 experience the Redwoods and most pass through Richardson Grove to do so. Many of
8 these visitors have strong legacy ties to Richardson Grove State Park, and a family
9 connection that spans generations. *Any project that affects the historic patina and the
10 natural fabric of Richardson Grove State Park can have far reaching impact to millions
11 of people as they enter the Redwood Region.*”

12 AR 2:376 (emphasis added).

13 The Park shelters an abundance of wildlife including the federally protected marbled murrelet
14 and spotted owl. AR 1:303-309. The South Fork of the Eel River, a designated Wild and Scenic River
15 under both state and federal law, also threads through Richardson Grove and along Highway 101. AR
16 1:302. The Park contains cultural and archaeological resources, including a Native American village
17 site, documenting the early presence of Indian people. AR 2:453; 20:6029. Local Native Americans
18 regard the Grove’s ancient trees themselves as sacred. AR 2:453.

19 Redwood trees breathe through their roots, absorbing air, nutrients and water. AR 2:429-430.
20 They need non-compact soil to thrive. AR 23:7496. They also rely on shallow, interlacing root systems
21 that provide mutual reinforcement and structural support. AR 23:7487, 7488. A tree’s so-called
22 “structural root zone” — defined as a circular area with the tree trunk at the center, having a radius equal
23 to three times the diameter of the tree trunk measured at 4.5 feet above the ground level — is especially
24 vulnerable to damage from construction activities. AR 4:1315. According to a Natural Resources
25 Handbook developed by the State Department of Parks and Recreation, “[t]here should be no
26 construction activities in the Structural Root Zone of a protected tree.” AR 18:5601 (emphasis added).

27 **II. The Project and its Effects on Richardson Grove**

28 Caltrans describes the Richardson Grove Operational Improvement Project (“Project”) as just
over one mile in length, consisting of “minor realignments and widening of Route 101 to correct STAA
restrictions at three locations.” AR 1:34. STAA-standard trucks are configured differently from and

1 slightly longer than “California legal” trucks. *See* AR 1:12. Although many STAA trucks are restricted
2 from passing through the Grove, *id.*, others are allowed under legislative exemptions. Veh. Code §§
3 35401.5(f), 35401.7. The Project’s purpose is “to adjust the roadway alignment so that two STAA
4 trucks passing in opposite directions could be accommodated.” AR 1:19. Caltrans maintains the Project
5 is necessary to prevent STAA trucks from “off-tracking,” that is, straying outside the travel lane. AR
6 1:21. Yet the Project is **not** a safety project. AR 2:436, 638. Caltrans’ concern about off-tracking is not
7 based on any record of collisions, but rather on a computer program called “Autoturn” that Caltrans used
8 to design the Project. AR 13:3830. This computer program and its assumptions were not fully
9 described in the EIR or otherwise made available to the public. **There is no record of accidents in the**
10 **Grove involving STAA trucks.** AR 2:485.

11 The Project will **not** bring the highway through Richardson Grove up to Caltrans’ highway
12 design standards. AR 2:418. As a result, the Project includes mandatory design exceptions to highway
13 design standards for minimum design speed and curve radii, shoulder width, minimum super-elevation
14 rate, stopping sight distance, minimum distance to a fixed object and corner site distance. AR 1:38; AR
15 13:3758-90. The Project also includes advisory exceptions to design standards for alignment
16 consistency, compound curves, super-elevation transitions, clearance to fixed objects within “clear
17 recovery zones,” and side slopes greater than 4:1. AR 1:38; AR 14:4040-68.

18 The Project as described in the Final EIR has three segments. Segment one, entirely within the
19 Park from post mile (“PM”) 1.1 to PM 1.7, will widen the road, change curves, replace culverts, cut
20 trees, cut and fill soil, realign the road from the existing centerline by approximately 2 to 6 feet on
21 average, and remove and replace the road pavement. Segment two, located at the northern end of the
22 Park from PM 1.7 to PM 2.04, will remove and repave the roadbed, and extend a berm to divert water to
23 a culvert at PM 1.78. Segment three, located on the edge and outside the Park from PM 2.04 to PM
24 2.20, will widen and realign the road up to 10 feet from the centerline and replace culverts, cut and fill
25 soil to create shoulders, build a 200-foot retaining wall 10-13 feet below the road, and cut a slope 4,500
26 square feet in area on the opposite side of the road. AR 1:35-36. These activities will involve
27 significant ground disturbance, vegetation and tree removal, cut slope excavation, placement of fill
28 material, removal and disposal of lead-contaminated soils, culvert removal and replacement, stream

1 diversion, equipment staging areas, utility relocation, right-of-way acquisition of Park lands, and
2 temporary construction easements. AR 1:295.

3 Of particular concern are the Project’s effects on the roots of old-growth redwoods in the Grove.
4 The Project calls for both cut and fill activities within the structural root zone, with excavation at depths
5 of approximately two feet and maximum fill depth of three and a half feet. AR 1:59-60. This
6 excavation will involve cutting the roots of old growth redwoods, including roots within the structural
7 root zone, up to 2 inches in diameter. AR 2:395. Caltrans admitted in the Final EIR, however, that in
8 some “areas of cut” and in areas of “culvert improvement work . . . , it may not be possible to avoid
9 cutting roots greater than two inches.” *Id.* Other effects of the Project on redwood trees include
10 placement of impervious material and fill over the roots, changing drainage patterns, compaction, and
11 exposure to fuel and oils from leaky equipment. *See, e.g.*, AR 1:125, 311; AR 20:6346-47.

12 Caltrans proposed to minimize impacts to the old growth redwoods by using an “air spade,” hand
13 tools, or other methods approved by the construction engineer to excavate around roots; adding “brow
14 logs” to minimize the impact of fill on the trunks of the trees; and watering the trees weekly once
15 excavation below the finish grade occurs. AR 1:132-35. However, where culverts are to be repaired or
16 replaced, the Project does not require use of an air spade or other hand excavation techniques and would
17 permit mechanical excavation within structural root zones. AR 1:132-35; AR 13:3798. If roots are
18 present in these culvert trench zones, they “would certainly be removed/damaged by the excavator.” AR
19 8:2390. Caltrans has not identified any scientific studies showing these mitigation measures would be
20 effective or sufficient to protect the trees from harm. *See* AR 1:185-186, 319-320; AR 2:618-619. Nor
21 did Caltrans conduct any field studies of the root systems in the Grove. AR 3:806. Finally, Caltrans
22 admitted that it could **not** predict — and did **not** know — the impacts of construction on the trees. AR
23 2:553; 3:806.

24 The Project would affect other Grove resources as well. For example, the Project may affect the
25 marbled murrelet and the Northern spotted owl — two species protected under the federal Endangered
26 Species Act — to the point where special authorization allowing the harm and harassment of the species
27 was required. AR 1:154-56; 6:1808-09. Construction of the Project also “could negatively affect visitor
28 experience at the park,” AR 2:363, and result in alteration of the visual environment within the Grove

1 and north of the Park boundary. AR 13:3852, 3879. A newly discovered archaeological site lies partly
2 within the Project’s Area of Direct Impact. 20 AR 20:6008, 6029, 6039, 6040, 6409. The Project also
3 entails removal and roadside disposal of soils that contain aeriually deposited lead at hazardous
4 concentrations. AR 20:6074-75, 6078, 6081.

5 **III. Environmental Review and Approval of the Project**

6 This Project had its genesis in 2006 with Caltrans’ initiation of a “Goods Movement Feasibility
7 Study” that intended to use a multi-disciplinary team approach to exploring alternatives for safe and
8 economically feasible goods movement, including STAA truck access, in Humboldt County. AR 1:33;
9 7:1940. The study would have considered several alternatives, including highway improvement,
10 signalization, time of day STAA truck travel restrictions, warning systems, and combinations thereof.
11 AR 7:1943. By June 2007, however, Caltrans abandoned this approach in favor of the computer
12 simulation that ultimately led to the Project. AR 7:1968.

13 Caltrans issued a Notice of Preparation for a combined Environmental Assessment and
14 Environmental Impact Report (“EA/EIR”) in May 2008. AR 15:4822-4823. The Draft EA/EIR was
15 released on December 4, 2008. AR 8:2572. Caltrans held a public hearing almost immediately
16 thereafter on December 15, 2008. AR 15:4827. The public outcry against the Project was tremendous;
17 more than 800 responsive letters and thousands of comments protested the Project because of its
18 potential for impacts to the environment. *See* AR vols. 2, 3; AR 3:840. Public comment on the draft
19 document closed on March 12, 2009. AR 15:4832, 4835.

20 Caltrans released the Final EA/EIR and Finding of No Significant Impact on May 18, 2010, and
21 approved the Project on the same day. AR 1:1, 9, 10; 14:4426. The Final EIR contained both extensive
22 changes to the Project and significant new information concerning the Project’s effects. For example:

23 • The Final EIR more than doubled (from 40 to 86) the number of trees identified as having
24 potential tree root impacts. *Compare* AR 1:128-129 *with* AR 4:1316-1317 at Table 9.

25 • The Final EIR for the first time identified 68 redwoods that would be affected by cut and fill
26 operations in their structural root zones. AR 1:130-31.

27
28

1 • Caltrans in the Final EIR relocated the retaining wall to the opposite side of Highway 101,
2 upslope from the Eel River. AR 1:286, 289; 4:1432-33. The new retaining wall would “measure
3 approximately 180-feet long and extend as much as 12-feet below the roadway.” AR 14:4041.

4 • The Final EIR identified and mapped for the first time the land to be transferred to Caltrans
5 from State Parks. AR 1:214-215.

6 • The Final EIR changed project maps to mark cut and fill, identify more trees whose roots will
7 be impacted, locate the Park land to be taken, and identify the relocated retaining wall. 1 AR 269-289.

8 In addition to these changes, Caltrans included substantial new information about the Project. In
9 particular, the Final EIR mentioned the opinions of two arborists, developed after the close of public
10 comment on the Draft EIR, concerning the Project’s effects on ancient redwood root zones. AR 1:129.³
11 Although one arborist is not a redwood expert, AR 15:4725, and the other is a Caltrans employee whose
12 report was revised by his superiors and Caltrans “legal,” AR 10:3035, Caltrans claimed these two
13 reports supported its conclusion that the Project would have no significant effect on ancient redwood
14 trees and require no mitigation.

15 Despite repeated requests, *see, e.g.*, AR 24:7670-71, 7696-97, Caltrans never provided any
16 opportunity for the public to comment on the Final EIR, the Project changes and new information
17 revealed therein, or the arborists’ reports on which Caltrans belatedly relied. Indeed, the public was not
18 able even to view the Final EIR until after the Project was approved.

19 This action was filed on June 17, 2010.

20 **STANDARD OF REVIEW**

21 The EIR is the “heart of CEQA,” an environmental “alarm bell” designed to alert the public and
22 their governmental representatives of environmental changes “before they have reached ecological
23 points of no return.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 392
24 (1988) (“*Laurel Heights I*”). An EIR is not “a mere set of technical hurdles” for agencies to overcome,
25 but rather functions to ensure that “government officials who decide to build or approve a project do so

26 _____
27 ³ Caltrans did not list these opinions as references or include them as Appendices in the Final EIR. AR
28 1:15, 185-186.

1 with a full understanding of the environmental consequences and, equally important, that the public is
2 assured those consequences have been taken into account.” *Vineyard Area Citizens for Responsible*
3 *Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412, 449 (2007) (“*Vineyard*”). In this sense, the
4 EIR is a “document of accountability” that “protects not only the environment but also informed self-
5 government.” *Laurel Heights I*, 47 Cal. 3d at 392. To this end, “[a]n EIR must include detail sufficient
6 to enable those who did not participate in its preparation to understand and to consider meaningfully the
7 issues raised by the proposed project.” *Id.* at 405.

8 In reviewing Caltrans’ compliance with CEQA, this Court must determine whether the agency
9 prejudicially abused its discretion. § 21168.5. Abuse of discretion is established if the agency “has not
10 proceeded in a manner required by law *or* if the determination or decision is not supported by substantial
11 evidence.” *Id.* (italics added). “Judicial review of these two types of error differs significantly.”
12 *Vineyard*, 40 Cal. 4th at 435. Claims of improper procedure — including claims that an agency has
13 failed to include the information required by CEQA in an EIR — are reviewed *de novo*, while only an
14 agency’s factual determinations are reviewed for substantial evidence. *Id.*; *see also Cmties. for a Better*
15 *Env’t v. City of Richmond*, 184 Cal. App. 4th 70, 82-83 (2010).

16 ARGUMENT

17 **I. The EIR Violated CEQA’s Procedural Requirements by Failing to Accurately Describe** 18 **the Project and its Environmental Setting.**

19 **A. The EIR Failed to Disclose Crucial Information about the Environmental Setting of** 20 **the Project.**

21 An EIR must include “a description of the physical environmental conditions in the vicinity of
22 the project.” CEQA Guidelines § 15125(a). Public knowledge of the regional setting is “critical to the
23 assessment of environmental impacts,” and “[s]pecial emphasis should be placed on environmental
24 resources that are rare or unique to that region and would be affected by the project.” CEQA Guidelines
25 § 15125(c). An inaccurate, incomplete, or misleading account of the environmental setting makes it
26 impossible for the public, decision-makers, or reviewing courts to conclude that an EIR adequately
27 identified and analyzed a project’s environmental effects. *See San Joaquin Raptor/Wildlife Rescue Ctr.*
28 *v. County of Stanislaus*, 27 Cal. App. 4th 713, 729 (1994). Because Caltrans’ compliance with these

1 provisions implicates CEQA’s fundamental information disclosure requirements, *see id.*, this Court’s
2 review is *de novo*. *See Cmties. for a Better Env’t*, 184 Cal. App. 4th at 82-83.

3 Both the Draft EIR and the Final EIR here failed to disclose perhaps the most critical,
4 controversial aspect of the Project’s environmental setting: the nature, location, and extent of the
5 structural root zones of the old-growth redwood trees alongside Highway 101. These failures made
6 evaluation of the Project’s most critical environmental impact — damage to the roots of ancient trees
7 within Richardson Grove State Park — impossible.

8 First, Caltrans misleadingly described the nature and purpose of the “structural root zone,” which
9 generally has a radius three times that of the diameter of a tree’s trunk. AR 4:1315, 18:5599. The Draft
10 EIR, citing the Department of Parks and Recreation’s Natural Resources Handbook, described this zone
11 as “where most of the nutrient and water absorption occurs.” AR 4:1315. The Handbook, however,
12 makes clear the “structural root zone” is just that: an area filled with “structural” roots helping to hold up
13 and maintain the physical integrity of the tree. *See* AR 18:5599-5600 (Handbook excerpt describing
14 permanent “buttress” and “intermediate” roots that could be damaged by soil disturbance). The
15 handbook also identifies a “root health zone” with a radius five times a tree’s diameter; this zone, which
16 the Draft EIR failed to mention at all, contains “feeder” roots that deliver water and nutrients to the tree.
17 *Id.* Caltrans cited the Natural Resources Handbook, but ignored what it actually says.

18 The Draft EIR identified 40 trees that might suffer “potential tree root effects,” including 27 trees
19 30 inches and above in diameter. AR 4:1316-17. According to the Final EIR, such trees are “old
20 growth” redwoods. AR 1:18. The Draft EIR also referenced maps in Appendix L purportedly “showing
21 where construction occurs within the structural root zones of trees.” AR 4:1315. Those maps, however,
22 did not depict the extent of the affected trees’ structural root zones at all, much less show how those
23 areas would be affected by Project activities. AR 4:1413-33. Comments on the Draft EIR alerted
24 Caltrans to this failure. *See, e.g.*, AR 2:410 (“Missing is a detailed description of the structural root
25 zones of trees that might be affected by the project”). The Final EIR did not remedy this material
26 omission. Although the maps in Appendix L were revised to show a far greater number of trees with
27 root zone impacts, those maps still omit any depiction of structural root zones in relation to planned
28 Project construction activities. AR 1:269-89.

1 In *San Joaquin Raptor/Wildlife Rescue Center*, the court invalidated an EIR for a proposed
2 housing development that failed to provide “clear and definite analysis of the location, extent, and
3 character” of wetlands within and adjacent to the project. 27 Cal. App. 4th at 729. In particular, the
4 court criticized the lead agency for failing to conduct and document any investigation “specifically
5 considering the presence and extent of wetland areas”; such investigation should have been “fully
6 explained” in the EIR, including identification of the investigators, “the actions taken by them disclosed
7 and their conclusions supported by facts and analysis.” *Id.* at 728. Absent such investigation and
8 detailed disclosure, the court could not conclude that all environmental impacts were adequately
9 discussed and analyzed; as a result, the environmental setting description was “inadequate as a matter of
10 law” and insufficient to support a finding that the development’s impacts had been mitigated to a level
11 of insignificance. *Id.* at 729. The Court in *Galante Vineyards v. Monterey Peninsula Water*
12 *Management District*, 60 Cal. App. 4th 1109 (1997) reached a similar conclusion, holding an EIR
13 inadequate for failing to disclose the importance of viticulture in the area surrounding a project that
14 would have affected traffic, air quality, and climate in nearby vineyards. *Id.* at 1121-22. This omission
15 made “a proper analysis of project impacts . . . impossible.” *Id.* at 1122.

16 Caltrans’ EIR suffers from similar deficiencies. Despite acknowledging structural root zones
17 may be affected by the Project, Caltrans failed to conduct and document any investigation into where
18 those structural roots might be, and failed to provide any clear and definite analysis of their location,
19 extent, and character sufficient to enable the public or a reviewing court to determine whether Caltrans’
20 conclusions have any support. Indeed, the Final EIR’s response to comments revealed Caltrans did not
21 conduct any field studies at all to determine the location of potentially affected root systems. See AR
22 3:790 (comment asking what field studies were conducted regarding structural root impacts), 806
23 (response stating that “[n]o field studies have been conducted”). This failure to investigate, document,
24 and disclose perhaps the single most important aspect of the Project’s environmental setting — the vital
25 structural root zones of the old-growth redwoods that define Richardson Grove State Park — renders the
26 EIR inadequate as a matter of law. See *Galante Vineyards*, 60 Cal. App. 4th at 1122; *San Joaquin*
27 *Raptor/Wildlife Rescue Ctr.*, 27 Cal. App. 4th at 729.

1 **B. The EIR Failed to Provide an Accurate and Complete Description of the Project.**

2 “An accurate, stable, and finite project description is the *sine qua non* of an informative and
3 legally sufficient EIR.” *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193 (1977).
4 Without an accurate description, decision-makers and the public cannot weigh a project’s environmental
5 costs and benefits, meaningfully consider mitigation measures, or evaluate alternatives. *See id.* at 192-
6 93; *see also* CEQA Guidelines § 15124 (requiring detail sufficient for “evaluation and review of the
7 [project’s] environmental impact”). CEQA requires a project description provide sufficient facts “from
8 which to evaluate the pros and cons” of the project; an EIR in which “important ramifications” of the
9 project remain “hidden from view” throughout the approval process “frustrates one of the core goals of
10 CEQA.” *Santiago County Water Dist. v. County of Orange*, 118 Cal. App. 3d 818, 829 (1981). The
11 adequacy of a project description implicates CEQA’s informational mandates and is thus reviewed *de*
12 *novo*. *See Cmties. for a Better Env’t*, 184 Cal. App. 4th at 82-83.

13 The EIR here described the Project’s purpose and characteristics in terms insufficient to support
14 reasoned analysis of potential impacts, particularly effects on old-growth redwood root systems. For
15 example, the Draft EIR described the Project as “correct[ing] STAA restrictions at three locations,” AR
16 4:1245, but did not actually identify those locations. Nor did the Draft EIR describe the geometrics of
17 the road, the design considerations necessary to reconfigure the highway for STAA access, or the
18 precise characteristics of the proposed roadwork. Rather, the Draft EIR stated in conclusory fashion that
19 the Project was based on “[c]onceptual designs using the computer software ‘Autoturn’” AR
20 4:1244. Nowhere else did the Draft EIR even mention “Autoturn,” much less disclose the
21 characteristics or assumptions of the software or the inputs Caltrans used to design the Project.

22 The Draft EIR described a range of “maximum” and “average” alignment shifts, but did not
23 specify where these shifts would occur in relation to affected redwood root systems. AR 4:1245-46,
24 1250. Similarly, although the Draft EIR estimated volumes of soil disturbance in the “main areas of cut
25 and fill,” it failed to describe the extent and depth of cut and fill operations adjacent to potentially
26 affected redwoods. *See id.* The “typical” cross-section diagrams of the existing and proposed roadway
27 provided in the Draft EIR offered no information as to potential root system impacts. AR 4:1248-49.
28 Layout maps included in an appendix to the Draft EIR identified 41 trees with “root impacts,” AR

1 4:1414-33, but did not depict the location or depth of proposed excavation or cut and fill operations that
2 could affect redwood root zones.

3 The Final EIR failed to remedy the informational deficiencies in the Draft EIR. The description
4 of the Project in the Final EIR failed to provide any additional information concerning the precise
5 characteristics of Project activities within redwood root zones. *See* AR 1:34-38. Responses to
6 comments reiterated the Project design was derived from the “Autoturn” computer program, *see* AR
7 2:435, but failed to provide any further meaningful information regarding that program’s characteristics
8 or assumptions. The Final EIR did finally disclose, for the first time, some general information
9 concerning the depth of cut and fill activities in the structural root zones of 68 old-growth redwoods.
10 AR 1:130-31 (Table 10). Moreover, the Final EIR more than *doubled* the number of trees identified as
11 having root zone impacts in the Draft EIR. *See* AR 1:270 (layout map listing 86 trees where work would
12 occur in root zones). These belated disclosures regarding the Project’s primary impacts demonstrate that
13 the Draft EIR — the only version of the EIR the public could have reviewed or commented on prior to
14 Project approval — failed to describe the Project accurately or completely enough to enable reasoned
15 evaluation of its impacts, the effectiveness of mitigation measures, or the feasibility of alternatives.

16 The lack of an accurate and complete Project description here frustrated CEQA’s fundamental
17 informational purpose. The EIR’s description of the Project’s technical and environmental
18 characteristics, *see* CEQA Guidelines § 15124(c), was insufficient to support an evaluation of its most
19 controversial impact: cutting through, compacting, and paving over the structural root zones of
20 Richardson Grove’s ancient redwood trees. The EIR failed to identify where off-tracking of STAA
21 trucks supposedly would occur, failed to describe how the Project was designed to resolve conflicts at
22 these locations, and failed to explain which Project components were proposed for which reason.
23 Whether or not Caltrans officials knew this information from some other source is beside the point;
24 without this information in the EIR itself, the public was unable to understand exactly how the Project
25 would affect Richardson Grove State Park, and was forced to rely solely on Caltrans’ conclusory
26 representations. *See Santiago County Water Dist.*, 118 Cal. App. 3d at 831 (information “required to be
27 considered in an EIR must be in that formal report; what any official might have known from other
28 writings or oral presentations cannot supply what is lacking in the report”) (quotation omitted).

1 Furthermore, the Draft EIR contained *no* meaningful information on soil cutting and fill
2 activities. The belated inclusion of additional information in the Final EIR serves only to illustrate, and
3 not to remedy, this fundamental defect. Caltrans apparently concluded the public did not need to know
4 or comment upon the fact that the Project’s intrusion into redwood root zones would be *more than twice*
5 *as extensive* as disclosed in the Draft EIR. As explained in Part V, *infra*, this conclusion was legally
6 erroneous; Caltrans should have circulated a *revised* Draft EIR with the new information. Whatever
7 basis Caltrans might have had for failing to disclose basic facts about the Project, “the public and
8 decision-makers, for whom the EIR is prepared, should also have before them the basis for that opinion
9 so as to enable them to make an independent, reasoned judgment.” *Santiago County Water Dist.*, 118
10 Cal. App. 3d at 831. No such “independent, reasoned judgment” was possible here, because critical
11 information about the Project and its effects was not disclosed until *after* the Project was approved. By
12 the time the public learned of the Project’s characteristics and impacts, it was too late.

13 Finally, the EIR’s shifting and unstable account of the Project’s purpose sent conflicting signals
14 to the public, undermining evaluation of impacts and potential alternatives. *See Cmties. for a Better*
15 *Env’t*, 184 Cal. App. 4th at 83-84. The Draft EIR suggested improving safety was one of the primary
16 purposes of the Project. *See* AR 4:1240-42. In responses to comments, however, Caltrans stated “[t]he
17 project is not a safety project, but an operational improvement project to lift the STAA restriction at this
18 location.” AR 2:638. Neither the Draft nor the Final EIR clearly explained what design standards are
19 necessary for STAA truck access, although both documents acknowledged that the Project would not
20 conform to Caltrans’ basic highway safety design criteria. *See* AR 1:38, 4:1251 (Project would require
21 “mandatory design exceptions” to “highway design standards”); *see also* AR 13:3758-3790; 14:4040-68
22 (design exception reports).⁴ As a result, the public had no way to evaluate whether alternative designs,
23 alignment changes at different locations, or avoidance measures might work to permit STAA access
24 without undermining safety. All the public could go on was Caltrans’ say-so regarding the results of the
25 “Autoturn” software — a computer model that was never even described, much less included, in the

26
27 ⁴ Caltrans did not list the design exception reports as references or include them as Appendices in the
28 Final EIR. AR 1:15, 185-186.

1 EIR. *See* AR 2:435 (describing lack of any design “standards” for STAA, stating Project relied on
2 “Autoturn” software, and conceding Project would not bring road up to current design standards). The
3 EIR’s shifting statements of purpose, and its reliance on an undescribed and undisclosed computer
4 model, “call for blind faith in [Caltrans’] vague subjective characterizations,” *Cmties. for a Better Env’t*,
5 184 Cal. App. 4th at 85, and thus cannot satisfy CEQA’s informational purpose.

6 The Supreme Court has declined in other contexts to “countenance a result that that would
7 require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully
8 informed as to the environmental consequences of action by their public officials.” *Laurel Heights I*, 47
9 Cal. 3d at 404-05. Caltrans acted contrary to this fundamental goal by failing to describe the Project’s
10 objectives and technical characteristics consistently and in adequate detail in the Draft EIR. Caltrans
11 only compounded this error by depriving the public of any opportunity to review or comment on new
12 information disclosed in the Final EIR. In so doing, Caltrans failed to proceed according to law.
13 Accordingly, Caltrans’ certification of the EIR and approval of the Project must be set aside.

14 **II. The EIR Failed to Disclose, Analyze, or Propose Legally Adequate Mitigation for the**
15 **Project’s Significant Impacts on Ancient Redwoods.**

16 The basic purposes of CEQA are twofold: *first*, to ensure that the public and decision-makers
17 know, understand, and meaningfully consider the environmental effects of proposed projects, and
18 *second*, to require that public agencies consider and adopt feasible mitigation measures and alternatives
19 that would avoid or lessen significant effects. *See* §§ 21001, 21001.1, 21002, 21002.1, 21081, 21100.
20 In furtherance of these purposes, public agencies pursuing projects subject to CEQA must follow a
21 familiar and well-established course of action. First, a lead agency must determine whether the
22 environmental impacts of its project are “significant.” CEQA Guidelines §§ 15063, 15064. If there is
23 substantial evidence in light of the whole record that the project will have significant effects, the agency
24 must prepare an EIR. §§ 21082.2(d), 21100(a); CEQA Guidelines § 15064(a)(1), (f). The EIR must
25 identify the Project’s environmental effects, evaluate their significance, describe feasible mitigation
26 measures to minimize those effects, and consider a range of reasonable alternatives that could avoid or
27 substantially lessen those effects. CEQA Guidelines §§ 15126.2, 15126.4, 15126 Before the agency can
28 approve the project, it must specifically find that the project’s significant effects have been mitigated or

1 avoided. § 21081; CEQA Guidelines § 15091. If significant environmental effects remain after
2 implementation of all feasible measures, the agency may still approve the project, but only after
3 adopting a “statement of overriding considerations” finding that the project’s benefits outweigh its
4 environmental cost. § 21081(a)(3), (b); CEQA Guidelines § 15093. Mitigation measures must be
5 monitored and enforced following project approval “to ensure compliance during project
6 implementation.” § 21081.6(a)(1) CEQA Guidelines § 15097.

7 Caltrans failed even to take the first step down this well-worn path in evaluating the Project’s
8 effects on the old-growth redwoods of Richardson Grove. Its first error was in failing to identify
9 impacts to redwood root zones as significant. Caltrans then compounded this error through its
10 inconsistent — and at times incoherent — discussion of mitigation measures for these impacts, which
11 culminated in a conclusion that no mitigation was necessary. As a result, Caltrans failed to ensure
12 mitigation measures were incorporated into the Project, failed to make the findings required by law or
13 adopt a statement of overriding considerations, and failed to adopt a mitigation monitoring and reporting
14 plan. Finally, Caltrans failed to provide substantial evidence in support of its conclusion that “special
15 construction techniques” would avoid significant impacts.

16 **A. The EIR Failed to Disclose and Properly Evaluate the Significance of the Project’s**
17 **Effects on Ancient Redwood Trees.**

18 Caltrans somehow concluded the Project’s effects on ancient redwoods and their root systems
19 would be less than significant, despite ample evidence in the record — and even Caltrans’ own
20 statements in the EIR and elsewhere — to the contrary. Lead agencies must determine the significance
21 of project impacts using “careful judgment . . . , based to the extent possible on scientific and factual
22 data.” CEQA Guidelines § 15064(b). The evaluation of an activity’s significance also “depends upon
23 the setting.” *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 718 (1990). An
24 agency may not “travel the legally impermissible easy route to CEQA compliance” by making a
25 significance determination without fully analyzing a project’s effects. *Berkeley Keep Jets Over the Bay*
26 *Comm. v. Bd. of Port Comm’rs*, 91 Cal. App. 4th 1344, 1371 (2001).

27 Here, Caltrans failed even to analyze or explain the evidence in the record showing the Project’s
28 impacts on ancient redwood root zones would be significant, much less exercise “careful judgment” in

1 the context of the Project’s “setting” among the giant old-growth trees of Richardson Grove State Park.
2 Indeed, Caltrans ignored the very “scientific and factual data” on which it purported to rely. The Draft
3 EIR cited only one reference — the Natural Resources Handbook prepared by the state Department of
4 Parks and Recreation — in its discussion of redwood root zone impacts. AR 4:1315 (citing
5 “Department of Parks and Recreation, 2005”). The Handbook clearly indicates Caltrans should have
6 identified these impacts as significant. Construction activities identical to those proposed as part of this
7 Project — namely, “soil disturbance from 0 to 3 foot depth including trenching, grade changes, storage
8 of vehicles and materials, or compaction caused by machinery traversing the [structural root] zone” —
9 can “wound or destroy tree roots,” with activities close to the tree trunk having the greatest probability
10 of causing injury. AR 18:5600. Severing intermediate and feeder roots can put “old low vigor trees”
11 under “significant” stress, and in fact, “[i]n dense forests where drip lines of trees touch each other it is
12 impossible to install a new facility without causing damage.” AR 18:5599. In light of these concerns,
13 the Handbook states categorically that

14 there *should be no construction activities in the Structural Root Zone of a protected tree.*
15 This includes soil disturbance from 0 to 3 foot depth Any intrusion into this zone is
16 usually accompanied by *significant injury* to roots further from the trunk; this will
17 shorten the useful life of the tree in the developed area by reducing vigor and introducing
18 root disease. Furthermore, damage to any structural roots may cause an already
19 structurally compromised tree to become hazardous (i.e., a high risk of uprooting).

20 AR 18:5601 (emphasis added). Where, as here, root systems have already been compromised by
21 existing construction, the Handbook states “[t]here should be no intrusion beneath the *dripline* for a
22 protected tree,” due to the possibility of “significant” damage to “old, low vigor trees with existing root
23 or foliage damage.” *Id.* (emphasis added).⁵ The Handbook thus provides no support for finding the
24 Project’s impacts on redwood root zones to be less than significant; if anything, it compels the opposite
25 conclusion.

26 ⁵ The “structural root zone” of a tree has a radius three times the diameter of the trunk, while the
27 “dripline” encompasses the entire area “directly beneath the vertical projection (shadow) of the trees
28 [sic] foliage canopy.” AR 18:5599.

1 Experts outside Caltrans confirmed the Project’s impacts would be significant. Dr. Stephen
2 Sillett, the Kenneth L. Fisher Chair of Redwood Forest Ecology in the Forestry Department at Humboldt
3 State University, put it bluntly:

4 Cutting woody roots or redwoods leads to decline and often die-back or the treetop and
5 other portions of the crown, depending on the number of large roots cut and the
6 proportion of the rooting zone impacted by construction. I have studied redwoods for
7 many years, and my repeated observations of large redwoods near construction sites have
8 convinced me that cutting large roots is a BAD IDEA if maintaining tree health and vigor
9 is a goal. Surely one of the primary goals in Richardson Grove State Park, as in all other
10 redwood forests protected within our region, is maintenance of redwood tree health and
11 vigor. Thus, I urge CalTrans to abandon plans to widen Highway 101 in a way that
12 necessitates cutting woody roots, because this will greatly compromise Richardson Grove
13 State Park’s goal of protecting the giant roadside trees in this magnificent forest.

14 AR 3:1124. A certified arborist submitted a comment letter stating “cutting roots on old growth
15 redwood trees will impact their health.” AR 24:7943. An ecologist for the Department of Parks and
16 Recreation informed Caltrans that “the project would have significant environmental issues including
17 take for marbled murrelet and that an EIR will likely be needed.” AR 15:4623. All of this information
18 should have led Caltrans to conclude impacts to root systems would be significant.

19 Indeed, the record shows Caltrans at some point *did* view these impacts as potentially significant.
20 The Natural Environment Study prepared by Caltrans in support of the EIR, citing the Handbook and
21 one additional scientific article, concluded “[a]dverse effects to old growth trees may be a significant
22 impact to this unique natural community.” AR 1:311; *see also* AR 4:1454. A memorandum from
23 Caltrans to the California Transportation Commission transmitting the Draft EIR similarly identified
24 impacts to redwood root systems and State Park resources as “potentially significant.” AR 13:3797.
25 The very fact that Caltrans chose to prepare an EIR suggests the agency viewed at least some of the
26 Project’s effects as significant; after all, an EIR is proper only where there is substantial evidence of
27 significant environmental effects. *See* §§ 21082.2(d), 21100(a); CEQA Guidelines § 15064(a)(1), (f).
28 Caltrans even stated in the Final EIR that after considering comment, it “will certify the EIR and issue
Findings and a Statement of Overriding Considerations under CEQA.” AR 1:11. Again, a statement of
overriding considerations issues only where a project has significant environmental effects that cannot
be feasibly mitigated. § 21081(b); CEQA Guidelines 15093.

1 Where, as here, a lead agency identifies significant environmental impacts resulting from a
2 project, the lead agency must either make a specific finding that adequate mitigation measures have been
3 incorporated into the project to reduce significant effects, or, if such measures are infeasible, must adopt
4 a statement of overriding considerations justifying approval of the project. § 21081; *see also Cleary v.*
5 *County of Stanislaus*, 118 Cal. App. 3d 348, 361-62 (1988). Yet — despite having promised to do so on
6 the first page of the Final EIR, AR 1:11 — Caltrans failed to make *any* such findings here. Instead, in
7 the face of all the evidence and in spite of its own prior conclusions, Caltrans determined the Project,
8 with implementation of “special construction techniques,” would have *no* significant impacts and would
9 require *no* mitigation. *See* AR 1:166, 4:1343. This determination — contradicted by the record, and
10 unsupportable and unlawful in itself — unleashed a cascade of further legal errors.

11 **B. The EIR Failed to Propose Legally Adequate Mitigation for the Project’s Significant**
12 **Effects on Ancient Redwoods.**

13 **1. The EIR’s Discussion of Mitigation Measures Was Internally Contradictory**
14 **and Contrary to CEQA’s Requirements.**

15 Caltrans’ failure to proceed in the manner required by law with respect to the Project’s
16 significant effects on ancient redwoods led to the agency’s further failure to establish legally adequate
17 mitigation for those effects. As with its initial significance determination, Caltrans approached
18 mitigation in an inconsistent and contradictory fashion; although the EIR and supporting documents
19 discussed a number of “mitigation” measures, Caltrans ultimately failed to adopt *any* mitigation
20 whatsoever. This was error.

21 CEQA’s specific requirements for mitigation measures are intended to ensure those measures are
22 enforceable and are actually implemented. *See Fed’n of Hillside and Canyon Ass’ns v. City of Los*
23 *Angeles*, 83 Cal. App. 4th 1252, 1260-61 (2000); *see also* § 21081.6. CEQA prohibits public agencies
24 from approving projects with significant environmental impacts unless all feasible mitigation measures
25 to minimize those impacts are adopted. *See* §§ 21002, 21002.2(b), 21081. CEQA defines mitigation
26 broadly as measures that avoid, minimize, rectify, or compensate for significant environmental impacts.
27 *See* CEQA Guidelines § 15370. Mitigation measures must be “fully enforceable,” either through
28 conditions of approval or through incorporation into a project itself. CEQA Guidelines § 15126.4(b).
Where feasible mitigation measures exist, a public agency cannot approve a project without specifically

1 finding that legally adequate measures have been incorporated into the project. *See* § 21081(a)(1). An
2 agency also must adopt a mitigation monitoring and reporting plan to ensure that measures are actually
3 implemented following project approval. § 21081.6(a)(1); CEQA Guidelines § 15097. If mitigation is
4 infeasible, the agency must make a specific finding to this effect, and must adopt a statement of
5 overriding considerations before it can approve the project. § 21081(a)(3), (b); CEQA Guidelines §§
6 15091(a)(3), 15093.

7 Caltrans’ discussion of mitigation measures for the Project’s effects on redwood root zones was
8 irrational, inconsistent, and contradictory. On one hand, for example, the EA/EIR explicitly described
9 the measures Caltrans proposed to reduce construction impacts on redwood structural root zones as
10 “[m]itigation measures.” AR 1:132-35; 4:1317-19. Appendix D to the Draft EIR also identified
11 “[m]itigation measures,” specifically including measures “to offset the impacts to the mature redwood
12 trees where construction occurs within the structural root zone.” AR 4:1374. The Natural Environment
13 Study accompanying the Draft EIR also stated Caltrans would “mitigate” for root zone impacts, in part
14 by providing Richardson Grove State Park with corvid-resistant trash cans. AR 4:1457, 1460. Internal
15 Caltrans meeting notes described “Mitigation Measures Proposed for State Park Impacts.” AR 15:4622.
16 These references to mitigation confirm that Caltrans viewed impacts to ancient redwood root zones as
17 significant and had proposed mitigation measures to lessen those impacts.

18 Without any explanation, however, Caltrans stated in the cursory, conclusory CEQA-specific
19 section of the EA/EIR that *no* significant impacts would occur and that *no* mitigation measures were
20 necessary. AR 1:166; 4:1343. The State Department of Parks and Recreation commented on this
21 “conflict” between the explicit discussion of mitigation in the main body of the document and the
22 finding that no mitigation measures were necessary in the CEQA section of the document. *See* AR
23 2:388. In response, Caltrans stated “[t]he final document will be revised to identify the avoidance and
24 minimization mitigation [*sic*] measures.” AR 2:397. **This never happened.** Caltrans just relabeled
25 these measures “special construction techniques” and baldly concluded that significant impacts would
26 not occur. AR 1:166. Ultimately, the Final EIR contained only one word under the heading “Mitigation
27 Measures for Significant Impacts under CEQA” — the word “None.” AR 1:166, 4:1343.

1 Caltrans' failure to adopt, or even to consider adopting, any of the "mitigation" measures
2 discussed elsewhere in the EIR flies in the face of the statute's fundamental requirement that public
3 agencies not approve projects unless feasible mitigation measures have been adopted to reduce
4 significant environmental impacts. §§ 21002, 21002.1, 21081. Unlike the "essentially procedural"
5 National Environmental Policy Act, CEQA contains "substantive provisions with which agencies must
6 comply," the "most important" of which is "the provision requiring public agencies to deny approval of
7 a project with significant adverse effects when feasible alternatives or feasible mitigation measures can
8 substantially lessen such effects." *Sierra Club v. Gilroy City Council*, 222 Cal. App. 3d 30, 41 (1990),
9 disapproved on other grounds by *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559
10 (1995). Caltrans' inconsistent and contradictory discussion of "mitigation" cannot satisfy CEQA.

11 Indeed, by failing to evaluate and adopt *pursuant to CEQA* the mitigation measures identified in
12 the EIR, Caltrans failed to comply with a number of legal requirements that further the "substantive
13 provisions" of the statute. Caltrans failed to make findings, including a statement of overriding
14 considerations, in conjunction with project approval, and thus failed to demonstrate that it had
15 incorporated all feasible mitigation to minimize the Project's impacts. *See Citizens for Quality Growth*
16 *v. City of Mt. Shasta*, 198 Cal. App. 3d 433, 440-41 (1988); *see also* §§ 21002, 21081(a)(1). Caltrans
17 failed to ensure the mitigation measures discussed in the EIR and supporting documents were
18 enforceable in accordance with section 21081.6(b) and CEQA Guidelines section 15126.4(a)(2). And
19 Caltrans failed to adopt a mitigation monitoring and reporting plan to "ensure compliance during project
20 implementation" in accordance with section 21081.6(a)(1). Caltrans' conclusory and unexplained
21 decision to relabel mitigation measures as "special construction techniques" does nothing to excuse
22 these errors. Caltrans failed to proceed in the manner required by law, and its decision to approve the
23 Project must be set aside.

24 **2. No Substantial Evidence Supports the EIR's Conclusion that "Special**
25 **Construction Techniques" Will Reduce or Avoid Significant Impacts.**

26 Even if Caltrans could avoid CEQA's clear mitigation requirements by relying solely on the
27 "special construction techniques" identified as "mitigation" measures elsewhere in the EIR — which, as
28 shown above, it cannot — it still would have to support with substantial evidence its determination that

1 those techniques would be effective in avoiding any significant impacts. CEQA Guidelines § 15091(b).
2 CEQA defines “substantial evidence” as “facts, reasonable assumptions predicated upon facts, and
3 expert opinion supported by facts.” CEQA Guidelines § 15384(b). Caltrans’ conclusions here are long
4 on assumptions and opinions, but extremely short on facts.

5 The “special construction techniques” identified in the EIR on their face do not protect ancient
6 redwood roots. Although these measures generally require excavation within the structural root zone of
7 redwood trees to be done by hand and in the presence of an arborist, AR 1:132-33, they are subject to a
8 significant exception: at the locations where culverts will be replaced, “[m]echanized equipment” — i.e.,
9 a backhoe — can be used “upon approval of the construction engineer.” AR 1:133; 8:2486. Caltrans
10 was aware that roots “would certainly be removed/damaged by the excavator” in the trench zones
11 necessary to remove and install the culverts. AR 8:2390. Caltrans design personnel nonetheless insisted
12 on this exception; as one employee stated, “I am concerned with the amount of hand digging and we
13 may wish to minimize it as much as we can.” AR 8:2486.

14 The “special construction techniques” are also internally inconsistent. One measure requires
15 contractors to “use a pneumatic excavator within the structural root zone of redwood trees to minimize
16 physical injury to the tree roots.” AR 1:133. Another measure, however, also allows excavation “within
17 a setback equal to three times the diameter of any redwood trees” — i.e., within the structural root zone
18 — to be done with shovels, pick axes, “or other methods approved by the construction engineer to
19 minimize disturbance or damage to the roots.” AR 1:132. These contradictory measures apply in
20 exactly the same locations. As a result, the construction engineer — not the arborist — has been given
21 discretion to pass over the pneumatic excavator in favor of shovels, pick axes, and unspecified “other
22 methods” of excavating in the structural root zone.

23 The EIR also contains contradictory information as to whether and how roots will be cut. The
24 Final EIR states that smaller roots less than two inches in diameter “shall be cut cleanly with sharp
25 instrument [*sic*] in order to promote healing,” but says nothing about roots greater than two inches in
26 diameter. AR 1:133. An appendix to the Final EIR containing Caltrans’ Section 4(f) evaluation
27 describes the measure somewhat differently; here, the measure excludes “areas of proposed cut” from
28 the requirement that small roots be severed cleanly, but specifies that “[r]oots larger than 2 inches in

1 diameter will not be cut.” AR 1:208. In responses to comments from the California Department of
2 Parks and Recreation, Caltrans states the “intent” of requiring hand work in the structural root zone is to
3 “avoid” cutting roots greater than two inches in diameter, but concedes “in areas of cut” at three
4 locations and where “culvert improvement work” will occur, “for example, it may not be possible to
5 avoid cutting roots greater than two inches.” AR 2:395. Because Caltrans never made any findings as
6 to the incorporation of mitigation measures and failed to prepare a mitigation monitoring and reporting
7 plan, it is not clear which of these various inconsistent measures Caltrans intends its contractors to
8 follow. In any event, it appears that roots greater than two inches in diameter may be cut at various
9 locations, some known, and some identified only by way of “example.”

10 In responses to comments, Caltrans failed to identify any studies or other literature
11 demonstrating the effectiveness of these techniques and admitted it had conducted no fieldwork of its
12 own. AR 2:416-17, 618-19; 3:790, 806. In the absence of any supporting science or fieldwork, the
13 agency relied entirely on the opinions of two arborists — stated in memoranda prepared after the close
14 of public comment, never circulated publicly until after Project approval, and never even cited as
15 references in the Final EIR — to support its conclusion. *See, e.g.*, AR 2:361-62, 450. These
16 memoranda fail to provide substantial evidence that the Project’s impacts will be less than significant.

17 One memorandum was prepared by Dennis Yniguez, a consulting arborist hired by the Save the
18 Redwoods League. AR 6:1880-83.⁶ Much of Mr. Yniguez’s memorandum recounts his childhood
19 memories of visiting Richardson Grove and the details of his “site evaluation,” during which he and
20 others lunched with Caltrans personnel in the park, viewed drawings of the Project,⁷ and asked
21

22
23 ⁶ Mr. Yniguez’s memorandum was prepared and submitted to Caltrans *after* the close of public comment
24 on the Draft EIR. *See* AR 6:1879 (cover letter from Save the Redwoods League dated June 19, 2009),
25 1880 (memorandum dated June 1, 2009); AR 15:4834 (notice extending public comment deadline to
26 March 12, 2009). Caltrans did not disclose that it was relying on the memorandum prior to publication
27 of the Final EIR. The Final EIR was not made publicly available prior to Project approval; as a result,
28 the public never had any opportunity to review or comment on the Yniguez memorandum.

⁷ Mr. Yniguez claims that he was shown “large-scale CAD diagrams of each section of the highway in
and adjacent to Richardson Grove, with the proposed modifications and existing trees clearly
identified,” and that Caltrans had developed “sophisticated computer simulations of current vehicle
(footnote continued)

1 questions. AR 6:1881-82. After lunch, Mr. Yniguez and the other guests visited “some of the locations
2 beside Highway 101 where the highway would be modified adjacent to old-growth redwoods.” AR
3 6:1882. Based on these experiences, Mr. Yniguez developed a few “impressions” about the Project and
4 concluded it would have “no significant detrimental effect on root health or on the availability of water
5 to the roots of old-growth redwoods.” AR 6:1882-83.

6 Mr. Yniguez’s “impressions” and conclusions, however, are not borne out by facts. First, Mr.
7 Yniguez does not claim to have done anything other than “walk” to “some of the locations” where work
8 would take place. AR 6:1882. His memorandum offers no evidence that he actually examined *any*
9 particular redwood tree or root system to ascertain what specific damage might occur. Indeed, Caltrans
10 conceded in responses to comments that it did not conduct any site-specific field studies. See AR 2:416-
11 17, 618-19. Thus Mr. Yniguez’s evaluation is literally based on little more than a walk in the park.

12 Mr. Yniguez’s “impressions” also fail to reflect the actual “special construction techniques”
13 proposed by Caltrans. For example, Mr. Yniguez cites the presence of an arborist during construction
14 and the use of an “air spade” as support for his “impression” that roots will not be harmed, AR 6:1882,
15 but he does not discuss the fact that the construction engineer, not the arborist, will have final say over
16 whether the “air spade” is even used in the structural root zone. AR 1:133. Mr. Yniguez also
17 misunderstood the extent of culvert replacement operations under the Project. His memorandum states
18 only one culvert will require “trenching operations,” AR 6:1883, but the final EIR makes clear that
19 culverts would be “replaced” at three locations and extended at a fourth. AR 1:35, 297. At one of these
20 locations, PM 1.34, the California Department of Fish and Game recommended Caltrans relocate the
21 culvert because it “outlets right next to an old-growth redwood.” AR 8:2317; *see also* AR 20:6408
22 (Caltrans archaeological survey report acknowledging “the large redwood tree appears to be in conflict
23 with this pipe”). Caltrans not only failed to implement the Department’s recommendation, *see id.*
24 (noting it would require a “project scope change”), but ultimately exempted *all* culvert excavation work
25 from the “special construction techniques,” even though Caltrans knew that roots would “certainly” be

26 _____
27 traffic patterns.” AR 6:1881. As discussed in Part I.B., *supra*, no such materials were made available to
28 the general public as part of the EIR.

1 damaged as a result. *See* AR 1:133; 8:2486, 2490 (internal emails documenting Caltrans’ effort to
2 “minimize” use of hand excavation). There is no evidence Mr. Yniguez evaluated the Project that
3 Caltrans ultimately approved. His “impressions” of what he did and saw during his lunchtime visit to
4 Richardson Grove are therefore of limited relevance.

5 Incredibly, Mr. Yniguez never even mentions the most critical impact of this Project: the cutting
6 and disturbance of roots within the *structural* root zone of ancient redwood trees. As the Department of
7 Parks and Recreation Handbook cited by Caltrans makes clear, cutting structural roots threatens not only
8 water and nutrient absorption, but also physical stability, especially in older trees. *See* AR 18:5599-
9 5601. Mr. Yniguez’s memorandum, in contrast, focuses almost exclusively on water absorption and
10 says nothing about the risks posed by damage to structural roots. *See* AR 6:1882-83. This glaring
11 omission reflects that Mr. Yniguez is not a redwood expert. AR 15:4725. In fact, Mr. Yniguez advised
12 Caltrans to consult with noted redwood expert Dr. Stephen Sillett, *id.* — the same Dr. Sillett who bluntly
13 informed Caltrans that cutting woody redwood roots is a “BAD IDEA.” AR 3:1124. Once again, Mr.
14 Yniguez’s memorandum fails to address critical aspects of the Project’s impacts, and thus cannot serve
15 as substantial evidence that those impacts will be less than significant.

16 Caltrans also belatedly relied on a memorandum prepared by Darin Sullivan, a Caltrans Tree
17 Maintenance Supervisor and arborist. Mr. Sullivan’s memorandum concedes that “tree roots can be
18 damaged quite easily” by excavation work, as well as by fill and compaction. AR 14:4037. To
19 “minimize” these impacts, Mr. Sullivan recommended “use of a pneumatic excavator (such as an air
20 spade)” to remove soil, use of a permeable road base, and incorporation of roots into the road base
21 where feasible. *Id.* Mr. Sullivan also recommended placement of a “brow log” against larger trees “to
22 counter the effects of fill on the root flare,” summer watering, restrictions on equipment storage, and
23 revegetation techniques. AR 14:4038. Based on his review of “project information,” including layout
24 maps and cut and fill depths, Mr. Sullivan stated his “professional opinion” that “this project can be
25 performed with minimum impact to the root vitality of these wonderful trees.” AR 14:4039.

26 Mr. Sullivan’s opinion lacks a factual foundation and cannot serve as substantial evidence in
27 support of Caltrans’ conclusion that the Project will have no significant effect on ancient redwood root
28 systems. There is no indication that Mr. Sullivan possesses relevant expertise beyond his arborist

1 certification. His participation in this Project and his recommendations were not part of his “normal
2 duties” with Caltrans. AR 8:2560. His final work was not entirely his own, but rather was edited by his
3 superiors with input from Caltrans “legal.” AR 10:3035.

4 Like Mr. Yniguez’s memorandum, moreover, Mr. Sullivan’s memorandum fails to address key
5 exceptions to Caltrans’ “special construction techniques.” Mr. Sullivan does not discuss the
6 construction engineer’s ability to dispense with pneumatic excavation in favor of shovels, pick axes, or
7 “other methods.” *See* AR 1:132-133. Mr. Sullivan does not even mention the proposed culvert removal
8 and replacement operations, which would be performed with mechanical excavators. *See* AR 1:133;
9 8:2486, 2490. Nor does it appear that all of Mr. Sullivan’s concerns and recommendations were
10 addressed by Caltrans. When he first commented on Caltrans’ proposed measures to protect the trees,
11 Mr. Sullivan cautioned against protecting only “large” roots because “[a]ny lose [*sic*] of roots can have
12 an impact on these large trees”; Mr. Sullivan felt that “if the work can be done without harming *any*
13 roots almost all people of concern will be happy.” AR 8:2177 (emphasis added). No such restriction
14 appears in the final “special construction techniques,” however, and in its responses to comments on the
15 Final EIR, Caltrans admitted it might be impossible to avoid cutting even larger roots. AR 2:395. Mr.
16 Sullivan also recommended “making a file for each tree impacted more than 10% and hav[ing] a step by
17 step plan to keep root loss below the 10%.” AR 8:2560. Again, these recommendations do not appear
18 in Mr. Sullivan’s memorandum or among the “special construction techniques” identified in the Final
19 EIR. Caltrans did not conduct *any* field studies in support of its conclusions, *see* AR 3:790, 806, much
20 less “make a file” or create a “step by step plan” for each affected tree.

21 In sum, the opinions of Mr. Yniguez and Mr. Sullivan are not “supported by facts,” CEQA
22 Guidelines § 15384(b), and cannot serve as substantial evidence in support of Caltrans’ conclusions in
23 the final EIR. As one Court of Appeal put it,

24 The value of opinion evidence rests not in the conclusion reached but in the factors
25 considered and the reasoning employed. Where an expert bases his conclusion upon
26 assumptions which are not supported by the record, upon matters which are not
27 reasonably relied upon by other experts, or upon factors which are speculative, remote or
28 conjectural, then his conclusion has no evidentiary value. In those circumstances the
expert’s opinion cannot rise to the dignity of substantial evidence.

1 *Pacific Gas & Electric Co. v. Zuckerman*, 189 Cal. App. 3d 1113, 1135 (1987) (citations omitted); *see*
2 *also Maples v. Kern County Assessment Appeals Bd.*, 103 Cal. App. 4th 172, 198 (2002); *Hongsathavij*
3 *v. Queen of Angels/Hollywood Presbyterian Med. Ctr.*, 62 Cal. App. 4th 1123, 1137 (1998); *accord Ctr.*
4 *for Biological Diversity v. County of San Bernardino*, 185 Cal. App. 4th 866, 884-85 (2010) (finding
5 that statements in consultant’s memorandum did not constitute substantial evidence where memorandum
6 did not contain facts to support statements and consultant lacked relevant expertise). Moreover, because
7 the “special construction techniques” reviewed in each arborist’s memorandum can be overridden by the
8 construction engineer — and, in the case of culvert replacement activities, disregarded entirely — there
9 is no substantial evidence that these techniques will actually be implemented in the manner discussed in
10 the arborists’ opinions. *See Fed’n of Hillside and Canyon Ass’ns*, 83 Cal. App. 4th at 1261-62 (holding
11 city failed to comply with CEQA where mitigation measures were not “incorporated into the project . . .
12 in a manner that will ensure their implementation”).

13 Caltrans’ conclusion in the Final EIR that the Project will have no significant impact on ancient
14 redwoods is not supported by substantial evidence. The Project’s impacts thus remain significant, even
15 after application of the “special construction techniques.” Under such circumstances, CEQA required
16 Caltrans to adopt additional feasible mitigation measures, or if no such measures existed, to adopt a
17 statement of overriding considerations. *See* § 21081(a)(1), (a)(3), (b). Caltrans failed to do either. Its
18 decision to approve the Project accordingly must be set aside.

19 **III. The EIR Failed to Disclose, Analyze, and Propose Mitigation for the Project’s Cumulative**
20 **Impacts.**

21 Cumulative impacts include changes in the environment that result from a project’s incremental
22 impact when added to other “closely related past, present, and reasonably foreseeable probable future
23 projects,” and can result from “individually minor but collectively significant projects taking place over
24 a period of time.” CEQA Guidelines § 15355. An EIR “shall discuss” cumulative impacts when a
25 project’s effects are “cumulatively considerable” — that is, when its “incremental effects” are
26 “significant when viewed in connection with the effects” of other past, current, and probable future
27 projects. CEQA Guidelines §§ 15065(a)(3), 15130(a); *see also* § 21083(b)(2). If an agency concludes
28

1 such impacts are not considerable, it must provide at least a brief supporting discussion. CEQA
2 Guidelines § 15130(a).

3 Caltrans' cumulative impacts analysis completely failed to discuss the possibility that this
4 Project, in conjunction with other STAA access projects planned and currently underway in Northern
5 California, could shift truck traffic patterns and increase travel through the Grove. *See* AR 1:159-64;
6 4:1339-41. The analysis does not even mention that Caltrans is *currently pursuing* STAA access
7 projects on other routes into Humboldt County, *see* AR 2:370, 570 (discussing planning for STAA
8 projects on Highways 197/199 and 299). Where an agency not only knows about, but is *actually*
9 *involved in*, planning for other projects that could result in cumulative impacts, the agency's failure to
10 disclose and fully analyze those projects renders an EIR inadequate as a matter of law. *Friends of the*
11 *Eel River v. Sonoma County Water Agency*, 108 Cal. App. 4th 859, 868-72 (2003).

12 In response to comments questioning whether the Project would increase truck traffic, Caltrans
13 provided a "General Response" stating "there was very little latent demand" for STAA access, and the
14 effect of removing the restriction on Highway 101 "would be similar" to that expected based on a study
15 of the Highways 197/199 project: about 8.25 new daily truck trips. AR 2:370.⁸ The study Caltrans
16 cited, however, provided no support for Caltrans' assertion that effects on Richardson Grove "would be
17 similar." It also concluded that the 197/199 project would result in a lot more than eight new truck trips
18 per day. Explicitly assuming that the Richardson Grove Project would be completed, and
19 acknowledging that the projects together would establish through access for STAA trucks from the San
20 Francisco Bay Area to the Oregon border, the study projected 92 additional truck trips per day by 2030
21 after accounting for "latent demand," additional demand for transportation "induced" by the highway
22 projects, and other factors. AR 21:6533. Caltrans never disclosed this higher number of truck trips or
23 discussed its potential significance in the EIR.

24
25 _____
26 ⁸ In some cases, Caltrans completely failed to respond to direct questions in comments regarding this
27 potential cumulative impact. *See, e.g.*, AR 2:695-96 (comment from Cynthia Elkins asking "[w]hat are
28 the cumulative effects of all four STAA proposals?"), 698 (no response to this comment).

1 Caltrans also failed to disclose other information about shifts in travel and shipping patterns that
2 could result from opening the various access points into Humboldt County to STAA trucks. In response
3 to a request for comments on an internal draft of the EIR, John Carson, a Caltrans District 1 supervisor,
4 produced a document discussing the potential cumulative impacts of removing STAA restrictions. AR
5 8:2334-37. He concluded if the Project were completed, shippers from the north “may find using STAA
6 rigs to the south advantageous,” and that shippers currently using Route 299 might find Highway 101
7 more “cost-effective.” AR 8:2336. As a result of these combined STAA projects, “loads will shift
8 between the two truck-configured modes and over the various routes as shippers and haulers find the
9 most economical method of transporting loads in, out and through Humboldt and Del Norte Counties.”
10 AR 8:2337. Caltrans failed to include *any* of this discussion in the EIR, despite the fact that one of its
11 employees *produced* this information *for the very purpose* of including it in the EIR. AR 8:2334. Such
12 omissions are fatal to the EIR’s adequacy as an informational document. *See Friends of the Eel River*,
13 108 Cal. App. 4th at 870-71; *Kings County Farm Bureau*, 221 Cal. App. 3d at 723.

14 **IV. Caltrans Failed to Adequately Analyze or Adopt Feasible Alternatives to the Project.**

15 Under CEQA, a lead agency may not approve a project if there are feasible alternatives that
16 would avoid or lessen its significant environmental effects. §§ 21002, 21002.1(b). To this end, an EIR
17 is required to consider a range of alternatives to a project that would feasibly attain most of the project’s
18 basic objectives while avoiding or substantially lessening any of its significant environmental impacts.
19 *Save Round Valley Alliance v. County of Inyo*, 157 Cal. App. 4th 1437, 1456 (2007). The discussion of
20 alternatives must be sufficiently detailed to foster informed decision-making and public participation.
21 *Id.* at 1456, 1460. A project proponent may not foreclose alternatives analysis by adopting unreasonably
22 narrow objectives. *See Kings County Farm Bureau*, 221 Cal. App. 3d at 736-37 (holding applicant’s
23 prior commitments could not foreclose analysis of alternatives); *cf. also Nat’l Parks & Conservation*
24 *Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010).

25 Caltrans’ alternatives analysis fails for two reasons. First, Caltrans attempted to define the
26 Project’s objectives so narrowly as to preclude any alternative other than the Project. The Project’s
27 stated purpose “is to adjust the roadway alignment to accommodate [STAA] truck travel, **thereby**
28 removing the restriction for STAA vehicles, and improve the safety and operation of US Route 101

1 while also improving goods movement.” AR 1:11 (emphasis added). Caltrans thus defined its core
2 purpose — removing the STAA travel restriction and improving goods movement — so narrowly as to
3 preclude any alternative other than construction “to adjust the roadway alignment.” *Id.* Other
4 alternatives that could have satisfied the Project’s main purpose, such as continuing the existing
5 legislative exemptions that currently allow some STAA trucks access through the Grove, were not
6 evaluated in detail. *See* AR 1:44-52. Indeed, the “No Build” Alternative was described in one cursory,
7 conclusory paragraph. AR 1:44. Caltrans thus failed to evaluate a “range” of reasonable alternatives
8 that would attain most of the Project’s basic objectives, and failed to provide enough “meaningful
9 information” about the alternatives it did mention to foster informed public participation. *See Save*
10 *Round Valley*, 157 Cal. App. 4th at 1456, 1460.

11 Caltrans also failed to demonstrate — in the EIR or anywhere else in the record — that the “No
12 Build” alternative is infeasible. In rejecting an alternative as infeasible, an agency “must explain in
13 meaningful detail the reasons and facts supporting that conclusion,” *Marin Mun. Water Dist. v. KG Land*
14 *Cal. Corp.*, 235 Cal. App. 3d 1652, 1664 (1991), and must support its rejection with substantial
15 evidence. CEQA Guidelines § 15091(b). Caltrans purportedly rejected the “No Build” alternative for
16 three reasons: roadway improvements “which could help lower the collision rate” would not occur,
17 businesses unable to use STAA trucks for shipping would “continue to be at an economic disadvantage,”
18 and recreational vehicles greater than 65 feet in length “would continue to be ticketed.” AR 1:44. All of
19 these conclusory assertions lack support in the record, and none demonstrates the “No Build” alternative
20 is infeasible. First, Caltrans conceded in responses to comments that “[t]he project is not a safety
21 project, but an operational improvement project to lift the STAA restriction at this location,” AR 2:638,
22 and admitted any safety benefits would be a “minor . . . byproduct.” AR 2:437. Caltrans identified no
23 evidence that the Project will “lower the collision rate.” Second, Caltrans’ protestations of economic
24 disadvantage ignore the fact that *STAA trucks already pass through the Grove legally* under legislative
25 exemptions. Cal. Veh. Code §§ 35401.5 (f), 35401.7. Caltrans never identified any evidence that these
26 trucks have been involved in collisions or otherwise pose a safety problem. *See* AR 2:485. Caltrans
27 also never adequately considered the possibility that broadening and extending these exemptions might
28 achieve the core objective of the Project — allowing STAA truck access — without causing any damage

1 to the Grove. Third, Caltrans did not identify preventing the ticketing of massive recreational vehicles
2 as one of the objectives of the Project. *See* AR 1:11. This last objection is thus simply irrelevant.

3 In short, Caltrans failed to explain in the EIR why the No Build alternative is infeasible. Indeed,
4 the EIR's cursory discussion of the Project under CEQA here did not even *mention* alternatives, much
5 less attempt to explain why they were rejected. AR 1:165-66. An agency's reasons for rejecting
6 alternatives "must be discussed *in the EIR* in sufficient detail to enable meaningful participation and
7 criticism by the public." *Laurel Heights I*, 47 Cal. 3d at 405 (emphasis added). Once again, the EIR
8 fails as a matter of law.

9 **V. Caltrans Failed to Recirculate the EIR.**

10 When significant new information is added to an EIR following public notice and comment, but
11 before certification, the lead agency must recirculate the revised document for additional public review.
12 § 21091.2; CEQA Guidelines § 15088.5. New information is considered "significant" if, absent
13 recirculation, the public would be deprived of a "meaningful opportunity to comment upon a substantial
14 adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect."
15 *Vineyard*, 40 Cal. 4th at 447. Recirculation is required when the new information "reveals, for example,
16 a new substantial impact or a substantially increased impact on the environment." *Id.*; *see also* CEQA
17 Guidelines § 15088.5(a)(1), (2). CEQA also mandates recirculation where the draft EIR "was so
18 fundamentally and basically inadequate and conclusory in nature that meaningful public review and
19 comment was precluded." CEQA Guidelines § 15088.5(a)(4). An agency's decision not to recirculate
20 must be supported by substantial evidence in the record. CEQA Guidelines § 15088.5(e).

21 Here, Caltrans added a great deal of new information about the Project, and changed the Project
22 significantly, between the close of public comment on the Draft EIR and certification of the Final EIR.
23 The information Caltrans added to the Final EIR was "significant new information" requiring
24 recirculation. Because Caltrans did not release the Final EIR for public comment prior to Project
25 approval, the public never had an opportunity to review or comment upon the new information and
26 Project changes. Approval of the Project should be set aside pending correction of the document's
27 numerous errors and further opportunity for public comment.

1 **A. The Final EIR Disclosed a Substantial Increase in the Severity of the Project’s**
2 **Environmental Impacts.**

3 Caltrans added new information to the Final EIR that revealed “a substantial increase in the
4 severity” of the Project’s effects on redwood structural root zones. CEQA Guidelines § 15088.5(a)(2).
5 In the Draft EIR, Caltrans claimed only 27 trees greater than 30 inches in diameter, and thus qualifying
6 as “old growth” using Caltrans’ definition, AR 1:18, would suffer “potential tree root effects.” AR
7 4:1316-17 (Table 9). The Final EIR, on the basis of what Caltrans claimed was “more refined design
8 information,”⁹ AR 1:127-28, increased to 73 the number of old growth trees with potential tree root
9 impacts. AR1:128-129 (Table 9). The number of old-growth redwood trees with tree root effects thus
10 nearly tripled between the close of public comment on the Project and Caltrans’ final approval.
11 Moreover, the total number of trees identified on Project maps as having root zone impacts also more
12 than doubled, from 41 in the Draft EIR to 86 in the Final EIR. *Compare* AR 1:270 *with* AR 4:1414. In
13 addition, the Final EIR disclosed for the first time that cut and fill operations would occur within the
14 structural root zone area of 68 old-growth redwood trees. AR 1:130-31 (Table 10). Caltrans also failed
15 to identify any evidence in the Draft EIR supporting its conclusion these impacts would be less than
16 significant. Rather, Caltrans waited until the Final EIR to disclose that it was relying on the opinions of
17 two arborists, Mr. Yniguez and Mr. Sullivan. As a result, these opinions—which, as previously
18 demonstrated, fail to support Caltrans’ conclusions in any event—were never reviewed by the public.

19 Caltrans’ tardy disclosures not only denied the public a meaningful opportunity to comment on
20 the greatest issue of public concern and controversy surrounding this Project — its effects on
21 Richardson Grove’s ancient redwoods — but also gravely misled both the public and other decision-
22 makers as to the nature and extent of those effects. In *Save Our Peninsula Committee v. Board of*
23 *Supervisors*, 87 Cal. App. 4th 99, 128-131 (2001), the Court of Appeal ordered recirculation of a draft

24 _____
25 ⁹ Is not clear from the record that this claim is true. The maps included with the Draft EIR (showing 41
26 trees with “root impacts”), and all but two of the maps in the Final EIR (showing 86 trees with potential
27 root zone impacts), were printed and revised on the same date: October 14, 2008. AR 1:270-89; 4:1414-
28 33. The underlying design of the road *did not change* between the Draft and Final EIRs. Moreover,
because the *Draft* EIR was released in December 2008, it appears that Caltrans could and should have
disclosed in the *Draft* EIR that the Project would affect more than twice the number of trees.

1 EIR where information about an applicant’s ability to offset groundwater pumping for a residential
2 development was disclosed in an “errata” to an EIR “just prior” to the County Board of Supervisors’
3 hearing on the project. The Court held that this belated disclosure could not “make up for the lack of
4 analysis in the EIR”; on the contrary, the new information had to be “subjected to the same critical
5 evaluation that occurs in the draft stage, so that the public is not denied an opportunity to test, assess,
6 and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn
7 therefrom.” *Id.* at 131 (internal quotations omitted). Critically, the Court also noted recirculation was
8 warranted “[i]n light of the atmosphere of public concern” about the project’s effects and the “focused
9 concerns” expressed in public comments about the thoroughness of the EIR’s analysis. *Id.*

10 Caltrans’ belated disclosures here are even more egregious. The Project’s substantially more
11 severe effects on old-growth redwoods were not disclosed *at all* until after the Final EIR had been
12 certified. No “errata” was prepared, no hearing was held, and no opportunity was given for the public to
13 assess whether Caltrans had adequately addressed these dramatically more severe impacts. In response
14 to the “atmosphere of public concern” around this Project, Caltrans did not pursue greater disclosure in
15 accordance with CEQA, but rather did all it could to hide the ball. Like the county officials in *Save Our*
16 *Peninsula*, Caltrans may exercise some discretion under the law in determining how best to proceed with
17 a project, but “it must do so on the basis of information collected and presented in the EIR and subjected
18 to the test of public scrutiny.” *Id.* at 131. Caltrans failed to do so here. Nor does Caltrans’ conclusion
19 that these more severe impacts remain less than significant relieve the agency of its duty to recirculate
20 the EIR. As previously discussed, this conclusion lacks evidentiary support. In any event, CEQA
21 requires additional public review when new information reveals a substantial increase in the level of an
22 environmental impact, whether or not this increase would lead to a different significance determination.
23 *See American Canyon Cmty. v. City of American Canyon*, 145 Cal. App. 4th 1062, 1083 (2006).

24 **B. Changes to the Project After the Close of Public Comment Introduced New and**
25 **More Severe Environmental Impacts.**

26 Caltrans also changed the Project in a number of ways that either introduced new potentially
27 significant impacts or substantially increased the severity of impacts identified in the Draft EIR. The
28 Draft EIR should have been recirculated for public comment on these changes.

1 For example, Caltrans changed the method of culvert replacement at crucial locations within
2 Richardson Grove. In the Draft EIR, Caltrans proposed to install a cast-in-place plastic liner in the
3 culvert at PM 1.34, rather than excavate it. AR 4:1250. In the Final EIR, however, Caltrans proposed to
4 replace the culvert entirely. AR 1:34. The existing culvert at this location “outlets right next to an old
5 growth redwood.” AR 8:2317. Culvert replacement operations are not subject to the restrictions
6 Caltrans devised to protect redwood roots, but rather may use heavy machinery for trenching. *See* AR
7 1:133; 8:2486. Indeed, Caltrans knew that replacing this culvert rather than installing a liner would
8 almost certainly cause damage to ancient redwood roots, *see* AR 8:2390, but failed to recirculate the EIR
9 despite this increase in severity of impact.

10 Caltrans also changed the depth of excavation in lead-contaminated soils in a manner that could
11 increase the overall toxicity of excavated materials. In the Draft EIR, Caltrans acknowledged soils
12 further below the surface (at a depth of 6 to 18 inches) were contaminated with lead at hazardous levels;
13 indeed, samples taken from the highway shoulder revealed contamination tended to increase with soil
14 depth. AR 4:1296-97. Caltrans concluded, however, once these subsurface soils were mixed with the
15 cleaner soils between zero and six inches below the surface, the resulting material would be non-
16 hazardous. *Id.* AR 4:1296-98. All of Caltrans’ analysis in the Draft EIR addressed contamination of
17 soils up to 18 inches below the surface, based on Caltrans’ expectation that excavation would occur to a
18 depth of 18 inches. *See* AR 4:1296. In the Final EIR, however, Caltrans changed the Project, increasing
19 the excavation depth to 24 inches. AR 1:105. Caltrans did not perform any additional analysis of lead
20 deposition in soils between 18 and 24 inches in depth, nor did it attempt to ascertain whether a mix of
21 soils between zero and 24 inches in depth would remain non-hazardous. *See* AR 1:106, Table 3
22 (evaluating soils to 18 inches in depth). Because lead contamination levels increased with depth, the
23 resulting mix of soils might well be more toxic than Caltrans disclosed in the Final EIR. Yet Caltrans
24 still proposes to dispose of these materials on the roadside, just south of the Project, in a location that
25 drains into the South Fork Eel River. AR 2:389; 4:1298. The new, deeper excavation thus would
26 increase the severity of environmental impacts associated with disposal of lead-contaminated soils.
27 Caltrans failed to recirculate this new information to the public as CEQA requires.

1 **C. Fundamental Deficiencies in the Draft EIR Required Recirculation.**

2 Finally, the Draft EIR should have been recirculated due to fundamental deficiencies that
3 rendered effective public participation impossible. As discussed herein, Caltrans failed to accurately
4 describe the Project and its environmental setting, offered a confused and internally contradictory
5 account of the significance of the Project’s effects on ancient redwood root systems, identified numerous
6 “mitigation” measures and then said no mitigation was necessary, and did not allow the public to review
7 the two arborists’ reports, which constituted the primary “evidence” on which Caltrans based its ultimate
8 conclusions about the Project’s effects on old-growth redwoods. In the face of these multiple failures,
9 meaningful public comment never stood a chance.

10 The EIR’s failings may have resulted from Caltrans’ attempt to use an Environmental
11 Assessment prepared under NEPA as a substitute for the EIR required by CEQA. A NEPA document
12 “may be submitted in lieu of all or any part of an [EIR]” only if it “complies with the requirements” of
13 CEQA and the CEQA Guidelines. § 21083.5(a). Caltrans acknowledged that while NEPA requires an
14 assessment of the significance of the Project’s effects as a whole, CEQA requires a determination as to
15 whether the Project will significantly affect any environmental resource. AR 1:165-66, 4:1342; *see* §
16 21082.2(a). This acknowledgment demonstrates Caltrans’ awareness that the EA section of the
17 document could not, on its own, “compl[y] with the requirements” of CEQA.

18 Yet Caltrans’ CEQA-specific analysis added nothing of substance to the EA, and did nothing to
19 ensure compliance with the statute. The section of the document entitled “California Environmental
20 Quality Act (CEQA) Evaluation” comprised only five pages in the Draft EIR, AR 4:1342-46, and twelve
21 pages in the Final EIR, AR 1:165-76, nearly all of which were devoted to background information on
22 climate change. The CEQA-specific analysis of this Project’s effects on *every other environmental*
23 *resource* consisted of three conclusory sentences stating that the Project would have no significant
24 effects. AR 1:166, 4:1343. In other words, Caltrans failed to determine whether the Project would have
25 a significant effect on any particular environmental resource, even after acknowledging *on the previous*
26 *page of the document* that CEQA required it to do so. AR 1:165, 4:1342. In declining to identify *any*
27 mitigation measures, moreover, Caltrans completely failed to recognize another important difference
28 between NEPA and CEQA, namely CEQA’s substantive requirement that significant environmental

1 effects be avoided or lessened to the extent feasible. §§ 21002, 21002.1(b), 21081. Caltrans’ entire
2 attempt to comply with CEQA, in essence, consists of three conclusory sentences. It is difficult to
3 imagine a more feeble effort to comply with the law. *Cf. Laurel Heights I*, 47 Cal. 3d at 403 (criticizing
4 alternatives analysis that spanned “a scant one and one-half pages of text in an EIR of more than 250
5 pages”); *City of Coronado v. California Coastal Zone Conservation Commission*, 69 Cal. App. 3d 570,
6 583 (1977) (noting that a two-page environmental document “resembles an EIR as mist resembles a
7 Colorado cloudburst”).

8 Caltrans’ failure to recirculate its fundamentally deficient Draft EIR prejudiced the public and
9 foreclosed any meaningful opportunity to comment on the Project. Approval of the Project therefore
10 should be set aside pending correction of the document’s numerous errors and further opportunity for
11 public comment.

12 **VI. Petitioners Are Entitled to Injunctive Relief.**

13 Upon finding that an agency has failed to comply with CEQA, “the court must enter an order
14 mandating that the agency set aside its decision and take any necessary action to achieve compliance.”
15 *City of Redlands v. County of San Bernardino*, 96 Cal. App. 4th 398, 414-15 (2002); § 21168.9(a)(1).
16 Moreover, where any project activity would “prejudice the consideration or implementation of particular
17 mitigation measures or alternatives to the project,” the order must mandate that the agency suspend
18 activities that “could result in an adverse change or alteration to the physical environment” pending full
19 compliance with CEQA. § 21168.9(b).

20 Injunctive relief is a valid remedy in a mandamus proceeding. *Laurel Heights I*, 47 Cal.3d at
21 423. In *San Joaquin Raptor/Wildlife Rescue Center*, for example, the court enjoined all project activity
22 “to protect the site from adverse and possibly irreparable alteration” pending full compliance with
23 CEQA and “to ensure adequate consideration of alternative sites and additional mitigation measures” in
24 a revised EIR. 27 Cal.App. 4th at 741. Notably, the court enjoined not only construction, but also
25 preliminary activities such as surveying, because allowing the project to proceed pending preparation of
26 an adequate EIR would build momentum toward reapproval, jeopardizing consideration of alternatives
27 and mitigation measures. *Id.* at 742. Moreover, an injunction against all project activities was necessary
28 to prevent possible destruction of sensitive environmental sites not adequately addressed in the EIR. *Id.*

