

## EXHIBIT 2

REPLY BY DALL & ASSOCIATES, CONSULTANT TO TRUSTEE BEVERLY ANN ENGELHARDT OF THE FRANKLIN A. ENGELHARDT AND BEVERLY ANN ENGELHARDT TRUST, TO THE CALTRANS MEMORANDUM, "RESOLUTION OF NECESSITY - APPEARANCE" (WITH THREE ATTACHMENTS AND FIVE EXHIBITS) FROM STEVEN KECK, CHIEF FINANCIAL OFFICER, CALIFORNIA DEPARTMENT OF TRANSPORTATION TO THE CHAIR AND COMMISSIONERS, CALIFORNIA TRANSPORTATION COMMISSION REGARDING RESOLUTION OF NECESSITY C-21939

1. In this memorandum, Dall & Associates, consultant to Trustee Beverly Ann Engelhardt of the Franklin A. Engelhardt and Beverly Ann Engelhardt Trust (Trust), responds to the undated 32-page memorandum "Resolution of Necessity - Appearance" (with three attachments and five exhibits) from Steven Keck, Chief Financial Officer, California Department of Transportation (Caltrans) to the Chair and Commissioners, California Transportation Commission (Commission) regarding Resolution of Necessity C-21939 (RON).

1.1. The United States and California constitute constitutional republics in which a person may not be deprived of property without due process of law, or be denied equal protection of the laws.

Both the federal government and California have enacted statutes and set forth other implementing measures that set forth the requirements for an orderly process by which private property may be taken for settled projects that are in the harmonized public interest, necessary, and consistent with all other applicable laws. (Real Property Acquisitions Act of 1970 [Uniform Act, 42 USC 61], its implementing regulations [49 CFR 24], the California Eminent Domain Law [CCP § 12301.10 et seq.], the National Environmental Policy Act [42 USC §4321 et seq.], and California Environmental Quality Act [PRC § 21000 et seq., implementing regulations [including, but not limited to the FHWA NEPA regulations at 23 CFR 771.117 and guidelines, and the bevy of associated FHWA and Caltrans manuals provide the legal framework for transparent formulation and disclosure of the required accurate, complete, and current project description, associated takings of private property, and related opportunities for stakeholder comments.]

The Trust property that Caltrans proposes to take in association with the federally co-funded 0C550 Project -- or the newly identified 0C5509 Project, also without a settled project description -- is located in the California coastal zone, where the California Coastal Act, the certified Mendocino County local coastal program (LCP), and the federally approved California Coastal Management Program apply. (PRC § 30003 provides that "All public agencies and all federal agencies, to the extent possible under federal law or regulations or the United States Constitution, shall comply with the provisions of [the Coastal Act].") Mendocino County identifies the Trust parcel as APN 123-310-016.

Caltrans has failed to perform in a manner that comports with that orderly process, as discussed below, in Exhibit 1, our letter of October 16, 2020 to the Commission, and references therein.

1.2. Neither Caltrans nor the Commission has established in the public record of the Commission - based on evidence and analysis that pertains to Trust property - that (a) the public interest requires any project that Caltrans District 1 has proposed in the area of any such proposed project or specifically the project proposed on the Trust property [hereinafter, the 0C550 Project], (b) necessity requires the 0C550 Project, (c) any proposed 0C550 Project is planned in the manner that will be most compatible with the greatest public good, (d) any proposed 0C550 Project is located in the manner that will be most compatible with the greatest public good, (e) any proposed 0C550 Project is planned in the manner that will be most compatible with the least private injury, and (f) any Trust property sought to be acquired is necessary for any proposed 0C550 Project.

1.3. Caltrans has not identified or presented one “proposed project”, but instead a kaleidoscope of changing project descriptions in the public domain, as well as in the Trust appraisal package, in various iterations to the Trust’s consultant, and in documents before the CTC itself for the October 22 RON action. No settled (accurate, complete, internally consistent, lawful - *finite*) “proposed project” exists in this matter before the Commission.

1.4. Caltrans has not identified or presented one settled project location in relation to Trust property. No settled (accurate, complete, internally consistent, lawful - *finite*) “proposed project location” exists in this matter before the Commission.

1.5. Caltrans has not identified or presented any imperative (necessity) for acquiring Trust property in association with any proposed project. Caltrans admits to planning to gift (or exchange in lieu of payment) excess excavated material (soil and rock) from the protected natural landform on Trust property (and other impacted properties that contain the designated, mapped, and adopted [LCP, CCMP] highly scenic Navarro Ridge slope area) to a contractor. Caltrans has produced no project grading plan in response to our documents request pursuant to the Public Records Act, even as Caltrans admits that approximately half of the soil and rock it proposes to excavate is not necessary for any *proposed project* public purpose. As a result, the Caltrans-proposed taking of Trust property is *by design (planning)* not for a public purpose, and thus unavailable for the RON that Caltrans requests the Commission approve.

1.6. The RON, if adopted, would authorize Caltrans to take incompletely, erroneously, and ambiguously described, located, and falsely appraised Trust property by eminent domain for one disclosed (but impermissible) Caltrans highway development, other undisclosed Caltrans highway development, private contractor benefit, and to retroactively obtain Trust property in fee title without compensation or full compensation.

1.7. Our Client therefore objects to the Caltrans-proposed taking of Trust property for Caltrans' wholesale failure to comply with law, including, but not limited to, the Eminent Domain Act, and respectfully requests the Commission to either remand this matter to Caltrans/District 1 or deny the RON.

2. Caltrans (at 2) recommends the Commission adopt the RON, which it identifies as being for a "transportation project on State Route in District 1, in Mendocino County".

2.1. As discussed below, Caltrans has failed to meet to meet its evidentiary and analytical burden to present both (a) a requisite settled *proposed* Project, and (b) the requisite Trust property-specific findings, determinations, and declarations pursuant to CCP §1245.230.

2.2. Caltrans, by its admitted proposal to excavate more earthen material from the Trust property and other properties than any of its various project descriptions require, further proposes to take Trust property in excess of any bona fide transportation project, and thus in excess of the authorization for any Caltrans taking of private property by eminent domain. (Street and Highways Code § 102(a).)

2.3. Caltrans has also neither presented nor conducted a professional geotechnical subsurface investigation (including, but not limited to any [or any Trust property site-specific] slope Factor of Safety analysis) that supports or recommends excavation of Trust property to and beyond the Caltrans-proposed takings area as a necessary component of any otherwise settled and permissible transportation project.

3. The Memorandum fails to state, analyze, or respond with relevant evidence or analysis to our Client's set of 27 objections to the helter-skelter 0C550 Project and the Caltrans-proposed taking (and further planned excavation, beyond the requested takings area) of Trust property.

3.1. The Memorandum identifies no basis for its attribution, at 1, of our Client's "primary concerns and objections".

3.2. As further discussed below, Memorandum Attachment B neither states nor responds to our Client's objections.

4. The Memorandum, at 2, is disingenuous in its representation that "the owners have been offered the full amount of the Department's appraisal", given that the appraisal fails to meet the requirements for a valid appraisal, as set forth in Exhibit 1, part 17.1.

5. The Memorandum, at 2, is duplicitous in its representation that Commission adoption of the RON "will not interrupt the Department's efforts to secure an equitable settlement", given that (a) Caltrans failed to engage our Client (and other private property and public stakeholders) in early project design and planning, when federal

directives required Caltrans to do so, and (b) for more the nearly seven months subsequent to the Commission's remand of this matter in March, 2020, Caltrans continued to stonewall and arrogantly dismiss our Client's good faith efforts to be informed about, analyze, and discuss a Caltrans-demonstrated feasible alternative that would avoid taking of Trust property by eminent domain, when Caltrans had the ability to do so, but declined and impeded such an equitable resolution. Rather than adoption of the Caltrans-proposed RON's not interrupting any Caltrans efforts at resolution, our Client's request for Commission denial of the RON may perhaps yet launch Caltrans on the path to a sustainable, lawful project-as-a-whole in Albion.

Caltrans has evinced no orderly sequence of consultation with our Client in relation to project planning, design, environmental review, CDP application, or presentation to the Commission - but instead recently again resumed harassing her (with unlawful harangues during two unannounced weekend services of process associated with condemnation of neighbors' properties for the 0C550 Project). Caltrans' represented schedule for commencement of project construction reflects mere wishful thinking, given Caltrans' consistent and repeated failure to (a) identify (or state to Mendocino County) the true ownership of real property that Caltrans would involve in its 0C550 Project, (b) obtain written Permits to Enter Trust property, (c) perform timely, complete, and accurate technical studies, (d) prepare accurate, complete, and consistent plans, maps, parcel descriptions, and other documents, (e) properly and consistently identify the location of the 0C550 Project, including, but not limited to, in relation to property lines of record, adopted LCP/CCMP land use and zoning designations, or post miles, (f) present relevant evidence and analysis that would support the requisite findings required by CCP § 1245.230, or (g) even prepare a valid appraisal report.

The Memorandum assertion, at 2, that "discussions have been ongoing between the property owner, their representatives, and the Department to address and resolve their project related issues" mischaracterizes the clear *pro forma* intent in conducting these "discussions" since even the redrafted appraisal package ROW/Appraisal Map and grant deed legal description offered in partial response to concerns raised during those proceedings are not reflected in the material now before the CTC. (a) The record is clear, Caltrans' diversions notwithstanding, it has failed to produce (or in the alternative substantially delayed production of) the 0C550 documents requested in April, 2020, during May-June, 2020, during the initial DECM, after the initial DCEM, at the continued DCEM, between it and the CRPM, and until two days before the Commission's October 22, 2020 meeting. (b) No substantive discussions to "resolve project related issues" involving Caltrans participants occurred during the initial DCEM, although the DCEM chairman candidly observed from the presentation by Dall & Associates partner Stevie Dall that "we" (Caltrans) "have work to do". Such discussions were limited during the continued DCEM and the CRPM. Caltrans employees' participation in the one-hour limited (by Caltrans) August 21, 2020 conference to discuss our Client's good faith project alternative - that identified a LCP/CCMP-consistent project and would avoid the Caltrans-proposed taking of Trust property - elicited the Deputy Director's

acknowledgment that the alternative is feasible, derision by other Caltrans employees, and District 1's arrogant dismissal of the sustainable alternative.

6. The Memorandum, at 2, feigns - but does not and cannot document - compliance with the notice requirements by the Commission to our Client and the Trust *by first class mail* in this matter, which has not been given, as our Client stated in her letter of October 14, 2020. (Exhibit A.) For lack of required timely mailed notice alone, RON C-21939 is therefore not properly before the Commission.

7. The Memorandum, at 2, falsely represents that "legal possession will allow the construction activities on the parcel to commence". The Project is located in the coastal zone, where CEQA requires environmental review of the 0C550 Project (and the whole project), and the Coastal Act, LCP, and the CCMP require a CDP before construction can commence. Caltrans District 1 has a history of bungled projects in those realms, and 17 days between a right of way certification date and a ready to list date are wholly insufficient for even the first step in that process, which typically requires at least 270 days. Thus, Caltrans' claimed urgency for Commission approval of the RON is unsupported by evidence, contrary to evidence, and not a valid ground for Commission action on the RON.

8. The "summary" of the RON for taking of Trust property by eminent domain in association with, and in excess of, the (now styled, unidentified) "0C5509 Project" (emphasis added) places the location of the Project at post mile 41.89, where no Trust property exists, according to easement grant documents recorded for Caltrans in 1990, and in contradiction of the appraisal package and grant deed presented to the Trust, which describe the Trust parcel to be at PM 41.93 and PM 41.97, respectively, as well as the PM 41.88 that Caltrans has averred as correct subsequent to the DCEM. If, as the Memorandum, at 1, erroneously recommends, the Commission were to adopt this RON summary, it would do so with an identified location that is unsupported by relevant evidence, fails to provide sufficient detail for reasonable identification of the location, and thus would be inconsistent with the requirement of CCP § 1245.230((b)).

9. The "summary" of the RON for taking of Trust property by eminent domain in association with, and in excess of, the (now styled, unidentified) "0C5509 Project" references acquisition "Parcel 12967-1", whereas the RON, at 3, references (lists) a different parcel, "12967" at "PM 41.89". If, as the Memorandum, at 1, erroneously recommends, the Commission were to adopt this RON summary, it would do so with a referenced acquisition parcel for which the RON presents no legal description, fails to provide sufficient detail for reasonable identification of the property that it would authorize Caltrans to take by eminent domain, and thus would also be inconsistent with the requirement of CCP § 1245.230((b)).

10. The "summary" of the RON for taking of Trust property by eminent domain in association with, and in excess of, the (now styled, unidentified) "0C5509 Project" further characterizes its purpose as "conform lanes and install 4-foot shoulders/

guardrail”, although this is not the description that Caltrans now embraces. (a) Caltrans has not presented the requisite description, plans, or technical studies for any “0C5509 Project” and thus has failed to present evidence and analysis required by CCP § 1245.230((c)(2). (b) Taking of Trust property for the 0C550 Project (or any “0C5509 Project”) is unnecessary for Caltrans to “conform” the highway lane geometry (or superelevation), given that both can be accommodated within the existing Caltrans-claimed right of way on and contiguous to (“in front of”) the Trust property, as shown in our Commission presentation slide 27. (c) Taking of Trust property for the 0C550 Project (or any “0C5509 Project”) is unnecessary for Caltrans to install guard rail(s) because the 0C550 Project proposes none on and contiguous to (“in front of”) the Trust property. The “summary” of the RON does not state any valid public use for which Caltrans proposes to take Trust property and is therefore inconsistent with CCP § 1245.230(a).

11. The Memorandum, at 3 (“Project Information, at 1), locates an undisclosed “Project EA 01-0C5509”, in relation to the Caltrans proposed taking of Trust property by eminent domain, at PM 41.89 on Highway 1. Caltrans has produced no evidence that any Trust property exists at that post mile. To the contrary, easement grant documents recorded at Caltrans’ behest in 1990 show PM 41.89, and 41.90 adjacent to a parcel to the south. The post mile location is inconsistent with that presented by Caltrans since the DCEM (PM 41.88). The post mile location is also inconsistent with the internally inconsistent PM 41.93 and 41.97 set forth in the appraisal package presented to our Client and the Trust), and therefore inconsistent with the requirement of CCP § 1245.230 for a sufficiently detailed description of the property to be taken to provide for its reasonable identification.

12. The Memorandum, at 3 (“Project Information, at 1), again locates an undisclosed “Project EA 01-0C5509”, in relation to the Caltrans proposed taking of Trust property by eminent domain, “on State Route 1, near Albion”. (a) Highway 1 in relevant part is located on Trust property, which Caltrans has unconstitutionally taken without prior compensation and developed without requisite regulatory authorization. (b) Caltrans proposes 0C550 Project to extend beyond the boundaries of the Caltrans-proposed takings area on Trust property, in excess of the appraisal report and thus inconsistent with GC § 7267.2, inconsistent with the “sufficiently detailed” identification requirement CCP § 1245.230(b), and inconsistent with the property description requirement of CCP § 1245.230(c)(3).

13. The Memorandum, at 3 (“Funding Source”), fails to disclose that the 0C550 Project (or the EA 01-0C5509 Project) is in part federally funded, which triggers RON compliance requirements with federal law and implementing measures, including, but not limited to the Uniform Act, NEPA, the Coastal Zone Management Act, and their respective implementing regulations.

14. The Memorandum, at 3 (“Number of lanes”) describes existing “narrow” highway shoulder conditions at PM 41.89 that (a) are inconsistent with the testimony of Assistant

Chief Engineer Whiteside, who represents no shoulders to exist, and (b) the facts on the ground, which indicate a shoulder to exist south of PM 41.9.

15. The Memorandum, at 3 (“Proposed Major Features”) (a) lists a road geometry deficiency “at several locations”, without disclosing (1) whether it exists at “PM 41.89” or the PM that actually applies to the Trust parcel, (2) whether it exists on or contiguous to (“in front of”) Trust property Caltrans proposes to take by eminent domain, or (3) any development Caltrans proposes to address any such deficiency, if it were to exist. The Memorandum thus fails to present or identify a proposed project, inconsistent with CCP § 1245.230(c). (b) The Memorandum fails to disclose that the 0C550 Project, in addition to minor widening of the travel lanes, proposes to substantially relocate them easterly onto Trust property. The Memorandum thus fails to present or identify a proposed project, inconsistent with CCP § 1245.230(c).

(c) The Memorandum indicates the EA 01-0C5509 Project proposes to “install a Midwest Guard Rail System (MGS)”, without disclosing that Caltrans does not propose such installation on Trust property that Caltrans proposes to take by eminent domain, or on contiguous property (“in front of”) that Trust property. The Memorandum thus fails to present or identify a proposed project, inconsistent with CCP § 1245.230(c). (d) The Memorandum indicates that the EA 01-0C5509 Project proposes to “remove trees”, without disclosing that in assessing risks associated with the 0C550 Project, Caltrans revealed a strategy for its contractor to remove trees in the Project area in advance of the Project, to avoid environmental and regulatory review. The Memorandum thus fails to accurately present or identify proposed project component that pertains to the Trust parcel, inconsistent with CCP § 1245.230(c). (e) The Memorandum identifies the EA 01-0C5509 Project to have 18 drainage components, but fails to disclose (1) the proposed filling of the existing drainage that currently extends, in segments, along the shoulder of the NB travel lane, and (2) substantial excavation of the protected west-facing Navarro Ridge slope to locate a >100%-increased new open drainage ditch along the proposed 4-foot wide NB travel lane shoulder, including on Trust property that Caltrans proposes to take by eminent domain. The Memorandum thus fails to accurately present or identify proposed project, inconsistent with CCP § 1245.230(c). (f) The Memorandum fails to disclose that a “major feature” of the 0C550 Project consists of (1) excavation of the designated highly scenic and environmentally sensitive west-facing Navarro Ridge slope natural landform (soil and rocks), (2) use of approximately half of that material to fill the designated highly scenic and environmentally sensitive Navarro Point Preserve, a stream, and wetlands, and (3) use of the approximately other half as a gift or in lieu of payment to a private contractor for his volitional private use off-site the 0C550 Project area, including for non-transportation project purposes. The Memorandum thus both fails to accurately present or identify the proposed project, inconsistent with the requirements CCP §§ 1245.230(a) [statement of public use for which property is proposed to be taken] and 1245.230(c).

16. The memorandum, at 4 (“Traffic”), (1) erroneously describes 2015 annual average daily trip data for the EA 01-0C5509 Project area as “current” in October, 2020, (2) omits

disclosure of any bicycle or pedestrian use data, and (3) projects a less than 0.02% traffic increase over the forecast traffic period. The Memorandum thus fails to present evidence of any necessity (need, imperative), CCP § 1245.230(c)(1), for the proposed EA 01-0C5509 Project (or the 0C550 Project).

17. The memorandum, at 4 (“Need for the project”), states that “there is a need to reduce the frequency of run-off-road collisions within this highway segment”, based on three (3) road runoff collisions, undisclosed as to location or causal relationship (nexus), in comparison to an undisclosed set of “similar facilities”. The Memorandum contains no evidence, analysis of evidence, or reference to evidence that any of the three collisions occurred on, or had any proven nexus to, the extant highway on Trust property, or contiguous to (“in front of”) the Trust property Caltrans proposes to take by eminent domain pursuant to the RON. As noted above, the 0C550 Project proposes no guard rails on the aforementioned Trust property and contiguous property to prevent any road runoff collisions. Caltrans has presented no project description or plans for the EA 01-0C5509 Project. The Memorandum thus fails to demonstrate a necessity (need), as required by CCP § 1245.230(c)(3), to take Trust property for the proposed EA 01-0C5509 Project (or the 0C550 Project).

18. The Memorandum, at 4 (“Need for the project”), further states that “subsequent review of the collision history indicated that shoulder widening would address the run-off-road collisions by providing recovery area when a vehicle is leaving the traveled way”. However, as our Client shows in Slide 27, the Caltrans-claimed highway right of way in the aforementioned area can accommodate the proposed 4-foot wide travel lanes without the Caltrans-proposed taking of Trust property by eminent domain. The Memorandum thus fails to present the evidence, required by CCP § 1245.230(c)(3), of any necessity (need, imperative) for the proposed taking of Trust property.

19. The Memorandum, at 4 (“Need for the project”), fails to disclose that Caltrans - as a result of its proposed (LCP-impermissible) straightening of the highway inconsistent with the protected contours of the Navarro Ridge landform - proposes a new highway center line in over 95% of the 0C550 Project area, with an associated new proposed center line rumble strip location. The Memorandum thus fails to demonstrate a public interest requirement pursuant to CCP § 1245.230(c)(1) for the proposed taking of Trust property.

20. The Memorandum, at 4 (“Need for the project”), states that “The purpose of this project is to reduce the frequency and severity of collisions”, without evidence, analysis of evidence, or reference to either, that the proposed 4-foot wide NB travel lane shoulder adjacent to an open 4-foot wide drainage ditch and a steep excavated slope will perform that function. The Memorandum thus fails to demonstrate that (a) the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, as required by CCP § 1245.230(c)(2), and (b) that the property described in the RON is necessary for the proposed project, as required by CCP § 1245.230(c)(1) and (c)(3).



21. The Memorandum, at 4 (“Project planning and location”), states - without evidence or reference to evidence - that the limits of the EA 01-0C5509 Project “have been flagged, investigated, and compared with similar areas to determine why collisions are higher than state average rates before proposing improvements, which are revisited throughout the development process. This project will” *and then ends in mid phrase*. (a) Flagging of a project does either constitute its requisite planning or identified finite location pursuant to the LCP and the CCMP. (b) Investigating a project, in the absence of a complete Caltrans record of the requisite current technical studies, does constitute the necessary basis for a project description pursuant to the LCP and CCMP. (c) Unspecified Caltrans comparison of the project with unidentified similar locations does not constitute a valid basis either for project description or project alternatives analysis pursuant to the LCP and CCMP. The Memorandum thus fails to demonstrate that (a) the proposed project is planned in the manner that will be most compatible with the greatest public good and the least private injury, as required by CCP § 1245.230(c)(2), and (b) proposed project is located in the manner that will be most compatible with the greatest public good and the least private injury, as required by CCP § 1245.230(c)(2).

22. The Memorandum, at pages 5-13 of 32 pages, attaches an undated iteration of the Caltrans Condemnation Review Panel meeting (CRPM) “Parcel Panel Report”.

22.1. However, the Memorandum fails to include, and thereby present to the Commission, our August 27, 2020 letter, which sets forth in applicable detail our Client’s objections to the 0C550 Project, the Caltrans-proposed taking of Trust property by eminent domain, and the Caltrans procedures between the March, 2020 Commission remand of this matter and that date. That Caltrans failure to present a central statement of our Client’s objections to the Commission denies it essential information on the basis of which to make its required independent, unbiased decision on the CRPM record as a whole, and our Client a fair hearing and due process of law.

22.2. Attachment B contains a copy of our substantive 37-page letter of August 27, 2020 (“Caltrans District 1 - Proposed Taking of Engelhardt Trust Property, California Transportation Commission Resolution of Necessity C-21845”, to Chairman Purdie and members of the CRP/CRPM, transmitted by electronic mail on August 28, 2020 in file “DAItr,BE,CT,CRPChairman,Members20200827.pdf”. The reference to RON C-21845 reflects the number the Commission assigned to this matter in March, 2020; at the time of this letter, neither caltrans nor the Commission had informed us of RON C-21939.

22.3. Our Client denies all of the following in the “Parcel Panel Report” (Memorandum Attachment B), on the bases of their material inaccuracy, material incompleteness, presentation without relevant evidence or analysis of evidence, presentation contrary to evidence, and Caltrans’ failure to present the requisite accurate information:

- (a) The street address of the parcel location.
- (b) The description of the parcel land use designation.
- (c) The description of the parcel zoning designation.

- (d) The area of the Trust parcel APN 123-310-016.
- (e) The area Caltrans proposes to take.
- (f) The parcel description.
- (g) The description of the Trust property area Caltrans proposes to take.
- (h) The description of the Trust property's highest and best use.
- (i) The disclaimer of construction impacts on the Trust property's highest and best use.
- (j) The description of developed uses on the Trust property.
- (k) The statement of need for this acquisition, which references a "scope of work" not in evidence, and that is inconsistent with 0C550 Project plans, sections, and the 0C550 Project descriptions.
- (l) The statement of purpose for this acquisition, which is inconsistent with 0C550 Project plans, sections, and the 0C550 Project descriptions.
- (m) The statement that "in order to design and construct this improvement [4-foot shoulder], a portion of the subject property is required", when project design preceded the Caltrans' proposed takings over several years and our Client has presented a feasible project alternative that accommodates the shoulder without the proposed taking of Trust property.
- (n) The Parcel Panel Report fails to set forth, and Caltrans has failed to produce to our Client, the full set of "Panel findings".
- (o) The Parcel Panel Report purports to state "primary concerns and objections expressed by the property owners through their representatives", without disclosing any methodology for such ranking, selection, and exclusion of our Client's 27 sets of objections, all of which pertain to predicates for any finding or action pursuant to the California Eminent Domain Law in relation to the Caltrans proposed taking of Trust property.
- (p) The Parcel Panel Report's statement of "primary concerns and objections expressed by the property owners through their representatives", to the exclusion of all of our Client's relevant 27 sets of objections, denies our Client a fair hearing and due process.
- (q) The Parcel Panel Report fails to produce the complete body of our Client's specific 27 sets of relevant objections to the 0C550 Project and Caltrans' proposed taking of Trust property.
- (r) The Parcel Panel Report's "description" of nine (9) "specific" "owner contentions" misstates and omits presentation of the important relevant detail of them, to the extent that they in part address our Client's 27 specific sets objections, and thus denies our Client a fair hearing and due process.
- (s) The Parcel Panel Report's First Owner Contention is an oversimplification and incomplete statement - strawman - of our Client's objections to the 0C550 Project.
- (t) The Caltrans response lacks requisite relevance, evidence, and analysis of evidence in relation to the Caltrans-proposed taking of Trust property in association with the 0C550 Project.
- (u) The Caltrans response that it "not propose to straighten this segment of highway" is inconsistent with the 0C550 Project plans, as well as the sentence that follows ("The highway alignment remains as existing except for locations where the existing curves need adjustments to meet current highway standards.")

- (v) The Caltrans response about 2016-2018 collision data response lacks requisite relevance, evidence, and analysis of evidence in relation to the Caltrans-proposed taking of Trust property in association with the 0C550 Project.
- (w) The Caltrans response that “The public interest and necessity compel the Department to complete these safety improvements proposed in this project” is unsupported by evidence or analysis of evidence of any underway project that the 0C550 Project would “complete”, admits to an undisclosed and unanalyzed whole project, and lacks requisite relevance, evidence, and analysis of evidence in relation to the Caltrans-proposed taking of Trust property in association with the 0C550 Project.
- (x) The Parcel Panel Report’s Second Owner Contention is factually correct. Caltrans has produced no evidence to the record that any fatal road runoff collision (or injury or property damage road runoff collision) has occurred on or contiguous to (“in front of”) Trust property that Caltrans proposes to take.
- (y) The Caltrans response that “The subject parcel is only a portion of the project. The Department considers the project in segments of the highway system. Features in one location can influence the operational condition in another location, so safety features cannot be considered on a parcel by parcel basis” (a) tacitly admits our Client’s objection by not responding to it on point, (b) produces no evidence of Caltrans consistency as to how it delimits projects, (c) is inconsistent with Caltrans’ piecemealing of projects in Albion to avoid or circumvent environmental and regulatory review, and (c) is unsupported by any evidence or analysis of evidence that the *proposed* 0C550 Project is consistent with the criteria of CCP § 1245.230(c) (2) and (c)(3).
- (z) The Parcel Panel Report’s Third Owner Contention is factually and legally correct. Caltrans exempted/excluded the 0C550 Project under false pretenses, in reliance on a project description that has been specifically and materially superseded since March, 2019.
- (aa) The Caltrans response that the CE-CE for the 0C550 Project is in compliance with CEQA and NEPA is facially false. Caltrans has produced no evidence- and can produce no evidence - to the record that the CE-CE “has gone through a rigorous review process”. The CE-CE is invalid and was improperly approved by Caltrans, after it failed to perform requisite early project coordination and give prior notice of the proposed CE-CE to our Client (and other property and public stakeholders).
- (bb) The Parcel Panel Report’s Fourth Owner Contention fails to disclose our Client’s identification of specific material 0C550 Project inconsistencies with the mandatory standards of the LCP, which prohibit approval of that project, as well as Caltrans’ own aborted incomplete alternatives. Our Client made a good faith identification of a feasible, LCP-consistent 0C550 Project alternative that would avoid the Caltrans-proposed taking of Trust property, based on observed District 1-completed projects in other sensitive sites.
- (cc) The Caltrans response that “the project delivery team had already considered and rejected (or incorporated) some of the suggestions made by Dall & Associates” is unsupported by evidence in the record.

- (dd) The Caltrans response that “the majority of suggestions cannot be implemented because they will negatively impact safety, do not meet the project’s purpose and need, are infeasible due to site conditions, and/or are incompatible with the safety of people bicycling or hiking” is unsupported by evidence in the record.
- (ee) The Caltrans response admits that “certain of their proposed requests are consistent with the Mendocino County route concept”, which therefore is not a basis for Caltrans’ rejection of our Client’s recommended 0C550 Project alternative.
- (ff) The Caltrans response that “FHWA studies show that adequate shoulders are the most effective way to increase safety’ as currently designed, the proposed project scope is consistent with the Department’s goals of implementing complete streets and also enhances access to the Navarro Point Preserve” is unsupported by evidence in the record. Our Client’s recommended 0C550 Project alternative specifically provides for the 4-foot wide shoulder, which renders the response confirmatory. The 0C550 Project neither implements any “complete streets” design and the proposed shoulder cannot function as an additional lane pursuant to PRC §30254, which renders the response inapposite.
- (gg) The Parcel Panel Report’s Fifth Owner Contention erroneously characterizes our Client’s contention that (a) the 0C550 Project proposes to use material excavated from Trust property to fill wetlands as “without specification”, when the Project plans and technical studies show them, and (b) as a “compensation issue”, when our Client’s primary objection is to the undisclosed and impermissible excavation of LCP-protected Trust property at the time of Caltrans self-exemption of the 0C550 Project from environmental review and presentation of the appraisal package (that rendered it incomplete also for this reason).
- (hh) The Caltrans response that “This project will not fill in wetlands within the project’s limits or elsewhere” is both erroneous and disingenuous. (a) Project plans and technical studies show the regulatory wetlands that Caltrans proposes to directly fill as part of the 0C550 Project. (b) In its overlapping 0E940 (“Navarro Drainage”) Project Report, Caltrans proposes to import excavated material from the 0C550 Project excavation to fill westerly trending Navarro Street and its wetland.
- (ii) The Caltrans response admits our Client’s contention that the 0C550 Project will gift excavated material to a contractor, for use as his property (including in non-transportation project(s)), a non-public use that is inconsistent with CCP § 1245.230(a).
- (jj) The Caltrans response that “The property owners were offered just compensation for a fee acquisition for the section of land to be acquired” is in error: (a) The appraisal report did not identify the specific area in either of the two takings parcels referenced or incompletely/erroneously described in the Caltrans-proposed RON. (b) The 0C550 Project proposes excavation beyond the limits of those areas, without appraisal, requisite prior environmental analysis, or compensation. (c) The State has previously taken what is now Trust property for highway purposes, without requisite authorization or prior compensation of the property owner.
- (kk) The Caltrans response that “as it is a fee acquisition, it includes the cut material that will be used on other portions of the project or that will become the responsibility of the contractor to dispose” is in error. (a) The Caltrans appraisal package failed to

disclose to our Client and the Trust that Caltrans would excavate a substantial quantity of soil and rock from Trust property, or include the substantial value of that material in the appraisal. (b) Caltrans proposes to take valuable Trust property for a private purpose, in violation of Streets and Highways Code §102(a) and inconsistent with CP § 1245.230(a).

- (ll) The Parcel Panel Report's Sixth Owner Contention is a partial rehash of the incomplete statement of our Client's third contention, in which our Client specifically indicated that her recommended alternative, through site sensitive design and impact avoidance, would not encroach on the Navarro Point Preserve.
- (mm) The Caltrans response admits that it considered a seaward alignment of the 0C550 Project.
- (nn) The Caltrans response that "The final alignment achieves the project's primary objectives and minimizes impacts to private property" is unsupported by evidence or analysis, and contrary to evidence and analysis, in that (a) the 0C550 project - and thereby Caltrans' proposed alignment of the highway road prism through excavation of the protected west-facing Navarro Ridge natural landform is *prima facie* inconsistent with the LCP and CCMP, and therefore impermissible and infeasible, (b) Caltrans has produced no evidence or analysis of evidence that the 0C550 Project minimizes impacts to private property, when in fact they are directly and cumulatively extensive and by Caltrans' own section of Trust property, extend beyond the limits of the shown new right of way that Caltrans proposes to take by eminent domain.
- (oo) The Parcel Panel Report's Seventh Owner Contention erroneously presents our Client's objection that the State does not hold fee title or easement title to the extant highway landward of the Trust parcel's westerly boundary.
- (pp) The Caltrans response that an error exists "in the 1987 County Parcel Map" is inapposite and false: (a) our Client refers to no 1987 County Parcel Map, (b) Caltrans did not dispute the boundaries of APN 123-310-016 in 1978, when the County provided Caltrans the opportunity to do so, (c) the conveyance of an interest in land from Rossotti et ux. to the County in 1916 was for an easement, not in fee title, (d) no recorded evidence exists to support Caltrans' belated invention of (variously changing) fee title interest easterly of the shown centerline in that 1916 conveyance instrument, and (e) the State's assumption of County interest in the road in 1933 was limited to maintenance of the extant road within that easement, and specifically does not authorize or provide for any highway expansion.
- (qq) The Parcel Panel Report's Eighth Owner Contention blatantly misstates our Client's contention that (a) Caltrans has performed no geotechnical *subsurface* investigation, including, but not limited to a slope Factor of Safety analysis, of Trust property that Caltrans proposes to take by eminent domain, and (b) the 0C550 Project will directly and cumulatively adversely impact the stability of the protected Navarro Ridge slope natural landform, surface and subsurface hydrology, remove vegetation on the slope ESHA, and substantially destroy the wildlife corridor ESHA.
- (rr) The Caltrans response that "to minimize damages to these items, the Department has performed various studies and developed several reports on both the parcel level as well as project wide levels" is unsupported by evidence or analysis in the

record, and false. Caltrans has pointed to - and can point to - no 0C550 project design change (minimization of impacts) on the Trust property that Caltrans proposes to take as a result of any technical study.

- (ss) The Caltrans response that “a State Geologist and a Civil Engineer conducted a site investigation on the subject parcel and developed a Geotechnical Report” is unsupported by evidence or analysis in the record, and false. (a) The documents produced by Caltrans to the record indicate exactly the opposite; in fact, the most recent brief preliminary geotechnical memorandum (2020) recommends that a geotechnical investigation report be done. (b) In tandem, Caltrans has not produced - and cannot produce - any written Permit to Enter by either “a State Geologist” or “a Civil Engineer” to enter Trust property to perform either a reconnaissance level surface or professional subsurface geotechnical investigation.
- (tt) The Caltrans response that “A Drainage Report for the project was prepared by a State Engineer who specializes in Hydrology” is unsupported by a copy of such a report in the record. Unsurprisingly, Caltrans has repeatedly over the last seven months declined to produce to our Client a list of all documents that Caltrans deems to be in the record, and thereby denied our Client a fair hearing and due process in the DCEM, continued DCEM, CRPM, and now in the Commission’s proceeding on the RON.
- (uu) The Caltrans response that “a Landscape Plan calls for restoring vegetation in the post construction environment with native plants” is unsupported by (a) a baseline documentation of currently existing native and naturalized vegetation on the Trust parcel that Caltrans proposes to take and impact beyond the takings area, and (b) a professional revegetation plan that would restore such vegetation, criteria for restoration success, and the requisite monitoring/reporting program for achievement of the required restoration (if the 0C550 Project were otherwise permissible, which it is not). Caltrans has produced no restoration landscaping plan to the record, but rather limited itself to an erosion control plan. For lack of the required baseline and performance standards, and Caltrans’ repeated failure to implement required vegetation restoration plans in Albion, this purported 0C550 Project-incorporated mitigation is speculative and inconsistent with applicable case law in *Sundstrom v. Mendocino County*.
- (vv) The Caltrans response that “a Visual Impact Assessment has been prepared by a District Landscape Architect. There will be temporary visual impacts on the corridor during construction; however, there is no visual impact that can be directly seen from the residence on this parcel” is false, (a) as the VIA itself discloses in relation to 0C550 Project visual impacts on views from the Trust property, including, but not limited to, from our Client’s residence, and (b) as Slides 24 and 26 show in our presentation to the Commission with respect to the significant direct and cumulative effects of the 0C550 Project on the protected highly scenic Navarro Ridge natural landform.
- (ww) The Caltrans response that “a Natural Environment Study and an Environmentally Sensitive Habitat Area Assessment were prepared by qualified wildlife biologists. The study found that there is no effect to any species; the study also concluded there are no threats or endangerments to any designated critical habitat. The study

also concluded that the proposed project will not impede the flow and movement of wildlife in this area” is unsupported (a) by requisite current evidence and analysis of biological conditions, including changed conditions post-2017, and (b) any analysis of the Navarro Ridge-Navarro Point Preserve wildlife corridor.

- (xx) The Parcel Panel Report’s Ninth Owner Contention (a) omits the relevant factual details of our Client’s objection to the Caltrans appraisal package, (b) fails to bridge the analytic gap between the evidence and the requirements of Gov’t Code § 7267.2, (c) denies the Commission the requisite evidence and analysis on the basis of which to make the required findings pursuant to CCP § 1245.230(c)(4), and denies our Client a fair hearing and due process.
- (yy) The Caltrans response about who prepared the Appraisal Map is irrelevant and non-responsive, given its repeated numerous errors and omissions (that we identified to the DCEM, continued DCEM, and CRPM).
- (zz) The Caltrans response about who prepared the Appraisal is irrelevant and non-responsive, given its repeated numerous errors and omissions (that we identified to the DCEM, continued DCEM, and CRPM).

22.4. The Memorandum, at 11, contains a Caltrans table of contacts with our Client and us that (a) is inaccurate and unsupported by evidence, and (b) fails to disclose (1) the documents that were produced, (2) the documents that were requested pursuant to the Public Records Act, but not produced, (3) the content of emails, many of which were procedural or perfunctory, (4) the content of telephone calls, (5) the true content of unscheduled and very brief coincidence of persons between a Caltrans appraiser and our Client, and (6) recent repeated harassment by Caltrans process servers of our Client. Caltrans specifically has not produced the written record of all contacts with our Client, the Trust, and us in our capacity as her consultant and representative that the FHWA requires pursuant to the Uniform Act.

22.5. 22.5. The Memorandum, at 11, erroneously, and without evidence, represents that Caltrans has met the requirements of Gov’t Code § 7267.2, when, in fact (a) the appraisal that Caltrans has performed of Trust property that Caltrans proposes to take pursuant to the RON fails to meet the requirements for a valid appraisal on numerous points (including its internal inconsistencies on several of them), (b) Caltrans has had no prior contact with the Trust and has performed no appraisal whatsoever of other Trust property it is now in court to condemn in association with the 0C550 project or the “0C5509 Project”.

22.6. The Condemnation Review Panel has not produced evidence or any analysis of evidence, in the record and disclosed to our Client, required by CCP § 1245.230 and Gov’t Code § 7267.2 that (a) a settled proposed project exists, (b) a settled takings area description, that is sufficiently detailed for reasonable identification, exists, (c) that Caltrans proposes to Trust property solely for public use, (d) that the harmonized public interest requires a settled proposed project (which does not exist, or any of the unsettled Caltrans project descriptions), (e) that necessity requires a settled proposed project (which does not exist, or any of the unsettled Caltrans project descriptions), (f)

that a settled proposed project (which does not exist, or any of the unsettled Caltrans project descriptions) has been planned or located in the manner that will be most compatible with the greatest public good and the least private injury, (g) the property described in the RON (or the alternative property referenced in the RON) is necessary for any settled proposed project (which does not exist, or any of the unsettled Caltrans project descriptions), and (h) the offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record of Trust property that Caltrans proposes to take (1) pursuant to the RON, and (2) in excess of the RON.

22.7. The Panel's conclusion in the Memorandum, at 11-12, is therefore unsupported by the evidence and by analysis of the evidence in light of the mandatory applicable standards. As a result, (a) the Panel's recommendation in the Memorandum, at 12, and (b) the Chief Engineer (Id.), whom Caltrans has not disclosed in response to our PRAR to have performed any independent written analysis of the Panel's recommendation, has no valid basis on which to concur in it.

23. Memorandum Attachment C reproduces a copy of our Client's letter, of March 25, 2020, to the Chair and members of the Commission, and others as identified. Neither Caltrans nor the CRPM has specifically responded to our Client's substantive objections to RON C-21845 and the Caltrans taking of Trust property it proposed in association with the then-proposed project description, plans, sections, and technical studies.

24. Memorandum Exhibit A presents a Regional Project Location map and a Project Location map. We address them in our presentation Exhibits 3 and 8 to the Commission.

25. Memorandum Exhibit B presents an undated, unidentified source, "State of California Right of Way Resolution of Necessity drawing that (a) has no disclosed point of beginning for takings parcel "12967-1" corners, (b) erroneously identifies the dimensions of takings parcel "12967-1", (c) erroneously, and without evidence or analysis of evidence, locates "PM 41.89" westerly of the Trust parcel, and (d) inconsistently depicts takings parcel "12967-1" in relation to the 0C550 project excavation envelope in the Caltrans "project impacts" section that Caltrans witness Whiteside has presented to the Commission. We address Exhibit B in our presentation Exhibit 24 to the Commission.

26. Memorandum Exhibit C presents an essentially illegible reproduction of the 1978 County parcel map that created the Trust parcel (APN 123-310-016). We address Exhibit C in our presentation Exhibit 6 to the Commission.

27. Memorandum Exhibit D contains an annotated copy of Mendocino County document 160 Deeds 119, recorded in 1922, which in its very first line (that Caltrans elected not to highlight) indicates the document to be a deed of "indenture" - in other words, an easement from Rossotti et ux. to the County, rather than a fee title



conveyance, as the Grantee County (and current easement holder) has since repeatedly and consistently treated it.

28. Memorandum Exhibit E is a document - not printed on Commission letterhead - titled "Transportation Commission Resolution No. C-21939. California law enables no "Transportation Commission" to adopt the resolution that follows. The RON is invalid ab initio.

28.1. Memorandum Exhibit E, page 1 (at 30 of 32 pages), line 4, states that the RON is "to acquire certain real property". However, the RON, including, but not limited to, at page 3 in relation to "Parcel 12967" identifies no real (Caltrans-proposed takings) property at all, and in relation to "Parcel 12967-1" erroneously and incompletely identifies a takings parcel that is (a) incongruent with the Appraisal Map produced to our Client in the appraisal package, and (b) incongruent with the are Caltrans has disclosed it proposes to take in witness Whiteside's testimony to the Commission.

28.2. Memorandum Exhibit E, page 1 (at 30 of 32 pages), line 5, states a highway post mile ("41.89") that does not identify any Highway 1 location westerly of the Trust property that the RON describes on page 3, as discussed above.

28.3. Memorandum Exhibit E, page 1 (at 30 of 32 pages), line 7. (a) The Commission failed to provide our Client the required first-class mailed notice of any hearing on the RON in a timely manner. (b) Caltrans, if *arguendo* delegated to perform this notice, also failed to provide our Client the required first-class mailed notice of any hearing on the RON in a timely manner.

28.4. Memorandum Exhibit E, page 1 (at 30 of 32 pages), line 8. For lack of evidence and analysis of evidence of specific Caltrans compliance with each of the requirements of CCP § 1245.230, as discussed herein, the Commission cannot now make findings, determinations, or declarations thereon as set forth at lines 10-21.

28.5. Memorandum Exhibit E, page 1 (at 30 of 32 pages), line 12, references CCP § 1240.510, which provides that the exercise the power of eminent domain to acquire for that use property appropriated to public use if the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. Project 0C550 proposes to close the sole ADA-accessible entrance to the Navarro Point Preserve's \_\_\_ miles of oceanfront trails and only parking lot with 280 feet of high visibility fencing during the proposed up to two-year construction period.

28.6. Memorandum Exhibit E, page 3 (at 32 of 32 pages) contains (a) a location for the property the RON, if adopted, would authorize Caltrans to take that does not identify any highway location on or contiguous to (in front of) the Trust property, (b) a reference to "Parcel 12967", for which the RON presents no property description, and (c) a

reference to "Parcel 12967-1", for which the RON presents an erroneous and incomplete property description.

29. For all of the above reasons, our Client respectfully requests that the Commission not adopt (deny adoption of) RON C-21939.

## EXHIBIT A

**Beverly Gmail**

October 14, 2020 at 1:47 PM



Response to certified letter.

[Details](#)

To: paul.pham@dot.ca.gov, Cc: Norbert Dall

Siri found new contact info Beverly Gmail angelbluff30@gmail.com

[add...](#)

October 14, 2020

Dear Mr. Pham,

In yesterday's mail I received your certified letter, on the letterhead of the State of California Department of Transportation, advising of a California Transportation Commission hearing "at or any time after 9:00 am on October 22, 2020", regarding a Resolution of Necessity "to condemn a portion of your property".

The letter is dated October 2, 2020, but has a Roseville, CA postal stamp that is dated October 7, 2020.

The letter provides no notice of any specific California Transportation Commission agenda item. The letter also contains or references no specific Resolution of Necessity that the California Transportation Commission may hear on that date or that time. The letter further identifies no property that I own.

The letter therefore fails to provide proper notice of any matter that may be before the California Transportation Commission on that date and time, and thereby has denied me the required notice, in a timely manner, of the true nature of this matter.

As you know, Norbert Dall and Stephanie Dall of Dall & Associates, Sacramento, California represent me in my capacity as Trustee of the Franklin A. Engelhardt and Beverly A. Engelhardt Trust, including in any hearing before the California Transportation Commission in the matter of the State of California Department of Transportation's proposed taking of any Trust property by eminent domain.

Thank you.

Sincerely,

**Beverly A. Engelhardt**

P.O. Box 851  
Albion, California 95410

c: Norbert Dall and Stephanie Dall (by email)