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THE RESERVE MAINTENANCE
8 CORPORATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUDICIAL DISTRICT
11 CIVIL COMPLEX CENTER

12 THE RESERVE MAINTENANCE
CORPORATION,
13
14 Petitioner and Plaintiff,

15 v.

16 FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, a Joint Powers Agency;
17 BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN
18 TRANSPORTATION CORRIDOR
AGENCY; STATE OF CALIFORNIA
19 DEPARTMENT OF
TRANSPORTATION; and DOES 1
20 through 10, Inclusive;

21 Respondents and Defendants.

22 NATIONAL AUDUBON SOCIETY;
CALIFORNIA COASTAL PROTECTION
23 NETWORK; CALIFORNIA STATE
PARKS FOUNDATION; DEFENDERS
24 OF WILDLIFE; ENDANGERED
HABITATS LEAGUE; LAGUNA
25 GREENBELT, INC.; NATURAL
RESOURCES DEFENSE COUNCIL,
26 INC.; ORANGE COUNTY
COASTKEEPER; SEA AND SAGE
27 AUDUBON SOCIETY; SIERRA CLUB;
SURFRIDER FOUNDATION;
28 WILDCOAST-COSTASALVAJE;

Case No.

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[California Environmental Quality Act;
Cal. Code of Civ. Proc. § 1085; Cal. Govt.
Code §§ 54950 *et seq.*; Cal. Pub. Res. Code
21168.5]

1 PEOPLE OF THE STATE OF
2 CALIFORNIA ex rel. KAMALA D.
3 HARRIS, ATTORNEY GENERAL;
4 NATIVE AMERICAN HERITAGE
5 COMMISSION; CALIFORNIA STATE
6 PARK AND RECREATION
7 COMMISSION; AND CALIFORNIA
8 NATURAL RESOURCES AGENCY;

Real-Parties-In-Interest.

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1 area" virtually guarantees that the TCA will now seek to cram the toll road *directly*
2 *through* the only places remaining available; *i.e.*, the preserved open space, mitigation
3 lands, and trails located in the established communities of San Clemente, San Juan
4 Capistrano and/or Rancho Mission Viejo. Worse still, all remaining alignment options
5 under consideration would put a toll road within close proximity of community parks,
6 schools, trails, and homes with devastating, unmitigable environmental, socioeconomic,
7 and human impacts. Notably, these communities were planned and built in reliance on the
8 promise, and with the expectation, that any proposed toll road alignment would bypass
9 them and connect to Route 5 in San Diego County as the California Legislature clearly
10 intended.

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12 3. Through this action and on behalf of itself and the general public, the
13 Association seeks to set aside the settlement agreement between the TCA, the Save San
14 Onofre Coalition ("SSOC")¹, the People of the State of California ex rel. Kamala D.
15 Harris, Attorney General ("People"), the Native American Heritage Commission
16 ("NAHC"), and the California State Park and Recreation Commission ("CSPRC"). The
17 settlement agreement illegally *prohibits* the TCA and TCA Board from ever constructing
18 or funding the construction of "any road alignment that is located within, or that would
19 have Direct Impacts to, the Avoidance Area." In other words, the settlement agreement
20 purports to restrict the TCA's and TCA Board's discretionary governmental powers.

21
22 4. The Association further seeks to set aside a so-called "protective
23 agreement," as mandated by the settlement agreement, between the TCA, the SSOC,
24 CalTrans, and the California Natural Resources Agency ("CNRA"). Under the protective
25

26 ¹ The SSOC is comprised of the following entities: (1) National Audubon Society dba Audubon
27 California; (2) California Coastal Protection Network; (3) California State Parks Foundation; (4)
28 Defenders of Wildlife; (5) Endangered Habitats League; (6) Laguna Greenbelt, Inc.; (7) Natural
Resources Defense Council, Inc.; (8) Orange County Coastkeeper; (8) Sea and Sage Audubon
Society; (9) Sierra Club; (10) Surfrider Foundation; and (11) WILD Coast-COSTASALVAJE.

1 agreement, the TCA again promised that "[c]onsistent with the terms of the Settlement
2 Agreement, TCA agrees not to fund or construct a road in the Avoidance Area." Like the
3 settlement agreement, the protective agreement purports to *forever restrict* the TCA's
4 governmental authority regarding the funding or construction of any roadway in the
5 Avoidance Area.

6
7 5. Under controlling California law, it is clear that the TCA and
8 CalTrans do not have the authority to enter into contracts which expressly restrict the
9 exercise of governmental authority, either presently or in the future. Any such agreement
10 is invalid, void, and unenforceable as a matter of law. The TCA Board's entry into a
11 settlement agreement mandating that the TCA shall never, under any circumstances, fund
12 or construct a road in an "avoidance area" restricted the TCA's exercise of its governmental
13 authority and thus, constituted a void, invalid and *ultra vires* act. Similarly, the "protective
14 agreement," both standing alone and as a component of the prohibited settlement
15 agreement, is an unlawful and invalid attempt to restrict through contract the exercise of
16 governmental authority, both presently and in the future. Therefore, the TCA's and
17 CalTrans' execution of the Protective Agreement constituted an invalid, illegal and *ultra*
18 *vires* act.

19
20 6. Furthermore, the settlement agreement was considered and adopted by
21 the TCA Board during a closed session and without any noticed public hearing, public
22 comment, or public deliberation in violation of the Ralph M. Brown Act (Govt. Code §§
23 54950 *et seq.*) (the "Brown Act"). While the TCA Board is authorized pursuant to
24 Government Code section 54956.9 to discuss, in closed session, settlement of a lawsuit to
25 which the TCA is a party, the TCA Board is not authorized to execute any agreement
26 during closed session intrinsically required by law to be made only after a noticed public
27 hearing with public comment. The settlement agreement approved and executed by the
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1 TCA Board is replete with broad policy dictates which can only be adopted by the TCA
2 Board following a noticed public hearing and a full, fair opportunity for public comment.

3
4 7. The protective agreement was further executed and purportedly
5 approved by the TCA in secret without any noticed public hearing, opportunity for public
6 comment, or public deliberation in violation of the Brown Act. Like the settlement
7 agreement, the protective agreement contains broad policy directives which may only be
8 adopted following a noticed public hearing and a full, fair opportunity for public comment.

9
10 8. Furthermore, neither the TCA (acting by and through its Chief
11 Executive Officer Michael Kraman) nor CalTrans (acting by and through District 12
12 Director Ryan Chamberlain) was authorized to execute the protective agreement, which
13 established an "avoidance area" for the State Route 241 toll road and effectively rescinded
14 or modified the legislatively-approved route/alignment around the City of San Clemente
15 without proper process. Only the California Legislature and/or California Transportation
16 Commission is authorized to take such action concerning routes and/or specific alignments
17 for state highways and freeways.

18
19 9. Finally, the TCA and CalTrans approved the Protective Agreement,
20 including the broad land use policy edicts contained therein, without any environmental
21 review or process in violation of the California Environmental Quality Act (Public
22 Resources Code §§ 21000 *et seq.*, "CEQA").

23
24 10. The Association thus asks this Court to direct the TCA, TCA Board,
25 and CalTrans, by way of writ of mandate and/or injunction, to fulfill their mandatory duty
26 to act in accordance with the law by setting aside the settlement agreement and protective
27 agreement, as well as any and all agreements entered, and actions taken, pursuant thereto.

28

1 **THE PARTIES AND STANDING**

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3 11. Petitioner and Plaintiff Association is a California nonprofit, mutual

4 benefit corporation authorized to do and doing business in San Clemente, California. The

5 Association acts as a homeowners association for the residential planned development

6 project known as "The Reserve" located in the City of San Clemente, County of Orange,

7 State of California. The Reserve contains approximately 419 homes with over 1200

8 residents. The Association and each of its individual member residential property owners

9 have a direct and beneficial interest in the TCA's, TCA Board's, and CalTrans'

10 (collectively "Respondents") compliance with California law requiring open, fair public

11 hearings with a meaningful opportunity for public participation regarding decisions

12 impacting public policy and mobility solutions in Orange County. The Association and

13 each of its individual member property owners further have a direct and beneficial interest

14 in Respondents' compliance with provisions of California law prohibiting governmental

15 entities from executing agreements which purport to restrict or surrender governmental

16 authority in perpetuity; such agreements are invalid, void, and *ultra vires*. These interests

17 would be directly and adversely affected by the alleged violations of law set forth in this

18 Petition. The maintenance and prosecution of this action will further confer a substantial

19 benefit on the public at large by compelling Respondents to comply with California law in

20 executing their public, governmental functions. The Association's pursuit of this action

21 permits its individual members and the members of the general public throughout Orange

22 County to enforce important public rights and further enforce the public duty of

23 Respondents to comply with California law. Without the Association's pursuit of this

24 action, these rights and duties might otherwise go unenforced because other persons

25 directly interested in enforcement of the public rights and duties do not have the resources,

26 ability, or motivation to bring an enforcement action.

27

28

1 12. Upon information and belief, Respondent and Defendant TCA is a
2 joint powers authority operating exclusively in Orange County, California with its
3 principal office located in the City of Irvine. TCA is formed under the authority of the
4 Joint Exercise of Powers Act, Government Code sections 6500 *et seq.*, and exists pursuant
5 to a Joint Exercise of Powers Agreement (as amended) by and among its members.
6 Members of the TCA include the County of Orange, and the Cities of Anaheim, Dana
7 Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente,
8 San Juan Capistrano, Santa Ana, Tustin, and Yorba Linda. The TCA is a party to the
9 Settlement Agreement and Protective Agreement (as defined below), both of which are the
10 subject of this action.

11
12 13. Upon information and belief, Respondent and Defendant TCA Board
13 is the governing body of the TCA and is responsible, through the proper public hearing
14 process under the Brown Act, for planning, approving, and implementing projects within
15 TCA's authority. The TCA Board is obligated to comply with all state and federal laws in
16 governing the TCA and in conducting fair and open public hearings concerning projects
17 and contracts within the TCA's authority. The Board of Directors is comprised of
18 representatives of the County of Orange and of twelve cities within the County of Orange.
19 The TCA Board, with the exception of certain Directors, approved and executed the
20 Settlement Agreement which is the subject of this action. The TCA Board and its
21 members are sued in their official capacities only.

22
23 14. Upon information of belief, Respondent and Defendant CalTrans is an
24 agency of the State of California responsible for maintaining and operating California's
25 state highway system. To accomplish this objective, Caltrans is subdivided into twelve
26 (12) different business units called "Districts" that together form the geographic whole of
27 California. Each District has jurisdictional responsibility related to a county or group of
28 counties and is led by a District Director. District 12 encompasses the entirety of Orange

1 County. CalTrans purported to execute the Protective Agreement, which is the subject of
2 this action, by and through its District 12 Director Ryan Chamberlain. Mr. Chamberlain
3 also serves as an *ex officio* member of the TCA Board. CalTrans' District 12 offices are
4 located in Santa Ana, California.

5
6 15. Upon information and belief, Real Party in Interest National Audubon
7 Society ("NAS") is a New York corporation and doing business in California under the
8 name "Audubon California." NAS is a member of the SSOC and a party to the Settlement
9 Agreement and Protective Agreement which are the subject of this action.

10
11 16. Upon information and belief, Real Party in Interest California Coastal
12 Protection Network ("CCPN") is a California public benefit corporation with its principal
13 place of business located in Santa Barbara, California. CCPN is a member of the SSOC
14 and a party to the Settlement Agreement and Protective Agreement which are the subject
15 of this action.

16
17 17. Upon information and belief, Real Party in Interest California State
18 Parks Foundation ("CSPF") is a California non-profit organization with its principal place
19 of business located in San Francisco, California. CSPF is a member of the SSOC and a
20 party to the Settlement Agreement and Protective Agreement which are the subject of this
21 action.

22
23 18. Upon information and belief, Real Party in Interest Defenders of
24 Wildlife is a non-profit organization with its principal place of business located in
25 Washington, D.C. Defenders of Wildlife is a member of the SSOC and a party to the
26 Settlement Agreement and Protective Agreement which are the subject of this action.

1 19. Upon information and belief, Real Party in Interest Endangered
2 Habitats League ("EHL") is a California non-profit organization with its principal place of
3 business located in Los Angeles, California. EHL is a member of the SSOC and a party to
4 the Settlement Agreement and Protective Agreement which are the subject of this action.
5

6 20. Upon information and belief, Real Party in Interest Laguna Greenbelt,
7 Inc. in a California non-profit organization located in Laguna Beach, California. Laguna
8 Greenbelt is a member of the SSOC and a party to the Settlement Agreement and
9 Protective Agreement which are the subject of this action.
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11 21. Upon information and belief, Real Party in Interest Natural Resources
12 Defense Council, Inc. ("NRDC") is a New York non-profit organization with an office
13 located in Santa Monica, California. NRDC is a member of the SSOC and a party to the
14 Settlement Agreement and Protective Agreement which are the subject of this action.
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16 22. Upon information and belief, Real Party in Interest Orange County
17 Coastkeeper is a California non-profit organization located in Costa Mesa, California.
18 Orange County Coastkeeper is a member of the SSOC and a party to the Settlement
19 Agreement and Protective Agreement which are the subject of this action.
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21 23. Upon information and belief, Real Party in Interest Sea and Sage
22 Audubon Society is a California non-profit located in Irvine, California. Sea and Sage
23 Audubon Society is a member of the SSOC and a party to the Settlement Agreement and
24 Protective Agreement which are the subject of this action.
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26 24. Upon information and belief, Real Party in Interest Sierra Club is a
27 California non-profit corporation with its headquarters located in Oakland, California. The
28

1 Sierra Club is a member of the SSOC and a party to the Settlement Agreement and
2 Protective Agreement which are the subject of this action.

3
4 25. Upon information and belief, Real Party in Interest Surfrider
5 Foundation is a California non-profit organization with an office located in San Clemente,
6 California. Surfrider is a member of the SSOC and a party to the Settlement Agreement
7 and Protective Agreement which are the subject of this action.

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9 26. Upon information and belief, Real Party in Interest WILDCOAST-
10 COSTASALVAJE is a California non-profit organization with an office located in
11 Imperial Beach, California. WILDCOAST is a member of the SSOC and a party to the
12 Settlement Agreement and Protective Agreement which are the subject of this action.

13
14 27. Upon information and belief, Real Party in Interest the People of the
15 State of California, ex rel. Attorney General Kamala D. Harris is a representative of the
16 people of the State of California and a party to the Settlement Agreement which is the
17 subject of this action.

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19 28. Upon information and belief, Real Party in Interest Native American
20 Heritage Commission ("NAHC") is a public agency of the State of California (constituted
21 pursuant to California Public Resources Code section 5097.91 and 5097.92) and a party to
22 the Settlement Agreement which is the subject of this action.

23
24 29. Upon information and belief, Real Party in Interest CSPRC is a public
25 agency of the State of California and a party to the Settlement Agreement which is the
26 subject of this action. No public hearing was held by the CSPRC concerning the execution
27 of the Settlement Agreement or the contents thereof. The CSPRC executed and approved
28 the Settlement Agreement during closed session only.

1 Property affected by those acts is located, in Orange County. Additionally, the Settlement
2 Agreement and Protective Agreement were executed and performed, in whole or in part, in
3 Orange County. Venue is further proper in this Court under California Code of Civil
4 Procedure section 394(a) because the TCA and TCA Board are located within the County
5 of Orange.

6
7 **STATEMENT OF FACTS**

8
9 **THE FOOTHILL TRANSPORTATION CORRIDOR AND SR 241 SOUTHERN**
10 **EXTENSION**

11
12 35. The Foothill Transportation Corridor ("FTC") was added to the Orange
13 County Master Plan of Arterial Highways ("MPAH") by the Orange County Board of
14 Supervisors in August 1981, following the certification of Environmental Impact Report
15 123. Environmental Impact Report 423 was subsequently certified regarding the FTC in
16 May 1983. The FTC was originally intended to be constructed using state and federal
17 transportation and designated a free highway (*i.e.*, non-tolled).

18
19 36. Subsequently, the TCA was formed in 1986 pursuant to the Joint
20 Exercise of Powers Act (Government Code sections 6500 *et. seq.*) as a Joint Powers
21 Authority to fund and construct *toll roads* in Orange County in part due to substantial
22 decreases in the availability of state of federal transportation funding. It was decided at that
23 time that the FTC would be constructed as a toll road and added to the State Highway
24 System. The TCA and CalTrans thereafter executed various cooperation and non-compete
25 agreements toward that end.

26
27 37. The California state legislature, not the TCA or CalTrans, establishes
28 the framework for the State Highway System by describing each route by statute,

1 specifically, in the California Streets and Highways Code. In 1988, and following
2 environmental review by the TCA and County of Orange of four possible routes for the FTC,
3 Chapter 1363 (now codified at California Streets and Highways Code section 541) was
4 enacted which defined State Route 241 as "Route 231 near the Cities of Tustin and Irvine to
5 ***Route 5 south of San Clemente.***" (Emphasis added) The legislative history of this bill
6 reveals that the California legislature intended for Route 241 to *bypass* San Clemente and
7 connect to Route 5 in San Diego County. This intention for the 241 route is confirmed by
8 the map consistently employed and relied upon by legislators throughout the legislative
9 history for Streets and Highways Code section 541, attached hereto as Exhibit .

10
11 38. The Association is informed and believes that several environmental
12 groups reported their concerns over the proposed route for Route 241 to the legislature when
13 codified in 1988. Taking into consideration all environmental impacts and practical
14 considerations, the legislature ostensibly determined, despite the expressed concerns, that
15 the appropriate route for Route 241 would avoid established communities completely and
16 connect to Route 5 south of San Clemente.

17
18 39. In March 1990, the TCA certified final Supplemental EIR 423, which
19 evaluated the northern portion of the FTC as a toll facility. The northern portion of the FTC
20 ("Foothill-North"), was constructed in segments from 1995 to 1998 and begins at Oso
21 Parkway near Rancho Santa Margarita and proceeds north where it terminates at SR-91 near
22 the Santa Ana River in the City of Anaheim.

23
24 40. The southern portion of the FTC ("Foothill-South") has been the subject
25 of planning efforts for over thirty-five years. From 1989 to 1991, the TCA prepared TCA
26 EIR No. 3, for the selection of a locally-preferred alignment for the Foothill-South. TCA
27 EIR No. 3 was circulated for a 60-day review period which included public hearings. A
28 Supplemental EIR ("SEIR") was then circulated to address changes to the alignment which

1 addressed changes to the "C" Alignment through San Onofre State Beach and San Clemente
2 resident concerns regarding noise and visual impacts. The modified alignment around San
3 Clemente and connecting to Route 5 south of San Clemente was dubbed the "Modified C
4 Alignment," which was selected as the locally-preferred alternative by the TCA and is
5 consistent for the codified route for the SR 241. The Modified C Alignment was modified
6 further following input from the United States Fish and Wildlife Services, and the new
7 alignment was called the "CP Alignment." The CP Alignment went around San Clemente
8 and connected to Route 5 south of the San Clemente city limits.

9
10 41. In December 1993, the TCA initiated the preparation of a Subsequent
11 SEIR to evaluate the CP Alignment, the BX Alignment (which terminated at Route 5 at
12 Avenida Pico in San Clemente), and a no build alternative. Between 1993 and 1996,
13 technical analysis of the CP and BX alignment alternatives and the No Build Alternative
14 was conducted. A true and correct copy of the map depicting the CP and BX alignment
15 alternatives is attached hereto as Exhibit .

16
17 42. In 1996, the California Legislature enacted Chapter 1154 (A.B. 3020),
18 which extended the SR 241 route by transfer from former Route 231: "Route 5 south of
19 San Clemente to Route 91 in the City of Anaheim."

20
21 43. In the early 2000s, the alignment for the southern portion of the FTC
22 (a 16-mile segment from Oso Parkway to the Route 5 south of San Clemente) ("Foothill-
23 South") was studied by the TCA as six possible alignments, including three which went
24 around the east side of the City of San Clemente and connected to Route 5 south of San
25 Clemente as set forth in Streets and Highways Code section 541. In December 2005, the
26 TCA released the final environmental impact report regarding the various alignments
27 considered.

28

1 *Transportation Corridor Agency*, San Diego Superior Court, Case No. GIN051370) (the
2 actions alleged in this paragraph and collectively referred to as the "2006 Lawsuits").

3
4 47. On or around April 18, 2013, the TCA certified an Addendum to the
5 2006 SEIR ("2013 Addendum") and approved an extension of the SR 241 from Oso
6 Parkway to Cow Camp Road (the "Tesoro Extension") ("2013 Approvals").

7
8 48. The 2013 Addendum and 2013 Approvals were also challenged under
9 CEQA by certain SSOC Members (*California State Parks Foundation et al. v. Foothill*
10 *Eastern/Transportation Corridor Agency et al.*, San Diego Superior Court Case No. 37-
11 2013-00049797-CU-WM-CTL) and by the People (*People of the State of California, ex*
12 *rel. Attorney General Kamala D. Harris v. Foothill/Eastern Transportation Corridor*
13 *Agency et al.*, Case No. 37-2013-00050001-CU-WM-NC) (the "2013 Lawsuits"). The
14 2013 Lawsuits alleged that the 2013 Approvals violated CEQA because a new
15 environmental impact report was purportedly required to analyze new information and
16 substantial changes since the 2006 SEIR was certified. The 2013 Lawsuits also alleged
17 that the TCA was improperly "piecemealing" approvals of the Green Alignment.

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19 49. Ultimately, the San Diego Superior Court never made any
20 determination regarding the merits of any of the claims made in the 2006 and 2013
21 Lawsuits. Instead, a stipulated judgment was entered pursuant to a voluntary settlement by
22 and between the TCA, the SSOC, the People, NAHC, and CSPRC as discussed below.

23
24 **THE NOVEMBER 2016 SETTLEMENT AGREEMENT**

25
26 50. On or about November 10, 2016, the TCA, the SSOC, the People, the
27 NAHC, and the CSPRC entered into a settlement agreement to resolve the 2006 and 2013
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1 Lawsuits (the "Settlement Agreement"). A true and correct copy of the Settlement
2 Agreement is attached hereto as Exhibit .

3
4 51. The TCA Board discussed, approved and executed the Settlement
5 Agreement during closed session on November 10, 2016. Despite the various broad policy
6 actions agreed to therein, no noticed public meeting was conducted concerning the
7 approval and execution of the Settlement Agreement (or the provisions contained therein)
8 and no opportunity was afforded for public comment or public deliberation in violation of
9 the Brown Act.

10
11 52. The Settlement Agreement provides, among various other substantive
12 mandates, that the TCA (1) "Shall rescind the certification of the 2006 SEIR, the 2006
13 Approvals, the approval of the 2013 Addendum, and the 2013 Approvals" (§ 2.1);² (2)
14 Shall reimburse the SSOC for the costs incurred in connection with the underlying lawsuits
15 in the total amount of \$7.1 million; and (3) "Shall not construct or provide funding for the
16 construction of any road alignment that is located within, or that would have Direct
17 Impacts to, the Avoidance Area" (§ 3.1.2). The Avoidance Area is defined in the map
18 included as Exhibit C to the Settlement Agreement; it covers a several square mile area
19 and effectively forecloses, in perpetuity, *any* potential SR 241 alignment to the east of San
20 Clemente and/or connecting to Route 5 south of San Clemente.

21
22 53. Remarkably, by designating an Avoidance Area in the Settlement
23 Agreement and agreeing to only pursue "Post Settlement Alignments",³ the TCA Board
24

25 ² On or around December 8, 2016, the TCA rescinded the certification of the 2006 SEIR,
26 the 2006 Approvals, the approval of the 2013 Addendum, and the 2013 Approvals during a
noticed public hearing.

27 ³ A "Post Settlement Alignment" is defined as "any alignment for the extension of the SR
28 241 that is consistent with the project goals, objectives and transportation needs identified

1 agreed bind its present authority, and the authority of future TCA Boards, concerning the
2 construction and/or funding of any SR 241 alignments located in the several square mile
3 Avoidance Area. This improper abnegation and surrender of the TCA's discretionary
4 authority in perpetuity was made irrespective of any future public process or environmental
5 review regarding proposed SR 241 alignments. In effect, the TCA Board abandoned and
6 forever barred longstanding SR 241 alignments behind closed doors, without any public
7 hearing, process, or deliberation.

8
9 54. The Settlement Agreement further provides that construction of any
10 structure that would "permit a direct connection between SR 241 and Los Patrones
11 Parkway, including but not limited to construction of any...bridge over SR 241 or over
12 Oso Parkway" shall not commence unless one of four different "triggering events" occurs.
13 Ex. [REDACTED], p. 11, § 4.1. One of these triggering events is the execution of a "protective
14 agreement" by and between the SSOC, the California Transportation Agency, and the
15 CNRA whereby the parties would agree that "no new major thoroughfare shall be
16 constructed in the Avoidance Area." Ex. [REDACTED], p. 11, § 4.1.1.

17
18 55. Another proposed triggering event was the adoption of so-called
19 "Protective Legislation", whereby the "California Legislature has passed and the Governor
20 has signed into law legislation preventing TCA from constructing a road in the Avoidance
21 Area" Ex. [REDACTED], p. 11, § 4.1.2.

22
23 56. The TCA and SSOC agreed to pursue the Protective Agreement
24 initially. However, it was agreed that if the Protective Agreement was not entered by
25 January 15, 2017, the TCA and SSOC agreed to use "good faith efforts to cause, through a
26 mutually-agreed upon process, the Protective Legislation to be introduced in the 2017

27 _____
28 and established by TCA, connects to Interstate 5, and *is not sited in and will not have
Direct Impacts to the Avoidance Area.*" (§ 1.9)

1 legislative session and to support its passage by the Legislature and signature by the
2 Governor." Ex. [REDACTED], p. 12, § 4.2.4. The Association is informed and believes that because
3 the Protective Agreement was not entered by January 15, 2017, the TCA and SSOC
4 attempted to introduce the Protective Legislation but were unable to garner sufficient
5 support from the California Legislature.

6
7 57. On December 14, 2016, the parties to the Settlement Agreement filed
8 a "Stipulation for Entry of Judgment Confirming And Implementing Settlement" in San
9 Diego Superior Court.

10
11 58. On January 19, 2017, the San Diego Superior Court entered a
12 stipulated final judgment regarding the 2006 and 2013 Lawsuits pursuant to the terms of
13 the Settlement Agreement. Notably, no judicial determination was made regarding the
14 validity of the Settlement Agreement or the terms included therein. Instead, the final
15 judgment incorporating the Settlement Agreement's terms was *solely* the product of a
16 stipulation among the parties in which the San Diego Superior Court acquiesced. The
17 Association was neither a party to the Settlement Agreement nor a party to the 2006 and
18 2013 Lawsuits. Additionally, the Association was not aware of the Settlement Agreement
19 or the specific provisions included therein at the time final judgment was entered by the
20 San Diego Superior Court.

21
22 59. Following the execution of the Settlement Agreement, the TCA and
23 SSOC members made numerous public statements and published several articles
24 concerning the content and impact of the settlement. Many of these statements
25 emphasized the permanent and absolute surrender of governmental authority concerning
26 the funding and construction of a roadway in the contractually-mandated Avoidance Area:

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- a. The NRDC released an article describing the settlement as "a definitive determination that the state park at San Onofre - and its natural, historical and cultural resources - will be *permanently preserved*." Ex. [REDACTED] (emphasis added).

- b. NAS commented that, the Settlement Agreement "will not allow *any* proposed Foothill-South Toll Road alignment in southern Orange County and northern San Diego County in [the Avoidance Area]." Ex. [REDACTED] (emphasis added).

- c. The Surfrider Foundation commented that "[t]he most significant and most hard-fought aspect of the settlement carves out 'avoidance areas' that *requires TCA to refrain from building or funding* a road project within an area that includes San Onofre State Beach, the Richard and Donna O'Neill Conservancy and other critical open space, wildlife habitat and cultural resources in the San Mateo Creek watershed." Ex. [REDACTED] (emphasis added). Moreover, the Surfrider Foundation has stated that "[t]he lawsuit settlement *permanently* protects San Onofre State Beach by establishing avoidance areas where *the TCA is not allowed to build a road*" and has explained that "[t]he Settlement Agreement...states where a road *cannot go*." Ex. [REDACTED] (emphasis added).

- d. In a March 2017 presentation by Michael Chesney, the Chief Strategy Officer for the TollRoads, Mr. Chesney stated that the Settlement Agreement "[e]nsures *permanent protection* of San Mateo Watershed, Donna O'Neill Land Conservancy, and other critical open space." Ex. [REDACTED]. Curiously, he went on to claim that the agreement,

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"does not establish any specific alignment or route," for the expansion of the SR 241, despite the fact that the Settlement Agreement clearly delineates a massive area where the route *cannot* be located.

60. Any remaining doubt concerning the TCA Board's surrender of its discretionary authority to construct a roadway in the Avoidance Area were erased during a June 5, 2017 TCA community forum at Saddleback College. Richard Katz, a TCA representative and participant in the settlement negotiations, further stated the following regarding the Settlement Agreement:

I have never seen an agreement like this where there is land actually designated as an avoidance area where you cannot build and an agency agrees not to build in the future not knowing what 10 or 20 years from now may bring. And, in this agreement the TCA has said the avoidance areas, which are clearly marked out on the map, no TCA authority at any point will ever build a road in those areas.

In other words, Mr. Katz stressed that the Settlement Agreement was intended to (and did) prohibit the TCA and TCA Board in perpetuity from constructing a roadway in the Avoidance Area. Incredibly, Mr. Katz further admitted this binding, perpetual agreement was executed by the TCA Board **without knowing what the future may hold**; *i.e.*, irrespective of the results of any public process or environmental review concerning proposed future SR 241 alignments.

THE MARCH 2017 "PROTECTIVE AGREEMENT"

61. On or about March 10, 2017, pursuant to § 4.1.1 of the Settlement Agreement, the TCA, the SSOC, Caltrans, and the CNRA entered into a protective agreement (the "Protective Agreement"), a true and correct copy of which is attached hereto as Exhibit .

1 62. TCA's Chief Executive Officer, Mike Kraman, executed the
2 Protective Agreement on behalf of the TCA. CalTrans' District 12 Director, Ryan
3 Chamberlain, executed the Protective Agreement on behalf of CalTrans. The Protective
4 Agreement was executed and purportedly approved by Mr. Kraman and Mr. Chamberlain
5 in private, without any noticed public hearing or opportunity for public comment. The
6 Association is informed and believes the TCA Board was not notified of the Protective
7 Agreement, or its terms, until after it was executed by Kraman.

8
9 63. In the Protective Agreement Caltrans agreed, "that in exercising its
10 authority under state law, it will not approve, permit, take possession of or otherwise
11 authorize the construction of a major thoroughfare in the Avoidance Area; provided,
12 however, that this prohibition shall not apply to any proposed widening of the existing
13 Interstate 5 facility." (Protective Agreement ¶ 1)

- 14
15 64. The Protective Agreement is illegal, void, and *ultra vires* because:
- 16 a. The Association is informed and believes that Mr. Chamberlain
17 was not authorized to agree, on behalf of CalTrans (or on
18 behalf of the California State Transportation Agency), that
19 CalTrans will not approve, permit, take possession of or
20 otherwise authorize the construction of a major thoroughfare in
21 the Avoidance area;
 - 22 b. CalTrans does not have the authority to agree, on behalf of
23 itself or on behalf of the California State Transportation
24 Agency, that it will not approve, permit, take possession of or
25 otherwise authorize the construction of a major thoroughfare in
26 the Avoidance area;

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- c. CalTrans does not have the authority to rescind freeway routes and/or alignments duly adopted by the California Legislature and/or CTC; and
- d. Even if it did have such authority, CalTrans cannot contractually restrict the discretionary governmental authority of CalTrans, the CTC, and/or the California Legislature to designate the appropriate alignment for the SR 241 following a noticed public hearing and an opportunity for public comment.

65. The TCA also agreed, as part of the Protective Agreement, that "[c]onsistent with the terms of the Settlement Agreement, TCA agrees not to fund or construct a road in the Avoidance Area." (Protective Agreement ¶ 2)

66. The Protective Agreement is further illegal, void, and *ultra vires* as because:

- a. The Association is informed and believes that Mr. Kraman is not authorized to execute the Protective Agreement on behalf of either the TCA or TCA Board or to otherwise agree that the TCA would not "fund or construct a road in the Avoidance Area";
- b. The TCA and TCA Board may not surrender through contract the discretionary authority to fund or construct a road in the Avoidance Area; and
- c. The TCA cannot agree, through contract, that it will not fund or construct a road in the Avoidance Area without a noticed public hearing with a meaningful opportunity for public comment.

67. Upon execution of the Protective Agreement, the TCA was permitted under the terms of the Settlement Agreement to, among other things, commence construction of the Oso Parkway Bridge Project without any environmental challenge by

1 the SSOC or its individual members. The TCA was further permitted to proceed with the
2 environmental review process concerning certain Post Settlement Alignments for the SR
3 241, all of which are necessarily forced to plow through the existing communities of San
4 Clemente, San Juan Capistrano, and/or Rancho Mission Viejo because of the
5 contractually-mandated Avoidance Area. A true and correct copy of the map showing the
6 proposed Post Settlement Alignments is attached hereto as Exhibit [REDACTED]. Ideas 8 and 15 are
7 currently *prohibited* by the Settlement Agreement because they are located within the
8 Avoidance Area. The Association is informed and believes the TCA plans to pursue "Idea
9 14" as its preferred Post Settlement Alignment. In fact, a cross-section of the engineering
10 for the terminus of "Idea 14" at or near Basilone Road is depicted as Sheet 2 of Exhibit C
11 to the Settlement Agreement.

12

13 68. The Association is informed and believes and thereon alleges that
14 prior to approving the Protective Agreement, the TCA, TCA Board, and CalTrans failed to
15 make any determinations regarding the potential impacts of that agreement on the
16 environment as required by CEQA.

17

18 **PROCEDURAL ALLEGATIONS SUPPORTING ISSUANCE OF WRIT**

19

20 69. The Association has exhausted all available and non-futile
21 administrative remedies required to be pursued by it under the law and the factual
22 circumstances underlying this action.

23

24 70. The TCA and CalTrans have, and at all relevant times had, a
25 mandatory duty to exercise their powers in accordance with the law. By entering into the
26 illegal and invalid Settlement Agreement and Protective Agreement, the TCA breached
27 this mandatory duty. Similarly, and by entering into the illegal and invalid Protective
28 Agreement, CalTrans has breached its mandatory duty to comply with the law. The

1 Association is informed and believes the TCA and CalTrans will not fulfill their
2 mandatory duties without a court order.

3
4 71. The Association has no plain, speedy and adequate remedy in the
5 ordinary course of law, other than the relief sought in this Petition, that will prevent the
6 Respondents from acting outside their legal authority.

7
8 72. The Association and the public at large will suffer irreparable harm if
9 the relief requested herein is not granted.

10
11 73. The Association has a direct and beneficial interest in the outcome of
12 this action and has performed all conditions precedent to the filing of this Petition. The
13 maintenance and prosecution of this action will further confer a substantial benefit on the
14 public at large by compelling Respondents to comply with California law in executing
15 their public, governmental functions. The Association's pursuit of this action permits its
16 individual members and the members of the general public throughout Orange County to
17 enforce important public rights and further enforce the public duty of Respondents to
18 comply with California law. Without the Association's pursuit of this action, these rights
19 and duties might otherwise go unenforced because other persons directly interested in
20 enforcement of the public rights and duties do not have the resources, ability, or motivation
21 to bring an enforcement action.

22
23 74. The Association seeks through this action to enforce important rights
24 affecting the public interest and which confer a significant benefit on the public as a whole
25 by ensuring that Respondents engage in an open process without restricting governmental
26 powers through private contracts. The Association has incurred, and will continue to
27 incur, substantial expense in attorneys' fees and costs in pursuing this matter of are within
28 the jurisdictional limits of this court. There is no monetary recovery sought or allowed in

1 this action that would be available to offset the expense incurred by the Association in
2 pursuing this action for public benefit. As such, the Association is entitled to recover an
3 award of attorneys' fees from Respondents, individually or collectively, pursuant to
4 California Code of Civil Procedure section 1021.5 and/or Government Code section 800.

5
6 **FIRST CAUSE OF ACTION**

7 **Writ of Mandate – To Set Aside TCA's Approval of the Settlement Agreement**
8 **(Against the TCA, TCA Board, and Does 1-10)**

9
10 75. The Association realleges Paragraphs [redacted] through [redacted], which are
11 incorporated herein by this reference.

12
13 76. The TCA's decision to approve and enter the Settlement Agreement
14 constitutes a prejudicial abuse of discretion inasmuch as the TCA failed to proceed in the
15 manner required by law as set forth herein below.

16
17 77. A public agency, including the TCA, cannot delegate, surrender or
18 impair the present or future exercise of its governmental powers or authority. The effect of
19 this rule is to void any contract that amounts to the restraint, surrender, or abnegation of a
20 public agency's proper governmental authority and functions.

21
22 78. The Settlement Agreement was intended to, and does, surrender and
23 impair the TCA's and TCA Board's proper governmental authority and functions. For
24 example, by designating an Avoidance Area in the Settlement Agreement and agreeing to
25 only pursue "Post Settlement Alignments", the TCA Board (and TCA) illegally agreed to
26 restrict, impair and/or surrender its present authority, and the authority of future TCA
27 Boards, concerning the construction and/or funding of any SR 241 alignments located in
28 the several square mile Avoidance Area. This improper abnegation and surrender of the

1 TCA's discretionary authority in perpetuity was made irrespective of any future public
2 process or environmental review regarding proposed SR 241 alignments. In effect, the
3 TCA Board abandoned and forever barred longstanding SR 241 alignments behind closed
4 doors, without any public hearing, process, or deliberation.

5
6 79. The Settlement Agreement further provides that construction of any
7 structure that would "permit a direct connection between SR 241 and Los Patrones
8 Parkway, including but not limited to construction of any...bridge over SR 241 or over
9 Oso Parkway" shall not commence unless one of four different "triggering events" occurs.
10 Ex. [REDACTED], p. 11, § 4.1. One of these triggering events is the execution of a "protective
11 agreement" by and between the SSOC, the California Transportation Agency, and the
12 CNRA whereby the parties would agree that "no new major thoroughfare shall be
13 constructed in the Avoidance Area." Ex. [REDACTED], p. 11, § 4.1.1. This agreement to enter into
14 a "protective agreement" was a further effort by the TCA and TCA Board to surrender its
15 governmental authority and functions in perpetuity in violation of California law.

16
17 80. The TCA Board's entry into a settlement agreement mandating that
18 the TCA shall never, under any circumstances, fund or construct a road in an "avoidance
19 area" restricted the TCA's exercise of its governmental authority and thus, constituted a
20 void, invalid and *ultra vires* act. The Association requests that this Court issue a
21 peremptory writ of mandate setting aside the TCA's unlawful action.

22
23 81. The Association has no plain, speedy, and adequate remedy in the
24 ordinary course of the law, other than the relief sought in this Petition/Complaint, in that
25 the Association has, and had, no right to appeal the stipulated judgment based on the
26 Settlement Agreement (*i.e.*, the Association was not a party to any of the actions covered
27 by the Settlement Agreement or stipulated judgment), and no administrative avenue by
28 which to challenge the Settlement Agreement.

1 WHEREFORE, the Association prays for relief as set forth below.

2
3 **SECOND CAUSE OF ACTION**

4 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**
5 **(Against the TCA and Does 1-10)**

6
7 82. The Association realleges Paragraphs [redacted] through [redacted], which are
8 incorporated herein by this reference.

9
10 83. The TCA's decision to approve and enter the Protective Agreement
11 constitutes a prejudicial abuse of discretion inasmuch as the TCA failed to proceed in the
12 manner required by law as set forth herein below.

13
14 84. A public agency, including the TCA, cannot delegate, surrender or
15 impair the present or future exercise of its governmental powers or authority. The effect of
16 this rule is to void any contract that amounts to the restraint, surrender, or abnegation of a
17 public agency's proper governmental authority and functions.

18
19 85. The TCA agreed, as part of the Protective Agreement, that
20 "[c]onsistent with the terms of the Settlement Agreement, TCA agrees not to fund or
21 construct a road in the Avoidance Area." (Protective Agreement ¶ 2) By so agreeing, the
22 TCA illegally agreed to restrict, impair and/or surrender its present authority, and the
23 authority of future TCA Boards, concerning the construction and/or funding of any SR 241
24 alignments located in the several square mile Avoidance Area. This improper abnegation,
25 impairment, and surrender of the TCA Board's discretionary authority in perpetuity was
26 made irrespective of any future public process or environmental review regarding
27 proposed SR 241 alignments. In effect, the TCA abandoned and forever barred
28

1 longstanding SR 241 alignments behind closed doors, without any public hearing, process,
2 or deliberation in violation of California law.

3
4 86. The Protective Agreement, both standing alone and as a component of
5 the illegal Settlement Agreement, is an unlawful and invalid attempt to restrict through
6 contract the exercise of governmental authority, both presently and in the future.
7 Therefore, the TCA's purported execution of the Protective Agreement constituted an
8 invalid, illegal and *ultra vires* act. The Association requests that this Court issue a
9 peremptory writ of mandate setting aside the TCA's unlawful action.

10
11 87. The Protective Agreement is further illegal, void, and *ultra vires* as
12 because the Association is informed and believes that Mr. Kraman is not, and was not,
13 authorized to execute the Protective Agreement on behalf of either the TCA or TCA Board
14 or to otherwise agree that the TCA would not "fund or construct a road in the Avoidance
15 Area."

16 88. The Association has no plain, speedy, and adequate remedy in the
17 ordinary course of the law, other than the relief should in this Petition/Complaint, in that
18 the Association has, and had, no administrative avenue by which to challenge the
19 Protective Agreement. Regardless, any attempts to administratively challenge the
20 Protective Agreement would have been futile because that agreement was not considered
21 and approved during a noticed public hearing and the Association had no knowledge of the
22 Protective Agreement until after it had already been approved and executed by the TCA
23 and CalTrans.

24
25 WHEREFORE, the Association prays for relief as set forth below.
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28

1 **THIRD CAUSE OF ACTION**

2 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**
3 **(Against CalTrans and Does 1-10)**

4 89. The Association realleges Paragraphs [redacted] through [redacted], which are
5 incorporated herein by this reference.

6 90. CalTrans' purported decision to approve and execute the Protective
7 Agreement constitutes a prejudicial abuse of discretion inasmuch as CalTrans failed to
8 proceed in the manner required by law as set forth herein below.

9
10 91. The California State Legislature establishes the framework for the
11 State Highway System ("SHS") by specifically describing each route in the California
12 Streets and Highways Code. This description establishes the termini of the route. The
13 California Streets and Highways Code section 541 currently describes the SR 241 route as
14 follows: "Route 241 is from Route 5 **south of San Clemente** to Route 91 in the City of
15 Anaheim." (Emphasis added) Selection of the exact location of each of the routes has been
16 delegated to the CTC, but the specific alignment, however, **must conform to the route**
17 **description in the Statutes.** *See* Cal. Str. & High. Code § 75 (empowering the CTC to
18 "[s]elect, adopt, and determine the location of State highways on routes authorized by
19 law"); *see also* CalTrans Project Development Procedures Manual Ch. 23, Art.

20 92. SR 241 was adopted as a state highway by Resolution of the CTC on
21 July 9, 1993 and August 19, 1998, and was declared to be a freeway.

22
23 93. Neither CalTrans, nor its individual District Directors (*i.e.* Ryan
24 Chamberlain), have been delegated any authority under California law concerning the
25 selection of a specific location or alignment for any route described in the California
26 Streets and Highways Code. Nor has CalTrans, or any of its individual District Directors,
27 been delegated any authority to rescind state highway or freeway routes, or the
28 location/alignment of state highways or freeways, for any route described in the California

1 Streets and Highways Code. In short, CalTrans has no authority under California law to
2 take any action designating where a route described in the California Streets and Highways
3 Code may be located, or not located.

4
5 94. Nevertheless, in the Protective Agreement Caltrans agreed, "that in
6 exercising its authority under state law, it will not approve, permit, take possession of or
7 otherwise authorize the construction of a major thoroughfare in the Avoidance Area;
8 provided, however, that this prohibition shall not apply to any proposed widening of the
9 existing Interstate 5 facility." (Protective Agreement ¶ 1)

10 95. The Protective Agreement is illegal, void, and *ultra vires* because:

- 11 a. The Association is informed and believes that Mr. Chamberlain was
12 not authorized to agree, on behalf of CalTrans (or on behalf of the
13 California State Transportation Agency), that CalTrans will not
14 approve, permit, take possession of or otherwise authorize the
15 construction of a major thoroughfare in the Avoidance area;
- 16 b. CalTrans does not have the authority to agree, on behalf of itself or on
17 behalf of the California State Transportation Agency, that it will not
18 approve, permit, take possession of or otherwise authorize the
19 construction of a major thoroughfare in the Avoidance area; and
- 20 c. CalTrans does not have the authority to effectively rescind and/or
21 preclude state highway and/or freeway routes and/or alignments duly
22 adopted by the California Legislature and/or CTC.

23 96. Even if it did have such authority, a public agency, including
24 CalTrans, cannot delegate, surrender or impair the present or future exercise of its
25 governmental powers or authority. The effect of this rule is to void any contract that
26 amounts to the restraint, surrender, or abnegation of a public agency's proper governmental
27 authority and functions.

28

1 public agencies. Accordingly, CEQA requires public agencies to determine whether a
2 project may have a significant impact on the environment. (Pub. Res. Code § 21151) Any
3 environmental review must be completed prior to the approval of a project so that the
4 approving agency, and general public, is fully apprised regarding the environmental
5 consequences of any action.

6
7 101. The foundational principle of CEQA is that it must be "interpreted in
8 such a manner as to afford the fullest possible protection to the environment within the
9 reasonable scope of the statutory language." (*Citizens of Goleta Valley v. Board of*
10 *Supervisors* (1990) 52 Cal.3d 553, 563-64) An agency's action violates CEQA if it
11 "thwarts the statutory goals" of "informed decisionmaking" and "informed public
12 participation." (*Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d692,
13 712)

14
15 102. Since the approval and execution of the Protective Agreement has the
16 potential to cause a either a direct, or reasonably foreseeable indirect, physical change in
17 the environment, such action constitutes "approval" of a "discretionary project" as defined
18 by CEQA and the State CEQA Guidelines ("Guidelines"), 14 Cal. Code of Regs., §§
19 15000 *et seq.*, and is therefore subject to CEQA. The approval violated CEQA and the
20 Guidelines in each of the following respects:

21
22 a. The TCA and CalTrans failed to evaluate the potential impacts
23 of the Protective Agreement on the environment or make any of the findings or
24 determinations required by CEQA and the Guidelines; and

25
26 b. The TCA and CalTrans failed to prepare an environmental
27 impact report ("EIR") concerning the Protective Agreement, including the promises made
28 therein concerning the abandonment of any and all future SR 241 routes/alignment through

1 the Avoidance Area or otherwise having any "Direct Impacts" on the Avoidance Area.
2 The TCA and CalTrans failed to prepare an EIR notwithstanding the fact that there ample
3 substantial evidence to support fair argument that the Protective Agreement, and the
4 promises included therein, may have a significant effect on the environment concerning:
5 (1) aesthetics, (2) air quality, (3) biological resources, (4) cultural resources, (5) geology
6 and soils, (6) greenhouse gas emissions, (7) hazards and hazardous materials, (8)
7 hydrology and water quality, (9) land use and planning, (10) noise, (11) population and
8 housing, (12) public services, (13) recreation, and/or (14) transportation/traffic. Despite
9 these reasonable probability of these impacts, the TCA and CalTrans approved the
10 Protective Agreement without any public notification, comment period, process, or
11 environmental review under CEQA.

12
13 103. The TCA's, TCA Board's, and CalTrans' failure to conduct any CEQA
14 review prior to approving and executing the Protective Agreement constituted a prejudicial
15 abuse of discretion for failure to proceed in a manner required by law. (Cal. Pub. Res.
16 Code, § 21168.5)

17
18 104. The Association has no plain, speedy, and adequate remedy in the
19 ordinary course of the law, other than the relief should in this Petition/Complaint, in that
20 the Association has, and had, no administrative avenue by which to challenge the
21 Protective Agreement. Regardless, any attempts to administratively challenge the
22 Protective Agreement would have been futile because that agreement was not considered
23 and approved during a noticed public hearing and the Association had no knowledge of the
24 Protective Agreement until after it had already been approved and executed by the TCA
25 and CalTrans. In short, there was no opportunity to the Association to raise objections to
26 or otherwise comment on the Protective Agreement before it was executed.

27
28 WHEREFORE, the Association prays for relief as set forth below.

1 **FIFTH CAUSE OF ACTION**

2 **Writ of Mandate – Violation of Ralph M. Brown Act**
3 **(Against the TCA, TCA Board, and Does 1-10)**

4
5 105. The Association realleges Paragraphs [redacted] through [redacted], which are
6 incorporated herein by this reference.

7
8 106. The Brown Act requires that virtually all decisions made by public
9 bodies must be made in public after providing the public with proper notice of the
10 proposed actions and with an opportunity to be heard on such actions. The Brown Act is
11 intended to facilitate public participation in government decision-making by ensuring that
12 the deliberative process by which decision related to the public's business is conducted in
13 full public view. All exceptions to the Brown Act's general provisions requiring public
14 meetings and action must be strictly and narrowly construed.

15
16 107. The TCA Board improperly executed and approved the Settlement
17 Agreement during closed session on November 10, 2016, without any public hearing or
18 opportunity for the public to be heard regarding the various broad policy actions included
19 in that agreement. A true and correct copy of the TCA Board's November 10, 2016
20 meeting agenda is attached hereto as Exhibit [redacted].

21
22 108. While the TCA Board is permitted under Government Code section
23 54956.9 to discuss with its counsel, in closed session, settlement of a lawsuit to which the
24 TCA is a party, the TCA Board was not (and is not) authorized to execute the Settlement
25 Agreement during closed session because that agreement includes provisions for actions
26 which are subject to the Brown Act's opening meeting requirements and which are
27 intrinsically required by law to be made only after a noticed public hearing with a
28 meaningful opportunity for public comment. (*See, e.g., Trancas Property Owners Assn. v.*

1 *City of Malibu* (2006) 138 Cal.App.4th 172, 183-187) As the California Attorney General
2 has explained, "the purpose of [Section 54956.9] is to permit the body to receive legal
3 advice and make litigation decisions only; it is not to be used as a subterfuge to real
4 nonlitigation oriented policy decisions." (Cal. Atty. Gen. Office, *The Brown Act* (2003),
5 p. 40)

6
7 109. The Settlement Agreement contains several broad policy edicts, such
8 as the TCA's promise to never "construct or provide funding for the construction of any
9 road alignment that is located within, or that would have Direct Impacts to, the Avoidance
10 Area." The TCA Board's decision to enact this several square mile "no go" zone for the
11 SR 241 was a broad policy action which plainly required a public hearing and an
12 opportunity for public comment. Indeed, the TCA Board's enactment, through the
13 Settlement Agreement, of the Avoidance Agreement took the longstanding "green
14 alignment" out of consideration for the SR 241 alignment and virtually guaranteed that any
15 SR 241 alignment would bisect established communities located in either or both the Cities
16 of San Clemente and San Juan Capistrano. Assuming the TCA and TCA Board even had
17 authority to take such actions (and they did not), each of the broad policy actions mandated
18 by the Settlement Agreement should have been considered and deliberated during a
19 properly noticed public meeting following an opportunity for meaningful public comment.

20
21 110. Rather than conduct a noticed public meeting concerning the
22 provisions of the Settlement Agreement and the policy decisions included therein, the TCA
23 simply referenced the following lawsuits on its November 10, 2016 Agenda for
24 consideration and discussion during closed session:

25
26 **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
27 (Subdivisions (a) and (d)(1) of Government Code Section 54956.9)

- 28
- California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051194

- 1 • The People of the State of California v. Foothill/Eastern Transportation
Corridor Agency San Diego Superior Court, Case No. GIN051371
- 2 • Native American Heritage Commission v. Foothill/Eastern Transportation
3 Corridor Agency San Diego Superior Court, Case No. GIN051370
- 4 • Jeffrey A Turner v. Native American Heritage Commission San Diego
5 Superior Court, Case No. 37-2008-00060583-CU-WM-NC
- 6 • California State Parks Foundation, et al. v. Foothill/Eastern Transportation
7 Corridor Agency San Diego Superior Court, Case No. 37-2013-00049797
- 8 • The People of the State of California v. Foothill/Eastern Transportation
9 Corridor Agency San Diego Superior Court, Case No. 37-2013-00050001
10 CU-WM-NC
- 11 • California Regional Water Quality Control Board, San Diego Region,
12 Waste Discharge Requirements Tentative Order No. R-09-2103-0007

11 111. Even had the TCA notified the public of what it intended to approve
12 in closed session, it gave the public no opportunity to comment on the TCA Board's
13 approval of the Settlement Agreement or the provisions contained therein. The TCA
14 Board further failed to consider and deliberate on the significant policy and land use
15 decisions contained in the Settlement Agreement in a noticed public meeting. The
16 Settlement Agreement was plainly used as subterfuge by the TCA to approve various
17 policy pronouncements behind closed doors without public deliberation or input. Such
18 ploys are illegal as a matter of law under the Brown Act.

19
20 112. The execution and approval of the Protective Agreement also violated
21 the Brown Act. Like the Settlement Agreement, the Protective Agreement provides for
22 broad policy directives (*i.e.*, the TCA's promise to never "fund or construct a road in the
23 Avoidance Area") which could only be adopted by the TCA Board following a noticed
24 public hearing and a full, fair opportunity for meaningful public comment. But no noticed
25 public hearing was held by the TCA Board regarding the approval of the Protective
26 Agreement. Instead, the Protective Agreement was executed on March 7, 2017 by the
27 TCA's Chief Executed Officer, Michael Kraman, in private and without any noticed public
28

1 hearing, public deliberation, or opportunity for public comment in violation of the Brown
2 Act.

3
4 113. On July 6, 2017, the Association sent the TCA Board a "Demand to
5 Immediately Cease and Desist from Violations of the Ralph M. Brown Act" pursuant to
6 Government Code section 54960.2. A true and correct copy of the Association's cease and
7 desist letter is attached hereto as Exhibit [REDACTED]. The Association is informed and believes
8 the TCA Board has failed, or will fail, to timely remedy the Brown Act violations alleged
9 herein. Accordingly, the Association is authorized to bring the instant action.

10
11 114. The TCA's violations of the Brown Act were not technical or trivial in
12 nature, but instead go to the heart of the notice, public meeting and deliberation mandates.
13 The Association, on behalf of its members and the public generally, requests that the Court
14 issue a peremptory writ of mandate setting aside the TCA's approval of the Settlement
15 Agreement and/or Protective Agreement and further declaring those agreements null and
16 void.

17
18 115. The Association has no plain, speedy and adequate remedy in the
19 ordinary course of law, other than the relief sought in this Petition, that will prevent the
20 Respondents from acting outside their legal authority.

21
22 116. Because of the Brown Act violations alleged herein and the TCA
23 Board's failure to timely remedy those violations, the Association is entitled to recover its
24 reasonable attorneys' fees and costs incurred pursuant to Government Code section
25 54960.5.

26
27 WHEREFORE, the Association prays for relief as set forth below.
28

1 **SIXTH CAUSE OF ACTION**

2 **Declaratory Relief**

3 **(Against TCA, TCA Board, and Does 1-10)**

4 117. The Association realleges Paragraphs [redacted] through [redacted], which are
5 incorporated herein by this reference.
6

7 118. An actual controversy has arisen and now exists between the
8 Association, on the one hand, and the TCA, TCA Board, and CalTrans on the other hand,
9 in that the Association contends, and Respondents dispute, that:

10 a. The TCA's and TCA's Board's approval and execution of the
11 Settlement Agreement was an illegal, void, and *ultra vires* act because that agreement
12 improperly surrendered, impaired and restricted the TCA's and TCA Board's present and
13 future exercise of their governmental authority and functions.
14

15 b. The TCA's approval of the Protective Agreement, both
16 standing alone and as a component of the Settlement Agreement, was an illegal, void and
17 *ultra vires* act because that agreement improperly surrendered, impaired and restricted the
18 TCA's and TCA Board's present and future exercise of their governmental authority and
19 functions.
20

21 c. The Protective Agreement is further illegal, void, and *ultra*
22 *vires* because the Association is informed and believes and thereon alleges that Mr.
23 Kraman is not, and was not, authorized to execute the Protective Agreement on behalf of
24 either the TCA or TCA Board or to otherwise agree that the TCA will not "fund or
25 construct a road in the Avoidance Area."
26

27 d. CalTrans' approval of the Protective Agreement was an illegal,
28 void and *ultra vires* act because: (1) the Association is informed and believes that Mr.
Chamberlain was not authorized to agree, on behalf of itself or anyone else, that CalTrans

1 will not approve, permit, take possession of or otherwise authorize the construction of a
2 major thoroughfare in the Avoidance Area; (2) Caltrans does not have the authority to
3 agree, on behalf of itself or anyone else, that it will not approve, permit, take possession of
4 or otherwise authorize the construction of a major thoroughfare in the Avoidance Area; (3)
5 CalTrans does not have the authority to take any action concerning routes or alignments of
6 state highways and freeways, let alone effectively rescind and/or preclude state highway
7 and/or freeway routes and/or alignments duly adopted by the California Legislature and/or
8 CTC; and (4) even if CalTrans did have such authority, the Protective Agreement
9 improperly restricts the authority of CalTrans and/or the CTC to designate the appropriate
10 route/alignment for the SR 241 following appropriate environmental review, a noticed
11 public hearing, and an opportunity for public comment and deliberation.

12
13 e. The TCA and CalTrans failed to conduct necessary
14 environmental review, including the preparation of an EIR, concerning the approval of the
15 Protective Agreement and the broad policy edicts included therein.

16 f. The TCA and TCA Board's approval of the Settlement
17 Agreement during closed session and without a noticed public hearing and an opportunity
18 for public comment and deliberation violated the Brown Act.

19 g. The TCA's approval of the Protective Agreement without a
20 noticed public hearing and an opportunity for public comment and deliberation violated the
21 Brown Act.
22

23 119. The California State Legislature establishes the framework for the
24 SHS by specifically describing each route in the California Streets and Highways Code.
25 This description establishes the termini of the route. The California Streets and Highways
26 Code section 541 describes the SR 241 route as follows: "Route 241 is from Route 5
27 **south of San Clemente** to Route 91 in the City of Anaheim." (Emphasis added) Selection
28 of the exact location of each of the routes has been delegated to the CTC, but the specific

1 alignment, however, **must conform to the route description in the Statutes.** *See* Cal.
2 Str. & High. Code § 75 (empowering the CTC to "[s]elect, adopt, and determine the
3 location of State highways on routes authorized by law"); *see also* CalTrans Project
4 Development Procedures Manual Ch. 23, Art.

5
6 120. The legislative history regarding the SR 241 reveals that the
7 California Legislature intended for Route 241 to *bypass* San Clemente and **connect** to
8 Route 5 South of San Clemente in San Diego County, near Basilone Rd. This intention for
9 the 241 route is confirmed by the SR 241 route map consistently employed and relied upon
10 by legislators throughout the legislative history for Streets and Highways Code section
11 541, attached hereto as Exhibit .

12 121. Accordingly, a further actual controversy has arisen and now exists
13 between the Association, on the one hand, and the TCA, TCA Board, and CalTrans on the
14 other hand, in that the Association contends, and Respondents dispute, that any alignment
15 approved concerning the Foothill-South segment of the SR 241 must **connect** to Route 5
16 south of San Clemente near Basilone Rd. The Association contends, and the TCA, TCA
17 Board, and CalTrans dispute, that any alignment for the Foothill-South segment of the SR
18 241 through the City of San Clemente does not, and cannot, conform to the route
19 description for the SR 241 as set forth in Streets and Highways Code section 541.

20 122. The Association seeks a declaration of the rights and duties of the
21 respective parties regarding the actual and existing controversies described in paragraphs
22 117 and 120 above.

23
24 123. A judicial determination of the rights and obligations of the parties
25 hereto is necessary and appropriate so that the parties may ascertain those rights and act
26 accordingly.

27
28 WHEREFORE, the Association prays for relief as set forth below.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Association prays for judgment as follows:

3
4 1. As to the First Cause of Action, for a peremptory writ of mandate
5 declaring the Settlement agreement void and commanding the TCA and TCA Board to set
6 aside the approval of the Settlement Agreement.

7
8 2. As to the Second Cause of Action, for a peremptory writ of mandate
9 declaring the Protective Agreement void and commanding the TCA and TCA Board to set
10 aside the approval of the Protective Agreement.

11 3. As to the Third Cause of Action, for a peremptory writ of mandate
12 declaring the Protective Agreement void and commanding CalTrans to set aside the
13 approval of the Protective Agreement.

14 4. As to the Fourth Cause of Action, for a peremptory writ of mandate
15 commanding that the TCA, TCA Board, and CalTrans set aside the approval of the
16 Protective Agreement until they have complied with the requirements of CEQA.

17
18 5. As to the Fifth Cause of Action, for a peremptory writ of mandate
19 commanding that the TCA and TCA Board to set aside the approvals of the Settlement
20 Agreement and Protective Agreement until they have complied with the requirements of
21 the Brown Act.

22 6. As to the Sixth Cause of Action, for a declaration of the rights and
23 duties of the respective parties as requested herein above.

24
25 7. As to all causes of action, for costs of suit incurred by the Association
26 in the pursuit of this action;

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8. As to all causes of action, for reasonable attorneys' fees and costs (including expert witness costs), as authorized by CCP § 1021.5, Govt. Code § 54960.5, and/or any other applicable provisions of law; and

9. As to all causes of action, all such other relief as the Court may deem just and proper.

Dated: July 28, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

DANIEL P. BANE
ASHTON M. BRACKEN

Attorneys for Petitioner
THE RESERVE MAINTENANCE
CORPORATION

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James Summers

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DECLARATION OF MESSENGER

I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in the service list. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

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

Date: _____

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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***FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY***

***FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY BOARD OF DIRECTORS***

***CALIFORNIA DEPARTMENT OF
TRANSPORTATION***

NATIONAL AUDUBON SOCIETY

***CALIFORNIA PROTECTION
NETWORK***

***CALIFORNIA STATE PARKS
FOUNDATION***

DEFENDANTS OF WILDLIFE

ENDANGERED HABITATS LEAGUE

LAGUNA GREENBELT, INC.

***NATURAL RESOURCES DEFENSE
COUNCIL, INC.***

ORANGE COUNTY COASTKEEPER

SEA AND SAGE AUDUBON SOCIETY

SIERRA CLUB

SURFRIDER FOUNDATION

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**PEOPLE OF THE STATE OF
CALIFORNIA ex. Rel KAMALA D.
HARRIS, Attorney General**

**NATIVE AMERICAN HERITAGE
COMMISSION**

**CALIFORNIA STATE PARK AND
RECREATION COMMISSION;**