

1 Brian Gaffney (Calif Bar No. 168778)
LAW OFFICES OF BRIAN GAFFNEY APC
2 446 Old County Road, Suite 100-310
Pacifica, CA 94044
3 Tel: (650) 219 3187
brian@gaffneylegal.com

4 Attorneys for Plaintiffs:
5 ALAMEDA CREEK ALLIANCE

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA
10

11 ALAMEDA CREEK ALLIANCE,
12 a non-profit California Corporation,

13 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF
TRANSPORTATION, and DOES 1 through
16 20, inclusive,

17 Respondents and Defendants.
18

Civil Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT
(PUB. RES. CODE § 21168.5;
CODE CIV. PROC. §§ 1085 AND 1094.5)**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 By this Petition and Complaint (“Petition”), Petitioner and Plaintiff alleges:

2 **INTRODUCTION**

3 1. Petitioner and plaintiff ALAMEDA CREEK ALLIANCE (“Petitioner”) in bringing
4 this action challenges the certification by Respondent CALIFORNIA DEPARTMENT OF
5 TRANSPORTATION (“Caltrans”) of the Alameda Creek Bridge Replacement Project Recirculated
6 Environmental Impact Report (“2017 Recirculated EIR”) for the Alameda Creek Bridge Replacement
7 Project (“Project”).

8 2. Caltrans’ certification of a flawed Environmental Impact Report for the Project
9 violates the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000
10 et seq., and the CEQA Guidelines, California Code of Regulations, Title 14, section 15000 et seq.

11 3. Caltrans prejudicially abused its discretion by failing to proceed as required by law,
12 and because these violations of law precluded informed public participation and informed decision
13 making.

14 4. Caltrans’ violations of CEQA, and approval of the Project based thereon, will harm
15 Petitioner, its members, and the public, as environmental values will be degraded without the level of
16 environmental review required under CEQA.

17 **PARTIES**

18 5. Petitioner Alameda Creek Alliance is a non-profit California Corporation and a
19 community watershed group with over 2,000 members, dedicated to protecting and restoring native
20 wildlife, plants, habitats and ecosystems within the Alameda Creek watershed. Alameda Creek
21 Alliance and its members are concerned about the Project’s potentially significant, adverse biological
22 impacts and the absence of concrete mitigation measures for these impacts.

23 6. Alameda Creek Alliance was formed as an association in 1997. Alameda Creek
24 Alliance participated in the CEQA administrative proceedings by *inter alia* submitting written
25 comments in 2014, 2015 and 2017 on the Project, and on the legal inadequacies of the 2015 draft EIR
26 and the 2017 draft Recirculated EIR. Petitioner brings this action on behalf of itself, its adversely
27 affected members and the public at large. Alameda Creek Alliance’s address is P.O. Box 2626,
28 Niles, California 94536.

1 provides important and unique habitat for sensitive species including the federally threatened
2 California red-legged frog, Alameda whipsnake, and steelhead trout. Alameda Creek is the largest
3 drainage in the South San Francisco Bay region, with a watershed area of almost 700 square miles.
4 Alameda Creek enters Niles Canyon near the Town of Sunol and exits the canyon in the Niles
5 District of Fremont, as it winds to San Francisco Bay.

6 11. Caltrans' proposed Project would replace the Alameda Creek Bridge in Niles Canyon
7 on State Route 84 as well as re-engineer the approaches to the bridge which would require extensive
8 tree cutting, grading, fill and construction of retaining walls from Post Marker 13.0 to 13.6. The
9 Project is located in Alameda County at the eastern border of the City of Fremont. According to
10 Caltrans, the Project will have a 21-acre construction footprint. The Project will directly impact 5.2
11 acres of various habitat types including wetland, riparian, riverine, oak woodland, and scrub habitat.
12 The Project would result in permanent impacts to 1.66 acres and temporary impacts to 3.55 acres of
13 various habitat types.

14 12. The Project would cut or impact approximately 296 trees, including 52 western
15 sycamores, a rare and regionally significant native riparian tree species

16 13. The Project would result in impacts to 5.2 acres of California red-legged frog habitat
17 (0.753 acres of temporary impacts, 2.798 acres of prolonged temporary impacts, and 1.663 acres of
18 permanent impacts).

19 14. The Project would result in impacts to 4.6 acres of Alameda whipsnake habitat (0.161
20 acres of temporary impacts, 2.798 acres of prolonged temporary impacts, 1.662 acres of permanent
21 impacts), and would impact 1.4 acres of designated critical habitat for the Alameda whipsnake.

22 15. The Project would result in impacts to nearly 2.5 acres of Steelhead trout habitat
23 (2.158 acres of temporary impacts, 0.315 acres of permanent impacts).

24 16. The 2017 Recirculated EIR does not define "temporary impacts" to trees or habitat
25 types. The 2017 Recirculated EIR defines "prolonged temporary impacts" as multiple years of
26 disturbance or would take over a year to restore to baseline conditions present prior to construction.

27 *Public Review and Project Approval*

28 17. Caltrans began the scoping process for the Alameda Creek Bridge Replacement

1 Project in February and March of 2014. The Alameda Creek Alliance submitted formal scoping
2 comments on the proposed Project on February 26, 2014.

3 18. In February 2015, Caltrans circulated the draft Alameda Creek Bridge Replacement
4 Project Environmental Impact Report (2015 draft EIR). The public was allowed to comment until
5 April 3, 2015. The Alameda Creek Alliance submitted extensive comments on the 2015 draft EIR on
6 April 3, 2015, including comments from fisheries experts, an ecologist with expertise in the affected
7 endangered species, and a transportation engineer. Rather than respond to these comments, Caltrans
8 after nearly two years determined that it needed to prepare a recirculated EIR.

9 19. In January 2017, Caltrans circulated the Alameda Creek Bridge Replacement Project
10 Recirculated Draft EIR. The public was allowed until April 3, 2017 to comment.

11 20. The Alameda Creek Alliance provided comments on the 2017 Recirculated Draft EIR
12 on March 1, 2017, noting that the revised EIR did not clearly identify or summarize changes to the
13 project or project analysis from the 2015 DEIR. "The current RDEIR does not even identify, let alone
14 summarize the revisions made to the 2015 DEIR... Caltrans' failure to comply with CEQA
15 procedures thwarts informed public comment." ACA comment CG-1.1

16 21. The San Francisco Public Utility Commission also commented on the 2017
17 Recirculated Draft EIR, noting that it could not tell how the recirculated EIR had changed. "Caltrans
18 should publish a redline version to clearly show where changes occurred between the previous and
19 current version of the DEIR." San Francisco Public Utility Commission Comment LJ-4.2.

20 22. The Alameda Creek Alliance also commented that the 2017 Recirculated Draft EIR
21 defers mitigation for mitigation measures UPLAND TREES-1 and RIPARIAN TREES-1, and thus
22 the sufficiency of these promised mitigations could not be assessed. ACA comment CG-1.11

23 23. The San Francisco Public Utility Commission also commented that the 2017
24 Recirculated Draft EIR defers mitigation which made "analysis of the sufficiency of the mitigation
25 for various impacts difficult." The San Francisco Public Utility Commission further commented that
26 it is difficult to determine if mitigation measures sufficiently mitigate Project impacts since the
27 measures have "not yet been developed." San Francisco Public Utility Commission Comment LJ-
28 4.31.

1 “2”.

2 31. Petitioner has complied with Public Resources Code section 21167.6 by filing a
3 Request for Preparation of the Administrative Record at the time of filing this Petition and
4 Complaint. The request notified Respondent that Petitioner would elect to prepare the record or that
5 the parties would agree to an alternative method of preparation.

6 32. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
7 sections 1085 (traditional mandate), and 1094.5 (administrative mandate); Public Resource Code
8 section 21168.5 (California Environmental Quality Act); and Article VI, section 10, of the California
9 Constitution.

10 33. Venue is proper in Alameda County pursuant to Code of Civil Procedure section 395
11 because Caltrans has its office within Alameda County, the Project site is located in Alameda County
12 and because the actions complained of herein occurred within this County.

13 34. Petitioner has no plain, speedy or adequate remedy in the ordinary course of law
14 unless this Court enjoins and mandates that Respondent comply with their duties and set aside the
15 approval of the Project. In the absence of such remedies, Respondents’ approvals will remain in
16 effect in violation of CEQA.

17 35. If Respondent and its agents are not enjoined from implementing the Project, and from
18 undertaking acts in furtherance thereof, Petitioner will suffer irreparable harm from which there is no
19 adequate remedy at law in that the Project area and surrounding areas would be irrevocably altered
20 and significant unmitigated adverse environmental impacts would occur. Petitioner and the general
21 public have also been harmed by Respondent’s failure to prepare a valid EIR for this Project.

22 36. In pursuing this action, which involves enforcement of important rights affecting the
23 public interest, Petitioner will confer a substantial benefit on the general public and citizens of
24 Alameda County, the San Francisco Bay Area and the State of California, and therefore will be
25 entitled to attorney’s fees and costs pursuant to, inter alia, Code of Civil Procedure section 1021.5.

26 37. This petition is timely filed within all applicable statutes of limitations.

27 38. Petitioners bring this action pursuant to Public Resources Code section 21168.5 and
28 Code of Civil Procedure sections 1085 and 1094.5 which require that an agency’s approval of a

1 Project be set aside if the agency has prejudicially abused its discretion. Respondent has prejudicially
2 abused their discretion because Respondent has failed to proceed according to the law, and their
3 decision is not supported by substantial evidence, and Respondents have failed to make proper and
4 adequate findings.

5 STATEMENT OF LAW

6 39. CEQA is an integral part of every public agency's decision making process. (Pub.
7 Res. Code § 21006.) CEQA was enacted to protect the environment by the establishment of
8 administrative procedures to ensure that long-term protection of the environment shall be the guiding
9 criterion in public decisions.

10 40. The purpose of an EIR is to provide public agencies and the public with "detailed
11 information" about the likely significant environmental effect of a proposed and ways in which the
12 significant effects might be minimized. (§ 21061; see § 21002.1, subd. (a).) Evaluation of project
13 mitigation measures is at "the core" of an EIR. *Banning Ranch Conservancy v. City of Newport*
14 *Beach* (2017) 2 Cal. 5th 918, 937. CEQA procedures are intended to assist public agencies to
15 "systematically identify" the feasible mitigation measures which will avoid or substantially lessen
16 significant effects. (§ 21002; see CEQA Guidelines §§ 15126.4, 15126.6.)

17 41. An EIR is inadequate where mitigation efforts largely depend upon management plans
18 that have not yet been formulated, and have not been subject to analysis and review within the EIR
19 *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92; *San*
20 *Joaquin Raptor Rescue Ctr. v. Cty. of Merced* (2007) 149 Cal. App. 4th 645, 670. An agency violates
21 CEQA by deferring the formulation of mitigation measures without committing to specific
22 performance criteria for judging the efficacy of the future mitigation measures." *POET, LLC v.*
23 *California Air Resources Board* (2013) 218 Cal.App.4th 681, 698-99.

24 42. CEQA requires agencies not approve projects unless feasible mitigation measures
25 have been adopted to reduce significant impacts. Pub. Resources Code §§ 21002; 21002.1, subd (b);
26 21081, subd (b)(3). CEQA requires the EIR determine "whether and how" a project's effects can
27 feasibly be mitigated (Pub. Resources Code § 21081, subd. (a)(1)-(3)). *City of San Diego v. Bd. of*
28 *Trustees of California State Univ.*, 61 Cal. 4th 945, 961 (2015). "Feasible means capable of being

1 accomplished in a successful manner within a reasonable period of time, taking into account
2 economic, environmental, social, and technological factors.” Pub. Res. Code § 21061.1. To be
3 feasible, a mitigation measure must be “capable of being accomplished in a successful manner” (Pub.
4 Res. Code, § 21061.1), i.e., it must actually be effective in mitigating the identified environmental
5 effect. The likelihood of a mitigation being implemented is relevant to assessing a proposed
6 mitigation measure's likely success in achieving the goal of protecting the environment. CEQA
7 requires consideration of mitigation effectiveness when determining mitigation feasibility.

8 43. “When recirculating a revised EIR, either in whole or in part, the lead agency shall, in
9 the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the
10 previously circulated draft EIR.” CEQA Guideline § 15088.5(g). An EIR is recirculated when
11 significant new information is added to an EIR after the draft EIR has been circulated for public
12 review. New information added to an EIR is not ‘significant’ unless ‘the EIR is changed in a way that
13 deprives the public of a meaningful opportunity to comment.

14 44. An EIR serves not only to protect the environment but also to demonstrate to an
15 apprehensive public that it is being protected. (CEQA Guideline § 15003, subd. (b).)

16 **FIRST CAUSE OF ACTION FOR VIOLATION OF CEQA (Pub. Res. Code, § 21000 *et seq.*)**

17 45. Petitioner incorporates by reference herein the preceding paragraphs, as if fully set
18 forth.

19 **Count One - The 2017 Recirculated EIR Failed To Summarize Changes Made To**
20 **The 2015 Draft EIR**

21 46. The 2017 Recirculated EIR provides substantial new information relevant to the
22 proposed Project that was not included in the 2015 draft EIR. This new information in the 2017
23 Recirculated EIR related to over 30 sections of the EIR.

24 47. The 2017 Recirculated EIR failed to summarize the revisions made to the 2015 draft
25 EIR.

26 48. The 2017 Recirculated EIR’s failure to summarize the revisions made to the 2015
27 draft EIR violates the express mandate of CEQA Guideline 15088.5.

28 49. Omission of this summary from the 2017 Recirculated EIR deprives the public of a

1 meaningful opportunity to comment. Omission of this summary is prejudicial as it deprives the public
2 and decision makers of substantial relevant information about the project.

3 50. By failing to prepare a recirculated EIR which summarized the revisions made to the
4 2015 draft EIR, Caltrans failed to proceed as required by law and prejudicially abused its discretion.

5 **Count Two – The 2017 Recirculated EIR Improperly Deferred Formulation Of Mitigation**
6 **Measures**

7 51. The 2017 Recirculated EIR impermissibly defers the formulation of mitigation
8 measures; thus, Caltrans will only determine mitigation measures after project approval and
9 EIR certification.

10 52. Mitigation measures including *inter alia* measures UPLANDS-1, RIPARIAN-1,
11 BIRDS-4, VISUAL-3 and VISUAL-6 largely depend upon management plans that have not yet been
12 formulated, and have not been subject to analysis and review within the EIR. A plan to determine
13 how these measures would be implemented would be completed only after project approval and after
14 2017 Recirculated EIR certification. The objectives of the planting plan, who will be responsible,
15 where planting will occur, and what performance standards will apply will only be determined after
16 Project approval and 2017 Recirculated EIR certification. The mitigation plans do not (1) enumerate
17 specific measures to be evaluated, (2) incorporate quantitative criteria, or (3) set specific deadlines
18 for completion. The 2017 Recirculated EIR does not include a commitment to what happens if
19 mitigation tree mortality exceeds 30%. The fact that the future management plans for mitigation
20 measures UPLAND TREES-1, RIPARIAN TREES-1 and VISUAL-3 would be prepared only after
21 consultation with other agencies does not cure these basic CEQA errors, since no adequate criteria or
22 standards are set forth. *San Joaquin Raptor Rescue Ctr. v. Cty. of Merced* (2007) 149 Cal. App. 4th
23 645, 670.

24 53. The 2017 Recirculated EIR defers formulation of mitigation measures without
25 committing to specific performance criteria for judging the efficacy of the future mitigation
26 measures. The 2017 Recirculated EIR does not include criteria for which trees will be
27 preserved, or the number of trees to be preserved. The 2017 Recirculated EIR does not
28 include criteria for designating Environmentally Sensitive Area for reducing impacts to

1 natural communities in temporary impact areas. The 2017 Recirculated EIR does not include
2 criteria for determining if off-site planting is necessary. Details for off-site planting and
3 riparian tree planting success criteria would be determined after project approval and 2017
4 Recirculated EIR certification.

5 54. Failure to properly formulate mitigation measures in the EIR was prejudicial as
6 it precluded the public and decision makers from assessing the measures, deprived the public
7 of a meaningful opportunity to comment, and fell short of CEQA’s mandate to mitigate and
8 avoid significant adverse environmental impacts.

9 55. By certifying an EIR which defers the formulation of mitigation measures, which
10 depends upon management plans that have not yet been formulated, and which fails to commit to
11 performance criteria to mitigation efficacy, Caltrans failed to proceed as required by law and
12 prejudicially abused its discretion.

13 **Count Three – The 2017 Recirculated EIR Did Not Properly Consider or Discuss the Feasibility**
14 **of Proposed Mitigation Measures.**

15 56. The 2017 Recirculated EIR fails to disclose to the public and decision makers that
16 Caltrans has failed to implement promised mitigation for past logging of trees in 2011 in Niles
17 Canyon in the uplands and riparian habitat of Alameda Creek as part of the Niles 1 project.

18 57. The 2017 Recirculated EIR fails to analyze the feasibility of mitigation measures
19 UPLANDS-1, RIPARIAN-1, VISUAL-3, and VISUAL-6 in light of Caltrans’ failure to implement
20 such past promised mitigations.

21 58. The 2017 Recirculated EIR fails to analyze the feasibility of proposed off-site tree
22 planting given that the San Francisco Public Utility Commission and other agencies generally do not
23 allow others to mitigate project impacts on their property.

24 59. The 2017 Recirculated EIR fails to determine “whether and how” the Project’s
25 significant effects can successfully be accomplished, the likelihood of the mitigation being
26 implemented, and mitigation effectiveness.

27 60. The 2017 Recirculated EIR’s failure to properly consider the feasibility of
28 proposed mitigation measures was prejudicial as it precluded the public and decision makers

1 from assessing the measures, and deprived the public of a meaningful opportunity to
2 comment.

3 61. By failing to prepare an EIR which properly considered the feasibility of proposed
4 mitigation measures, Caltrans failed to proceed as required by law and prejudicially abused its
5 discretion.

6 **Count Four - Failure to Make Adequate Findings in Violation of CEQA.**

7 62. Under CEQA, an agency must not approve or carry out a project where the certified
8 EIR identifies a significant impact unless the agency adopts specific statutorily defined findings with
9 respect to each significant effect.

10 63. Caltrans failed to make findings required by CEQA for each of the significant impacts
11 identified in the 2017 Recirculated EIR.

12 64. By failing to make adequate findings, Caltrans violated CEQA and prejudicially
13 abused its discretion.

14 **Count Five - Failure to Adopt a Mitigation Monitoring Plan for All Changes to Mitigate**
15 **Project Impacts**

16 65. With Project approval, the agency must adopt a reporting or monitoring program
17 ("MMRP") for the changes made by the project and for conditions of project approval which are
18 adopted to mitigate or avoid significant impacts. The MMRP must be designed to ensure compliance
19 during project implementation. The agency must provide that measures to mitigate or avoid
20 significant impacts are fully enforceable through permit conditions, agreements, or other measures as
21 set forth in referenced documents which address required mitigation measures.

22 66. Caltrans failed to adopt an MMRP for the Project.

23 67. Caltrans failed to adopt measures to mitigate significant impacts which are fully
24 enforceable through permit conditions, agreements, or other measures.

25 68. By failing to adopt an MMRP, Caltrans violated CEQA and prejudicially abused its
26 discretion.

27 //

28 //

1 **Count Six: Failure to Adopt a Statement of Overriding Considerations**

2 69. When an agency approves a project which will result in significant effects identified in
3 the EIR but which are not avoided or substantially lessened, the agency must state in writing the
4 specific reasons to support its action based on the EIR and/or other information in the record. The
5 statement of overriding considerations must be supported by substantial evidence in the record.
6 Findings do not substitute for the statement of overriding considerations.

7 70. Caltrans failed to adopt a statement of overriding considerations to explain how or
8 why specific benefits will outweigh each significant unavoidable environmental effect.

9 71. By failing to adopt a statement of overriding considerations, Caltrans violated CEQA
10 and prejudicially abused its discretion.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner and Plaintiff prays for relief as follows:

14 1. For a peremptory writ of mandate directing Respondent to void the 2017 Recirculated
15 EIR certification, and to void any and all approvals given for the Project in reliance thereon.

16 2. For a peremptory writ of mandate directing Respondent to fully comply with CEQA
17 prior to Project approval, and take any other action required pursuant to Public Resources Code
18 section 21168.9.

19 3. For a temporary restraining order, preliminary injunction, and a permanent injunction
20 restraining all Respondent and its agents, servants and employees, and all others acting in concert
21 with them or in their behalf, from undertaking any grading, construction, development,
22 improvements, issuing any construction, building or development approvals or permits, or taking any
23 other action to implement in any way the Project, pending full compliance with CEQA and other
24 requirements of law.

25 4. For costs of the suit incurred herein.

26 5. For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure; and

27 6. For such other and further relief as the Court deems just and proper.
28

1 DATED: November 15, 2017

LAW OFFICES OF BRIAN GAFFNEY, APC

2 *Brian Gaffney*

3 _____
4 Brian Gaffney
5 Attorneys for Petitioner / Plaintiff

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

VERIFICATION

I, Jeffrey Miller, declare as follows:

1. I am a member of Alameda Creek Alliance and am authorized to sign this verification.
2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT and know the contents thereof. The factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

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

Executed November 15, 2017 at Guerneville, California.



Jeffrey Miller

EXHIBIT 1

Proof Of Service by Mail

Alameda Creek Alliance v. California Department of Transportation

I am over the age of 18 years and not a party to the above entitled action. My business address is 446 Old County Road, Suite 100-310, Pacifica, CA 94044.

On November 13, 2017, I served the Notice of Commencement of CEQA Action attached hereto by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United State mail at Pacifica, California addressed as follows:

Mr. Bijan Sartipi
Caltrans District 4 Director
P.O. Box 23660
Oakland, CA 94623-0660

Derek S. van Hoften
Caltrans Legal Division
111 Grand Avenue, Suite 11-100
Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 15, 2017, at Pacifica, California



Brian Gaffney

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
brian@gaffneylegal.com

November 13, 2017

Via Email and U.S. Mail

Mr. Bijan Sartipi
Caltrans District 4 Director
P.O. Box 23660
Oakland, CA 94623-0660
bijan_sartipi@dot.ca.gov

Derek S. van Hoften
Caltrans Legal Division
111 Grand Avenue, Suite 11-100
Oakland, CA 94612
derek_vanhoften@dot.ca.gov

Re: Notice of Commencement of CEQA Action (Pub. Resources Code § 21167.5) Alameda Creek Bridge Replacement Project EIR

This letter provides written notice pursuant to Public Resources Code section 21167.5 that Alameda Creek Alliance (“ACA”) will file suit on or before November 16, 2017 challenging the California Department of Transportation’s (Caltrans) certification of the Alameda Creek Bridge Replacement Project Environmental Impact Report (EIR) and approval of the Alameda Creek Bridge Replacement Project (Project) in reliance thereon.

The grounds for this lawsuit include, *inter alia*, that Caltrans has violated CEQA as (1) Caltrans’ Recirculated EIR failed to summarize changes made to the previously circulated Draft EIR, (2) the Recirculated EIR improperly deferred formulation of mitigation measures, and (3) the Recirculated EIR did not discuss the feasibility of proposed mitigation measures UPLAND TREES 1 and RIPARIAN TREES 1 in light of Caltrans’ failure to implement mitigation measures for logging 150 trees as part of the Niles Canyon 1 project.

ACA is willing to immediately begin discussing terms to settle this dispute that could either obviate the need to file this lawsuit or provide for dismissal of the lawsuit once filed. ACA presents the following settlement demand, in the form of principles that would have to be embodied in a formal written settlement agreement.

1. Caltrans rescinds its certification of the EIR and Project approvals in furtherance thereof;
2. Caltrans revises the EIR to address the CEQA violations listed above, and circulates this revised EIR for public comment and response thereto prior to EIR certification;
3. Caltrans agrees to stay Project implementation until and unless an adequate EIR for the Project is certified, or alternatively, Caltrans agrees to issuance of a writ of mandate commanding that it prepare such an EIR.

This letter and ACA's prior participation in Caltrans's administrative process satisfy ACA's obligations under California Civil Code of Procedure section 1021.5, as interpreted by the California Supreme Court in *Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553, 577.

Thank you for your attention to this matter.

Very Truly Yours,



Brian Gaffney

cc: Alameda Creek Alliance

EXHIBIT 2

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
brian@gaffneylegal.com

November 16, 2017

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

RE : *Alameda Creek Alliance v. California Department of Transportation.*

Dear Attorney General:

Enclosed is a copy of a CEQA Petition for Writ of Mandate and Complaint for Injunctive Relief which will be filed today in the above-captioned matter. This copy is being furnished to you pursuant to Code of Civil Procedure section 388 and Public Resources Code section 21167.7.

Please acknowledge receipt of the enclosed petition by return letter.

Sincerely,



Brian Gaffney

cc: Alameda Creek Alliance