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California State Park Rangers  
Association

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO

CALIFORNIA STATE PARKS RANGERS  
ASSOCIATION

Petitioner

v.

CALIFORNIA DEPARTMENT OF PARKS  
AND RECREATION, and DOES 1 through 20

Respondents

TRANSCENDANCE THEATER COMPANY,  
And DOES 21 through 40,

Real Parties in Interest

Case No. \_\_\_\_\_

**VERIFIED PETITION FOR  
WRIT OF MANDATE**

1. Petitioner California State Parks Rangers Association petitions this Court for a Writ of Mandate, directed to Respondent California Department of Parks and Recreation ("Respondent" or "Parks"). Petitioner challenges Respondent's August 12, 2019 approval of the Transcendence Theater Company Summer Theater Festival 2020-2024 Seasons ("Project"). The Project is the grant of a five-year renewal of a Special Events Permit to the Transcendence Theater Company to stage performances in the Old Winery Ruins at Jack London Historic Park. The permit allows up to 4 annual theatrical productions (up to 30 performances in total) with up to 860 attendees at each performance. Petitioner contends that Respondent's approval for the Project based upon a Notice of Exemption violates the California Environmental Quality Act

(CEQA), Public Resources Code section 21000 *et seq.* ("CEQA"), and State Planning and Zoning Law, Government Code §§ 65300 *et seq.* Petitioner also contends that the approval of the Special Events Permit violates Public Resources Code, sections 5001.9(b); 5001.96; 5019.53; 5019.59; and 5080.03. Petitioner alleges as follows:

### **PARTIES**

2. Petitioner California State Parks Rangers Association ("CSPRA") is an organization of active and retired State Park professionals dedicated to advancement of the highest principles of public service, established to support and preserve California State Parks for present and future generations. For over 50 Years, CSPRA has been the professional organization that truly cares first about protecting and preserving the values of California's State Park System. CSPRA provides exchange of professional thought; defends State Park System integrity; supports quality Department effort; sponsors professional training; comments and makes recommendations on California park management issues. CSPRA has a direct and substantial beneficial interest in ensuring that Respondent complies with the laws relating to environmental protection, particularly CEQA. CSPRA is affected by Respondent's failure to comply with CEQA. CSPRA and its members' environmental, aesthetic and property interests will be severely injured if the adoption of the Project is not set aside pending full compliance with CEQA and all other laws. CSPRA brings this petition on behalf of all others similarly situated who are too numerous to be named and brought before this Court as petitioners. CSPRA is within the class of persons and entities beneficially interested in, and aggrieved by, the acts of Respondent as alleged below. Accordingly, CSPRA has standing to sue.

3. Respondent DEPARTMENT OF PARKS AND RECREATION is a governmental agency and political subdivision of the State of California charged with the authority to regulate and administer state parks throughout California. Parks is subject at all times to the obligations and limitations of all applicable state, federal, and other laws, including CEQA and the CEQA Guidelines, and the State Planning and Zoning Laws.

4. Real Party in Interest Transcendence Theatre Company is 501(c)3 nonprofit regional theatre company incorporated in the State and Delaware and registered to do business

1 in the State of California. Transcendence Theatre Company is the recipient of the Special  
2 Events Permit issued by Parks that is the subject of this Petition for Writ of Mandate.

3 5. Petitioner is unaware of the true names and identities of DOES 1 through 20 and 21  
4 through 40, inclusive, and sue such unnamed Respondents and Real Parties in Interest  
5 respectively, by their fictitious names. Petitioner is informed and believes, and based thereon  
6 alleges, that fictitiously named Respondents and Real Parties in Interest are responsible for all  
7 acts and omissions described above. When the true identities and capacities of Respondents and  
8 Real Parties in Interest have been determined, Petitioner will, with leave of Court if necessary,  
9 amend this Petition to include such identities and capacities.

#### 10 **JURISDICTION AND VENUE**

11 6. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
12 Code of Civil Procedure section 1094.5, and Public Resources Code section 21168. In the  
13 alternative, this Court has jurisdiction pursuant to Code of Civil Procedure section 1085 and  
14 Public Resources Code section 21168.5.

15 7. Venue for this action properly lies in the Superior Court for the State of  
16 California in and for the County of Sacramento pursuant to sections 393, 394 and 395 of the  
17 Code of Civil Procedure.

#### 18 **BACKGROUND FACTS**

19 8. Jack London State Historic Park is a listed National Historic Landmark. The stone  
20 masonry Winery Ruins are part of the Jack London State Historic Park and are interpreted by  
21 the public as part of the ranch compound. The Winery Ruins are a contributing feature of the  
22 National Register listed Cultural Landscape at the park and protected by state and federal law.

23 9. Transcendence Theater Company (TTC) produced summer theater festivals at Jack  
24 London State Historic Park since 2012, within the open-air confines of the Winery Ruins on the  
25 grounds of Jack London's Beauty Ranch. Parks initially approved the production for one-year  
26 periods in the 2012 and 2013 seasons, and approved for a 5-year production run from 2014 to  
27 2019.  
28

10. The Permits provides for Transcendence Theater Company to erect a portable stage and 860 chairs within the ruins and remove them after each production. The Beauty Ranch meadow serves as an area for group assembly, picnicking and entertainment with associated food and wine sales.

11. Transcendence Theater Company will produce a minimum of four productions with up to a maximum of 30 main stage performances during every summer festival. The pre-show picnic begins at 5 p.m.; the main stage show begins at 7:30 p.m. and concludes at approximately 9:30 p.m. with all guests exiting park by 10 p.m. Venue clean up takes place between 10 p.m. and 10:30 p.m. with all remaining staff exiting the park by 11 p.m. TTC will return to the park on days following the performances should additional cleanup be required as a result of both the 11 p.m. curfew and lack of light.

12. The Project includes an additional 20 tech-rehearsals. Each tech rehearsal ends at 10 p.m. All nontechnical production rehearsals must take place off site. There may be alterations to this schedule due to technical or weather related issues beyond the reasonable control of Transcendence Theater Company. Under such circumstances, both parties will determine rescheduled dates with respect to priorities of the park.

13. The Permit gives Transcendence Theater Company exclusive use of a large part of the historic area on all contracted dates. Transcendence Theater Company will be given exclusive access to the winery ruins, Beauty Ranch Meadow, upper and lower parking lots, picnicking areas within Beauty Ranch, backstage area between Winery Ruins and vineyards, and all areas in between.

14. Festival dates will vary from year to year, but will fall within the general timeframe of June through September .

## STANDING

15. Petitioner has standing to assert the claims raised in this Petition because Petitioner's aesthetic, environmental and property interests are directly and adversely affected by Respondent's approval of the Project.

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1                                   **ARBITRARY AND CAPRICIOUS ACTIONS**

2           16.     Petitioner brings this action on the basis, among others, of Government Code  
3 section 800, and other applicable laws, which award Petitioner's attorneys' fees in actions to  
4 overturn agency decisions that are arbitrary and capricious, such as the decisions in question in  
5 this action.

6                                   **CAUSES OF ACTION**

7                                   **FIRST CAUSE OF ACTION**

8                                   **Abuse of Discretion**

9                                   **Violation of CEQA, Public Resources Code, § 21000 et seq.**

10          17.     Petitioner realleges and incorporates herein, as if set forth in full, each and every  
11 allegation contained in paragraphs 1 through 16.

12          18.     Respondent's action in determining the Project is categorically exempt constitutes a  
13 violation of CEQA in that Respondent failed to proceed in a manner required by law and their  
14 decision to approve the Project based upon a categorical exemption is not supported by  
15 substantial evidence. Based upon substantial evidence in the record the Project may have a  
16 significant impact on the environment.

17          19.     CEQA Guidelines section 15301 provides for a categorical exemption for existing  
18 facilities that involve negligible or no expansion of use beyond that existing at the time of the  
19 lead agency's determination. The Project does not qualify for "existing facilities" exemption due  
20 to the expansion of this same project over the last seven years now 30 performances (and an  
21 additional use for 30 rehearsals) with 860 persons which is 33% over this current year of 22  
22 performances (and additional use for 22 rehearsals) and over three-fold from 2012 for 14  
23 performances of 500 persons this project is hardly negligible or no expansion.

24          20.     CEQA Guidelines section 15305 provides for a categorical exemption for minor  
25 alterations in land use limitations in areas with an average slope of less than 20%, which do not  
26 result in any changes in land use or density, including but not limited to: (a) Minor lot line  
27 adjustments, side yard, and set back variances not resulting in the creation of any new parcel; (b)  
28 Issuance of minor encroachment permits; (c) Reversion to acreage in accordance with the  
Subdivision Map Act. Due to the number of performances and rehearsals this is a major land use

1 and density that has changed from an historic winery into a Broadway musical entertainment  
2 venue (potential significant impacts to increased traffic and congestion during peak hours, and  
3 neighbors, and contribute to greenhouse gasses, noise and light pollution.

4 21. CEQA Guidelines section 15311 provides a categorical exemption for  
5 construction, or placement of minor structures accessory to (appurtenant to) existing commercial,  
6 industrial, or institutional facilities, including but not limited to: (a) On-premise signs; (b) Small  
7 parking lots; (c) Placement of seasonal or temporary use items such as lifeguard towers, mobile  
8 food units, portable restrooms, or similar items in generally the same locations from time to time  
9 in publicly owned parks, stadiums, or other facilities designed for public use. The Project does  
10 not constitute a temporary uses as it is a five year contract during peak season with year round  
11 storage; and installing entertainment venue marketing signs for theatrical venue in the beauty  
12 ranch area is not permissible due to a deed restriction (significant impact).

13 22. The Project also does not qualify for a categorical exemption as the Project is  
14 inconsistent with the General Plan governing Jack London State Historic Park. Parks' Project  
15 Evaluation Form for the Project acknowledges that the Project is inconsistent with the  
16 applicable General Plan.

17 The General Plan identifies a Primary Historic Zone and page 71 of the General  
18 Plan specifically states: An analysis of public intent has indicated a desire to keep  
19 activities in this particular part of the park "low key." Based on this statement,  
20 the performances are not consistent with the goal of the General Plan to  
21 "encourage low-impact activities that culturally support and historically  
22 compliment the interpretive topics [identified in the General Plan]. While the  
23 event is not "low key," the General Plan was written prior to a time when the park  
24 was managed by an association and prior to the expansion of the concept of how  
25 parks are managed. The performances have also been ongoing since 2012 and the  
26 public and surrounding community fully support these events so the public intent  
27 for the park has changed. These performances also provide exposure of the  
28 historic park to others who would not necessarily have been interested in visiting  
it.

24 23. None of these form the basis for approving a Project that is inconsistent with the  
25 General Plan nor does the argument address the potential impacts resulting from the  
26 inconsistency with the General Plan.

27 24. Neither the Project Evaluation Form nor the Notice of Exemption address the  
28 impacts or disruption issue of visitor's ability to freely view, enter, photograph or tour the

1 winery ruins and adjacent historic area.

2 25. The PEF also indicates that the Project is inconsistent with Parks' Cultural  
3 Resource Management Directives.

4 26. CEQA provides that if there is "reasonable possibility" that an activity will have a  
5 significant effect on the environment due to "unusual circumstances," an agency may not find  
6 the activity to be categorically exempt from CEQA. (CEQA Guidelines, § 15300.2(c). The  
7 unusual circumstances exception applies when both unusual circumstances and a significant  
8 impact as a result of those unusual circumstances are shown. (*Berkeley Hillside Preservation v*  
9 *City of Berkeley* (2015) 60 C4th 1086, 1104.)

10 27. In the present case, unusual circumstances exist such as the Project's inconsistency  
11 with the General Plan, inconsistency with Public Resources Code sections 5001.9(b); 5001.96;  
12 50019.53; 5019.59; 5080.03.

13 28. As the Project does not qualify for a categorical exemption under CEQA, approval  
14 of the Project constitutes a prejudicial abuse of discretion and is contrary to law.

15 **SECOND CAUSE OF ACTION**  
16 **(Violation of General Plan Laws - Government Code §§ 65300 *et seq.*;**  
17 **Code of Civil Procedure § 1094.5)**

18 29. Petitioner realleges and incorporates by reference paragraphs 1 through 28.

19 30. The State Planning and Zoning Law prohibits the agency from approving the  
20 Project if it conflicts with its General Plan and other applicable land use plans. Local land use  
21 and development decisions must be consistent with the applicable general plan. (*Families*  
22 *Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332,  
23 1336 (*FUTURE*)). "A project is consistent with the general plan ' "if, considering all its  
24 aspects, it will further the objectives and policies of the general plan and not obstruct their  
25 attainment." ' [Citation.] A given project need not be in perfect conformity with each and  
26 every general plan policy. [Citation.] To be consistent, a project must be 'compatible with' the  
27 objectives, policies, general land uses and programs specified in the general plan." (*Ibid.*)

28 31. As discussed above, Parks acknowledges that the Project is inconsistent with the  
General Plan. Instead of amending the General Plan, which is a public process, Parks argues

1 that the General Plan was written prior to a time when the park was managed by an association  
2 and prior to the expansion of the concept of how parks are managed. If that is the case, then the  
3 process is for Parks to update the General Plan, not approve projects/events that are inconsistent  
4 with the General Plan and then argue that the General Plan is out-dated.

5 32. As the Project conflicts with the General Plan and the General Plan, approval of  
6 the Project constitutes a prejudicial abuse of discretion and is contrary to law.

7 **THIRD CAUSE OF ACTION**  
8 **(Violation of Public Resources Code, § 5001.9(b);**  
9 **Code of Civil Procedure §§ 1094.5 & 1085)**

10 33. Petitioner realleges and incorporates by reference paragraphs 1 through 32.

11 34. Public Resources Code section 5001.9(b) provides that: "No new facility may be  
12 developed in any unit of the state park system unless it is compatible with the classification of  
13 the unit."

14 35. In the present matter, the theatrical entertainment venue constitutes a new facility  
15 due to its excessive use and physical presence during peak season and the construction and use  
16 of the stage and chairs being set up during regular park hours and for several weeks each season.  
17 The development of a facility for theatrical performances is not compatible with the  
18 classification of Jack London State Historic Park.

19 36. As the Project conflicts with the section 5001.9(b), approval of the Project  
20 constitutes a prejudicial abuse of discretion and is contrary to law.

21 **FOURTH CAUSE OF ACTION**  
22 **(Violation of Public Resources Code, § 5001.96;**  
23 **Code of Civil Procedure §§ 1094.5 & 1085)**

24 37. Petitioner realleges and incorporates by reference paragraphs 1 through 36.

25 38. Public Resources Code section 5001.96 provides that attendance at state park  
26 system units shall be held within limits established by carrying capacity determined in  
27 accordance with Section 5019.5. Section 5019.5 provides that "Before any park or recreational  
28 area developmental plan is made, the department shall cause to be made a land carrying capacity  
survey of the proposed park or recreational area, including in such survey such factors as soil,  
moisture, and natural cover."



1           39.     Parks made no evaluation or determination that the Project will be within the  
2 carrying capacity determined in accordance with section 5019.5.

3           40.     As the Project conflicts with the section 5001.9(b), approval of the Project  
4 constitutes a prejudicial abuse of discretion and is contrary to law.

5                               **FIFTH CAUSE OF ACTION**  
6                               **(Violation of Public Resources Code, § 5019.53;**  
7                               **Code of Civil Procedure §§ 1094.5 & 1085)**

8           41.     Petitioner realleges and incorporates by reference paragraphs 1 through 40.

9           42.     Public Resources Code section 5019.53 provides in relevant part:

10           Each state park shall be managed as a composite whole in order to restore, protect,  
11           and maintain its native environmental complexes to the extent compatible with the  
12           primary purpose for which the park was established. *Improvements undertaken*  
13           *within state parks shall be for the purpose of making the areas available for public*  
14           *enjoyment and education in a manner consistent with the preservation of natural,*  
15           *scenic, cultural, and ecological values for present and future generations.*

16           Improvements may be undertaken to provide for recreational activities including,  
17           but not limited to, camping, picnicking, sightseeing, nature study, hiking, and  
18           horseback riding, so long as those improvements involve no major modification of  
19           lands, forests, or waters. Improvements that do not directly enhance the public's  
20           enjoyment of the natural, scenic, cultural, or ecological values of the resource,  
21           which are attractions in themselves, or which are otherwise available to the public  
22           within a reasonable distance outside the park, shall not be undertaken within state  
23           parks. (Emphasis added.)

24           43.     Parks made no finding or determination that the Project is consistent with Public  
25 Resources Code section 5019.53. Moreover, in contradiction of section 5019.53, the Project  
26 becomes a facility for non-park purposes that constitutes an attraction onto itself.

27           44.     As the Project conflicts with the section 5019.53, approval of the Project constitutes  
28 a prejudicial abuse of discretion and is contrary to law.

**SIXTH CAUSE OF ACTION**  
                              **(Violation of Public Resources Code, § 5019.59;**  
                              **Code of Civil Procedure §§ 1094.5 & 1085)**

          45.     Petitioner realleges and incorporates by reference paragraphs 1 through 44.

          46.     Public Resources Code section 5019.59 provides:

          Historical units, to be named appropriately and individually, consist of nonmarine  
          areas established primarily to preserve objects of historical, archaeological, and  
          scientific interest, and archaeological sites and places commemorating important  
          persons or historic events. The areas should be of sufficient size, where possible,  
          to encompass a significant proportion of the landscape associated with the

1 historical objects. The only facilities that may be provided are those required for  
2 the safety, comfort, and enjoyment of the visitors, such as access, parking, water,  
3 sanitation, interpretation, and picnicking. Upon approval by the commission,  
4 lands outside the primary historic zone may be selected or acquired, developed, or  
5 operated to provide camping facilities within appropriate historical units. Upon  
6 approval by the State Park and Recreation Commission, an area outside the  
7 primary historic zone may be designated as a recreation zone to provide limited  
8 recreational opportunities that will supplement the public's enjoyment of the unit.  
9 Certain agricultural, mercantile, or other commercial activities may be permitted  
10 if those activities are a part of the history of the individual unit and any  
11 developments retain or restore historical authenticity. Historical units shall be  
12 named to perpetuate the primary historical theme of the individual units.

13 47. Under section 5019.59 only interpretative venues should take place in Jack London  
14 State Historic Park historic Beauty Ranch. Approval of theatrical performance is not consistent  
15 with the limitations of section 5019.59.

16 48. As the Project conflicts with the section 5019.59, approval of the Project constitutes  
17 a prejudicial abuse of discretion and is contrary to law.

18 **SEVENTH CAUSE OF ACTION**  
19 **(Violation of Public Resources Code, § 5080.03;**  
20 **Code of Civil Procedure §§ 1094.5 & 1085)**

21 49. Petitioner realleges and incorporates by reference paragraphs 1 through 48.

22 50. Public Resources Code section 5080.03 provides that:

23 (a) The department may enter into contracts with natural persons, corporations,  
24 partnerships, and associations for the construction, maintenance, and  
25 operation of concessions within units of the state park system for the safety  
26 and convenience of the general public in the use and enjoyment of, and the  
27 enhancement of recreational and educational experiences at, units of the state  
28 park system.

(b) Concessions shall not be entered into solely for their revenue producing  
potential.

(c) With respect to any unit of the state park system for which a general  
development plan has been approved by the commission, any proposed  
concession at that unit shall be compatible with that plan.

51. The permit/concession is not consistent with the park classification or is not  
compatible with the General Plan.

52. As the Project conflicts with the section 5080.03, approval of the Project constitutes  
a prejudicial abuse of discretion and is contrary to law.

**PRAYER**

Wherefore, Petitioner respectfully requests the following relief and entry of judgment as follows:

1. That this Court issue a peremptory writ of mandate ordering Respondent to:

(a) vacate and set aside Respondent's approval of the Project on the grounds that it violates the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*

(b) vacate and set aside Respondent's approval of the Project on the grounds that it violates the General Plan for the Park and Government Code, section 65300 *et seq.*

(c) vacate and set aside Respondent's approval of the Project on the grounds that it violates the various requirements of the Public Resources Code, as set forth above, regarding the operation of the Park;

(d) suspend all activity that could result in any change or alteration to the physical environment until Respondents have taken such actions as may be necessary to bring their determination, findings or decision regarding the Project into compliance with CEQA; the State Planning and Planning Law, Government Code, section 65300 *et seq.*

2. For a stay, preliminary injunction and permanent injunction restraining Parks and Real Party in Interest and their respective agents, employees, officers and representatives from undertaking any activity to implement the Project in any way pending full compliance with CEQA, the CEQA Guidelines, the State Planning and Zoning Law, and the applicable provisions of Public Resources Code;

3. For Petitioner's costs associated with this action;

4. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

5. For such other and further relief as the Court may deem just and proper.

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1 DATED: September 16, 2019

LAW OFFICE OF DONALD B. MOONEY

2  
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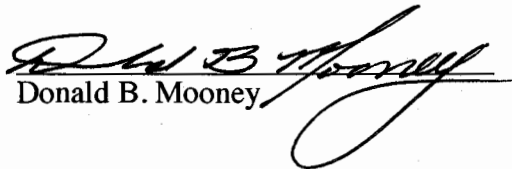
Donald B. Mooney  
Attorney for Petitioner California State  
Parks Rangers Association

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**VERIFICATION**

I am the attorney for California State Parks Rangers Association, which is located outside the County of Yolo, State of California, where I have my office. For that reason, I make this verification for and on their behalf pursuant to the California Code of Civil Procedure section 446. I have read the foregoing Verified Petition for Writ of Mandate and know its contents. The matters stated in this Verified Petition for Writ of Mandate are true of my own knowledge except those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the above is true and correct. Executed this 16th day of September 2019, at Davis, California.

  
Donald B. Mooney