

1 Deborah A. Sivas (CA Bar No. 135446)
Matthew J. Sanders (CA Bar No. 222757)
2 Stephanie L. Safdi (CA Bar No. 310517)
Rica V. Garcia (CA Bar No. 320758)
3 ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
4 Crown Quadrangle, 559 Nathan Abbott Way
Stanford, California 94305-8610
5 Telephone: (650) 725.8571
Facsimile: (650) 723.4426
6 ssafdi@stanford.edu
rica.garcia@stanford.edu

7
8 Ashley E. Werner (CA Bar No. 282217)
Phoebe S. Seaton (CA Bar No. 238273)
LEADERSHIP COUNSEL FOR
9 JUSTICE AND ACCOUNTABILITY
2210 San Joaquin Street
10 Fresno, California 93721
Telephone: (559) 369.2780
11 awerner@leadershipcounsel.org
pseaton@leadershipcounsel.org

12 Attorneys for Plaintiffs/Petitioners Friends of Calwa,
13 Inc. and Fresno Building Healthy Communities

14 *(Additional Counsel Listed on Next Page)*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF FRESNO**

18 FRIENDS OF CALWA, INC. and FRESNO
BUILDING HEALTHY COMMUNITIES,

19 Plaintiffs and Petitioners,

20 v.

21 CALIFORNIA DEPARTMENT OF
22 TRANSPORTATION, TONY TAVARES, in
his official capacity as Director of the
23 California Department of Transportation; and
DOES 1-20,

24 Defendants and Respondents.

Case No. 23CECG04109

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

California Environmental Quality Act, Cal.
Pub. Res. Code. §§ 21000 et seq; Cal. Gov.
Code §§ 11135 and 8899.50; Cal. Code Civ.
Proc. §§ 1085 and 1094.5

E-FILED
10/2/2023 4:02 PM
Superior Court of California
County of Fresno
By: A. Hoffman, Deputy

1 Valerie Feldman (CA Bar No. 210155)
Michael Rawson (CA Bar No. 94868)
2 PUBLIC INTEREST LAW PROJECT
449 15th Street, Suite 301
3 Oakland, California 94612
Telephone: 510-891-9794
4 vfeldman@pilpca.org

5 Attorneys for Plaintiffs/Petitioners Friends of Calwa,
Inc. and Fresno Building Healthy Communities
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

1. This action challenges a project by Defendant and Respondent California Department of Transportation (“Caltrans” or “Defendant”) to reconstruct and expand two interchanges on North Avenue and American Avenue connecting California State Route 99 to local roadways in South Fresno. The project would increase capacity for heavy-duty truck traffic and support further industrial buildout in nearby low-income communities of color.

2. For over fifty years, State Route 99 has cut a line through South Fresno, dividing communities and cutting off residents from the commercial and economic resources of downtown and North Fresno neighborhoods, while carrying an expanding flow of truck traffic and attendant pollution into local neighborhoods.

3. Neighborhoods and communities surrounding the interchanges in South Fresno – including the historic unincorporated communities of Calwa and Malaga to the east and adjacent neighborhoods in the City of Fresno (the “City”) – are among the most polluted in the state from particulate matter and other traffic-related emissions, as well as from industrial facilities fed by the trucks that flow from State Route 99. They are also among the most socially vulnerable, bearing the marks of decades of racial segregation and discrimination in zoning and financial services.

4. The neighborhoods impacted by the project are also comprised of significantly higher shares of people of color and children and have significantly higher poverty rates relative to surrounding areas. Unlike more affluent and White neighborhoods in the northern parts of the City and elsewhere in Fresno County, South Fresno communities have been zoned for decades for industrial land uses and have experienced a lack of investment in and zoning for neighborhood-serving amenities and resources, like grocery stores, parks, quality housing, and multi-modal transportation options. These communities have inherited and continue to suffer from the legacy of environmental racism and neglect.

5. The State of California has acknowledged the disproportionate pollution burdens impacting South Fresno and has taken actions to help remedy the legacy of environmental racism in these communities. In particular, the State adopted legislation and other directives requiring state and local agencies to reduce pollution exposures, reverse industrialization trends, and promote

1 environmental justice in as well as direct resources to overburdened communities. Among such
2 efforts, the California Air Resources Board (“CARB”) designated a large area of South Fresno as a
3 priority community requiring air monitoring and the reduction of air pollution from traffic and
4 industry. Likewise, the California Attorney General’s Office has warned the County of Fresno (the
5 “County”) that its land use policies targeting South Fresno for industrial development likely violate
6 state civil rights law and environmental justice mandates. And the State has approved
7 implementation plans to bring damaging ozone and particulate matter pollution in the region down to
8 federally required levels.

9 6. Defendant’s South Fresno State Route 99 Corridor Project (the “Project”) conflicts
10 with these policies and practices to reduce air pollution and industrial burdens and correct disparities
11 in South Fresno communities. The Project would expand the capacity of State Route 99
12 interchanges, facilitating increased traffic flow – particularly of heavy-duty trucks – between the
13 highway and local South Fresno roadways. The existing interchanges and adjacent local roads have
14 deteriorated over time due to their use by heavy-duty trucks travelling to existing industrial facilities
15 concentrated in the area. But instead of simply remedying these problems, Defendant proposed and
16 approved a project that would facilitate increased industrial buildout and related heavy-duty truck
17 traffic, exacerbating pollution burdens and locking in a vision of expanding industrialization in the
18 area, which denies South Fresno residents’ access to the opportunities enjoyed in other areas of the
19 City and County.

20 7. The Project is subject to the protections of the California Environmental Quality Act,
21 California Public Resources Code sections 21000 et seq. (“CEQA”). CEQA requires Caltrans to
22 carefully analyze and disclose potential environmental impacts of the Project, including impacts on
23 air quality, traffic, public health, and environmental justice on nearby communities, as well as
24 conflicts with air quality plans and land use policies. And CEQA requires Caltrans to consider less
25 harmful alternatives and to adopt feasible and enforceable mitigation measures to reduce adverse
26 impacts to insignificance.

27 8. Defendant’s environmental review of the Project fell significantly short. Caltrans
28 prepared an Environmental Impact Report (“EIR”) under CEQA that, among other things, failed to

1 acknowledge the existence of *any* impacted communities or sensitive receptors, failed to consider
2 conflicts with air quality and land use plans and policies, failed to analyze the capacity-increasing
3 Project’s impacts on vehicle miles traveled, and failed to consider cumulative impacts and public
4 health impacts of the Project together with similar and coordinated Caltrans’ projects up and down
5 the State Route 99 corridor as well as industrial development projects planned for adjacent
6 neighborhoods. And Caltrans failed to make underlying studies and reports readily accessible to the
7 public, including in Spanish, the language spoken by a majority of affected residents.

8 9. The numerous inadequacies in the environmental analysis mean that decisionmakers
9 and the public have been left in the dark about the Project’s impacts, including the Project’s
10 contribution to already disproportionate pollution burdens borne by South Fresno communities and
11 its conflict with laws and policies designed to reverse these trends. Consequently, it has also failed to
12 adopt effective mitigation to offset foreseeable harms.

13 10. These failures have put Caltrans on a collision course with civil rights mandates
14 designed to prevent discrimination and reverse disparities in environmental health and access to
15 housing and opportunity. California Government Code section 11135 prohibits Caltrans from
16 unlawfully discriminating in its programs and activities, including through actions that result in a
17 disparate impact on the basis of race, ethnicity, age, or other protected characteristics. Government
18 Code section 8899.50 requires Caltrans to affirmatively further fair housing (“AFFH”) by taking
19 meaningful actions to overcome segregation patterns and foster inclusive communities free from
20 barriers that restrict access to opportunity. The statute also prohibits Caltrans from taking any action
21 that is materially inconsistent with its duty to AFFH. Caltrans’ approval of the Project violates these
22 laws by facilitating increased flows of polluting heavy-duty truck traffic into South Fresno, furthering
23 the industrialization of South Fresno communities and compounding the wide-ranging resource and
24 public health disparities impacting these areas. Other neighborhoods in North Fresno and Fresno
25 County do not face the same impacts from the Project which threaten South Fresno communities.

26 11. The Court should accordingly issue a declaration that Defendant’s support for and
27 approval of the Project violate state environmental and civil rights laws, and it should set aside
28 Caltrans’ approval of the Project and certification of the legally deficient environmental document on

1 which it relies. Because the Project in its current form cannot proceed without violating Caltrans’
2 duties under state civil rights laws, the Court should also permanently enjoin Caltrans from re-
3 approving the Project.

4 **II. JURISDICTION AND VENUE**

5 12. This Court has subject matter jurisdiction over Plaintiffs’ CEQA claims pursuant to
6 Code of Civil Procedure section 1094.5 or, in the alternative, section 1085. The Court has subject
7 matter jurisdiction over Plaintiffs claims under Government Code sections 11135 and 8899.50
8 pursuant to Government Code sections 11139 and 8899.50(b)(2) and Code of Civil Procedure section
9 1085. Judicial review of the CEQA claims is governed by Public Resources Code section 21168 or,
10 in the alternative, section 21168.5, as well as section 21168.9. Injunctive relief is authorized under
11 Code of Civil Procedure section 526 and 527.

12 13. Plaintiffs have performed any and all conditions precedent to filing this action and
13 have exhausted all administrative remedies available to them to the extent required by law, and the
14 violations of law claimed below are ripe for judicial review.

15 14. Plaintiffs have served the Attorney General of the State of California with a copy of
16 the petition and complaint along with notices of filing in compliance with California Public
17 Resources Code section 21167.7 and California Code of Civil Procedure section 388. The Notice and
18 Proof of Service for the petition and complaint is provided as Exhibit A.

19 15. Plaintiffs provided written notice to Caltrans of their intent to commence this action
20 asserting claims for violations under CEQA and provided the Notice and Proof of Service with the
21 initial pleading as required by California Public Resources Code section 21167.5. The Notice and
22 Proof of Service are attached as Exhibit B hereto.

23 16. Plaintiffs have complied with the requirements of California Public Resources Code
24 section 21167.6 by concurrently filing a request that Caltrans prepare the record of administrative
25 proceedings relating to the CEQA claims in this action with their initial pleading.

26 17. Venue is proper in this Court, because Caltrans’ actions and omissions giving rise to
27 the violations of law alleged herein and the harms arising from those actions and omissions occurred
28 and are occurring in Fresno County.

1 **III. PARTIES**

2 18. Plaintiff and Petitioner FRIENDS OF CALWA, INC. (“Friends of Calwa”) is a
3 California non-profit organization headquartered in Fresno County in the community of Calwa. The
4 community of Calwa was named after the California Wine Association, which produced local wines
5 from a nearby vineyard. From the large brick winery owned by the California Wine Association,
6 which has now crumbled, a person in Calwa can see the skyline of downtown Fresno and imagine the
7 possibilities that have not been available in the heavily-industrialized neighborhood. In their fight to
8 improve their community for future generations, neighbors in the community of Calwa have a strong
9 history of organizing together. Following that tradition of neighbors helping neighbors, Friends of
10 Calwa was formed in 2009 by a group of Calwa neighbors who came together with the vision that all
11 people, regardless of income level, cultural background, or political persuasion are entitled to live in
12 neighborhoods that nurture their development. Friends of Calwa brings resources and people
13 together to foster a healthy and thriving Calwa, where all people have access to quality education,
14 good jobs, healthy food, public transportation, housing, recreation and parks, retail, meaningful civic
15 engagement, and the opportunity to enjoy artistic, spiritual, and cultural amenities. In service of this
16 mission, Friends of Calwa works to promote environmental health and justice in Calwa, including by
17 advocating before local, state, and federal agencies to protect the health and environment of the local
18 community from harmful industrial development and traffic, and from consequent toxic pollution.

19 19. Friends of Calwa, and Calwa residents on whose behalf the organization advocates,
20 are directly adversely impacted by the Project. Friends of Calwa’s mission to ensure that residents
21 enjoy equal access to environmental benefits and protection from health and environmental burdens
22 regardless of race, color, national origin, or income is frustrated by Defendants’ support for and
23 approval of the Project. Friends of Calwa has been and will be required to divert resources from
24 other organizationally essential programs and services to challenge Defendants’ actions and the
25 harms to environmental quality, civil rights, and to access to housing that will flow from these
26 actions. Friends of Calwa has also been required to invest staff time and other resources to ensure
27 that residents of Calwa and other area residents have opportunities to provide input to Caltrans
28 regarding the Project.

1 20. Plaintiff and Petitioner FRESNO BUILDING HEALTHY COMMUNITIES (“Fresno
2 BHC”) is a California nonprofit organization headquartered in the City of Fresno. Fresno BHC’s
3 mission is to foster thriving communities where all children and families can live healthy, safe, and
4 productive lives. Fresno BHC is led by and works for the rights of people of color, as well as for the
5 benefit of all Fresno County residents and works in partnership with community residents, young
6 people, and community and faith-based organizations to advance its mission. Many of Fresno BHC’s
7 staff and its executive team members were born and raised in South Fresno and are directly impacted
8 by the disparities effecting South Fresno; as a result, they care deeply about accomplishing Fresno
9 BHC’s mission. Fresno BHC brings attention and resources to Fresno communities and
10 neighborhoods that need it most, including Calwa, Malaga, and other South Fresno communities. In
11 service of this mission, Fresno BHC endeavors to build community members’ leadership and further
12 community priorities relating to six focus areas: (1) advancing health equity across Fresno; (2)
13 ensuring access to safe, affordable housing for every community member; (3) uplifting
14 neighborhoods through community-engaged economic development; (4) advocating for responsible
15 land use practices which support the development of parks and sustainable business, rather than
16 polluting facilities; (5) improving access to outdoor spaces; and (6) advocating for quality
17 transportation options which result in safer streets, cleaner air, and better public transit. One of
18 Fresno BHC’s current projects is managing the state-funded renovation of the 70-year-old Calwa
19 Park, which has provided generations of community members with valued recreational and outdoor
20 experiences and is located approximately one and a half miles from the Project Site.

21 21. The Project will directly impact Fresno BHC and the communities on whose behalf
22 Fresno BHC advocates. Fresno BHC’s mission to foster healthy and thriving communities is
23 frustrated by Defendants’ support for and approval of the Project. In addition, Fresno BHC has been
24 and will be required to divert staff time and other resources away from other important projects and
25 services, such as its efforts to support local training and leadership and to build environmental and
26 community assets in South Fresno, to oppose Defendant’s approval of the Project and counteract the
27 adverse environmental and health impacts that will result from the Project.

28 22. Defendant CALIFORNIA DEPARTMENT OF TRANSPORTATION (“Caltrans”) is

1 a California public agency responsible for managing California’s highway and freeway system.
2 Caltrans is the lead agency responsible for the Project’s environmental review under CEQA. Caltrans
3 is listed as the Project Applicant on the February 6, 2023 Notice of Determination. Plaintiffs are
4 informed and believe, and on that basis allege, that Caltrans is undertaking the Project as part of its
5 broader vision, goals, and policies to expand capacity of State Route 99 to support increased
6 movement of goods.

7 23. Defendant TONY TAVARES is the Director of Caltrans, an agency of the State of
8 California, and is named herein and at times mentioned herein in his official capacity. Defendants
9 Caltrans and Tavares are referred to collectively in this complaint as Caltrans.

10 24. Plaintiffs do not know the true names and capacities, whether individual, corporate,
11 associate, or otherwise, of Defendants and Respondents DOES 1-20, and therefore sue said
12 Defendants and Respondents under fictitious names. Plaintiffs will amend this Complaint to show
13 their true names and capacities when the same have been ascertained.

14 IV. LEGAL BACKGROUND

15 A. California Environmental Quality Act

16 25. CEQA is California’s comprehensive statute intended to provide for the “long-term
17 protection of the environment, consistent with the provision of a decent home and suitable living
18 environment for every Californian.” Cal. Pub. Res. Code § 21001(d). CEQA makes it state policy to
19 “[d]evelop and maintain a high-quality environment now and in the future, and take all action
20 necessary to protect, rehabilitate, and enhance the environmental quality of the state.” *Id.* § 21001(a).

21 26. CEQA mandates environmental review of all state and local agency projects in
22 California to inform decisionmakers and the public about potential significant environmental effects
23 and to identify ways to avoid or significantly reduce those impacts. CEQA Guidelines (14 Cal. Code
24 Regs.) § 15002.

25 27. Under CEQA, all state lead agencies must prepare and certify the completion of an
26 Environmental Impact Report (“EIR”) for any project they propose to carry out or approve that may
27 have significant effects on the environment. Cal. Pub. Res. Code § 21100(a). As the “heart” of
28 CEQA, the EIR is “an environmental ‘alarm bell’ whose purpose it is to alert the public and its

1 responsible officials to environmental changes before they have reached ecological points of no
2 return.” *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 392 (1988)
3 (citation omitted).

4 28. An EIR must identify and describe the project’s potential direct and indirect
5 significant effects on the environment, as well as the project’s cumulative impacts when viewed in
6 connection with the effects of past, present, and probable future projects. CEQA Guidelines
7 §§ 15126.2(a), 15065(a)(3), 15130(a). In doing so, the EIR must describe and disclose the “whole of
8 [the] action,” *id.* § 15378(a), thereby ensuring that “environmental considerations do not become
9 submerged by chopping a large project into many little ones – each with a minimal potential impact
10 on the environment – which cumulatively may have disastrous consequences.” *Laurel Heights
11 Improvement Assn.*, 47 Cal.3d at 396 (citation omitted).

12 29. Environmental effects that the agency must consider include, but are not limited to,
13 adverse impacts on aesthetics, noise, housing, land use, traffic, pedestrian and bicyclist facilities,
14 climate change, and air quality. CEQA Guidelines, App. G. Analysis of air quality impacts must
15 consider the potential for a project to conflict with or obstruct implementation of an applicable air
16 quality plan and to expose sensitive receptors to substantial pollution concentrations. *Id.* App. G,
17 § III. Further, an agency must make a reasonable effort to substantively connect a project’s air
18 quality impacts to likely health consequences. *Sierra Club v. County of Fresno*, 6 Cal.5th 502, 510
19 (2018); *see* CEQA Guidelines § 15126.2(a).

20 30. CEQA makes a finding of significance mandatory when the project will “have
21 environmental effects which will cause substantial adverse effects on human beings, either directly or
22 indirectly.” CEQA Guidelines, App. G, § XXI. The EIR must also set forth project alternatives and
23 enforceable mitigation measures to avoid or minimize environmental damage. *Id.* § 15002(a)(2)-(3).

24 31. The EIR must include an accurate description of the physical and environmental
25 conditions in the vicinity of the project, which serves as the baseline against which the lead agency
26 determines whether an impact is significant. *Id.* § 15125(a). This baseline must ordinarily reflect
27 conditions “as they exist at the time the [CEQA] notice of preparation is published.” *Id.*
28 § 15125(a)(1). Without an adequate baseline description, “analysis of impacts, mitigation measures

1 and project alternatives becomes impossible.” *Save Our Peninsula Comm. v. Monterey Cnty. Bd. of*
2 *Supervisors*, 87 Cal.App.4th 99, 124 (2001) (citation omitted).

3 32. An accurate description of the environmental setting is also critical because the
4 significance of an activity may vary with the setting. CEQA Guidelines § 15064(b)(1).

5 33. The lead agency must provide an adequate opportunity for public review and comment
6 on a draft EIR and must thoroughly evaluate all comments received, offering a good faith, reasoned
7 analysis in a written response. *Id.* §§ 15087, 15088. In particular, the lead agency’s response to
8 comments must address in detail major environmental issues raised when the lead agency’s position
9 differs from recommendations and objections made in public comments. *Id.* § 15088(c).

10 34. “CEQA does not authorize an agency to proceed with a project that will have
11 significant, unmitigated effects on the environment . . . unless the measures necessary to mitigate
12 those effects are truly infeasible” and the agency determines that the project’s specific benefits
13 outweigh these effects. *City of San Diego v. Bd. of Trustees of Cal. State Univ.*, 61 Cal.4th 945, 967
14 (2015) (citation omitted). When the lead agency approves a project that will result in significant and
15 unavoidable effects, the agency must provide a detailed statement of reasons, supported by
16 substantial evidence, to support its approval. CEQA Guidelines § 15093(b).

17 **B. California’s Anti-Discrimination Law, Government Code section 11135**

18 35. California’s overarching anti-discrimination law, codified in Government Code
19 section 11135, prohibits the State from discriminating against any person on the basis of race, color,
20 ancestry, national origin, ethnic group identification, religion, age, sex, sexual orientation, color,
21 genetic information or disability. Cal. Gov. Code § 11135(a). This proscription extends to any
22 program or activity conducted, operated, or administered by the State or any local agency that
23 receives state funding or financial assistance.

24 36. Facially neutral policies or activities may violate Government Code section 11135 if
25 they cause a disproportionate impact on a protected class. *See Darensburg v. Metro. Transp.*
26 *Comm’n*, 636 F.3d 511, 519 (9th Cir. 2011).

27 37. Government Code section 11139 provides a private right of action for any person to
28 seek equitable relief for violations of Government Code section 11135. Cal. Gov. Code § 11139.

1 **C. California’s Duty to Affirmatively Further Fair Housing**

2 38. Pursuant to Government Code section 8899.50(b), the State, including every
3 department, division, and officer, and other public agencies, is subject to a duty to affirmatively
4 further fair housing (“AFFH”) in the administration of programs and activities relating to housing and
5 community development. Cal. Gov. Code § 8899.50(b)(1). Community development includes
6 activities related to transportation, hazard planning, public facilities, and other environmental
7 resources. Agencies subject to the duty to AFFH are prohibited from taking any action that is
8 materially inconsistent with that duty. *Id.*

9 39. “Affirmatively furthering fair housing” means taking meaningful actions, “in addition
10 to combating discrimination, that overcome patterns of segregation and foster inclusive communities
11 free from barriers that restrict access to opportunity based on protected characteristics.” Cal. Gov
12 Code § 8899.50(a)(1). Meaningful actions are those that “address significant disparities in housing
13 needs and in access to opportunity, replacing segregated living patterns with truly integrated and
14 balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas
15 of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” *Id.*

16 40. The California Department of Housing and Community Development’s (“HCD”) guidance on agencies’ AFFH duty provides that “access to opportunity,” within the context of that
17 duty, encompasses safe and decent housing, transportation, recreation, and a healthy environment,
18 including safety from environmental hazards and healthy air and water, among other features.
19 Actions that are materially inconsistent with the duty to AFFH may include zoning or siting toxic or
20 polluting land uses or projects in or near a disadvantaged community and other actions which have a
21 disparate impact on protected classes, perpetuate discrimination, segregation, and barriers to
22 opportunity, and hinder any affirmative actions by agencies to AFFH. *See Martinez v. City of Clovis*
23 90 Cal.App.5th 193 (2023).

24 41. The duty to AFFH is enforceable through issuance of a writ of mandate pursuant to
25 California Code of Civil Procedure section 1085. Cal. Gov. Code § 8899.50(b)(2).
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

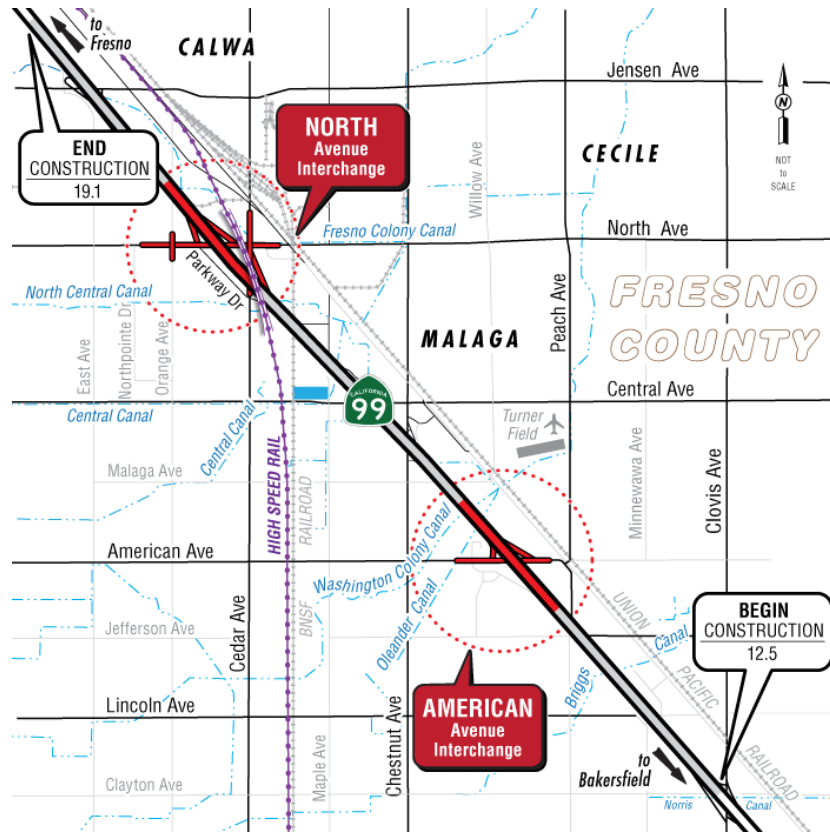
V. FACTUAL BACKGROUND

A. Community and Environmental Setting

Communities within Vicinity of Project Site

42. The Project is located at the southern edge of the City in close proximity to multiple communities and neighborhoods which will be directly impacted by the Project. These residential areas, collectively referred to herein as “South Fresno,” are home to thousands of residents living within a mile and a half of the Project Site to the east and west of State Route 99. South Fresno neighborhoods include low-income neighborhoods located within the City’s jurisdictional limits and others in unincorporated County but within the City’s planned development trajectory known as its sphere of influence.

43. The two historic communities of Calwa and Malaga lie within roughly a mile of the Project Site and just to the east of State Route 99, as depicted on the Project map below: Calwa just north of the Project’s North Avenue interchange, and Malaga between the Project’s North Avenue interchange and its southern American Avenue interchange. Calwa and Malaga are located in census tracts home to nearly 8,500 people.



1 Source: Caltrans, South Fresno State Route 99 Corridor Project Draft Environmental Impact Report,
2 Figure 1-2.

3 44. Both Calwa and Malaga are designated as “disadvantaged unincorporated
4 communities” under California Senate Bill 244, meaning that they have “an annual median household
5 income [] that is less than 80 percent of the statewide annual median household income.” Cal. Water
6 Code § 79505.5(a). While Malaga is entirely unincorporated, the eastern portion of Calwa has been
7 annexed into the City and only the western portion of the community remains unincorporated.

8 45. Calwa was established in 1885, the same year the City was incorporated. Today,
9 Calwa is home to a vibrant mixed-use commercial and residential district whose community assets
10 include Calwa Elementary School, a beauty salon, a candy store, a taqueria, a barbershop, and a bank,
11 as well as blocks of single-family residential homes and multi-family apartments. Calwa is also
12 home to several long-established places of worship, including the St. Anthony Mary Claret Church,
13 the Lao Evangelical Church, and the Calwa United Methodist Church. The community park, Calwa
14 Park, supported by the Calwa Parks Recreation and Parks District, recently received funding for a
15 playground, picnic area, walking loop, and a renovation project for the swimming pool.

16 46. Malaga was established in 1883. Today, the community’s amenities include Cristo
17 Rey Catholic Church, the Malaga Community Park and Recreation Center, and Malaga Elementary
18 School, as well as blocks of single-family homes and multi-family apartments.

19 47. South Fresno is home to other historic low-income incorporated and unincorporated
20 neighborhoods and communities located in Southwest, South Central, and Southeast Fresno – all
21 areas separated from North Fresno by state highways.

22 48. South Fresno is served by an array of additional community assets and non-residential
23 sensitive land uses, including Gurdawara Nanaksar Sahib, a Sikh Temple (0.6 miles from the
24 Project), Orange Elementary School (0.85 miles from the Project), and West Fresno Elementary
25 School and West Fresno Middle School (1.4 miles from the Project). In addition, a 1,400-bed
26 juvenile detention facility lies just 300 yards from the Project’s American Avenue interchange site.

27 49. South Fresno communities also contribute in essential ways to the local and regional
28 economy. South Fresno residents, for instance, are employed across a wide variety of sectors,

1 including as farmworkers, construction workers, teachers, service workers, small business owners,
2 and in other physically and mentally strenuous occupations.

3 **History of Segregation and Discriminatory Land Use Practices**

4 50. The Project’s location in South Fresno is no accident: The City and County – with
5 which Caltrans is cooperating on the Project – have a long history of government-sponsored
6 segregation and discriminatory land use practices that have concentrated highways and industrial
7 development in and near South Fresno communities.

8 51. The City and County’s history of segregation goes back to at least the 1870s. During a
9 town meeting in 1873, the City’s White residents agreed to restrictive covenants which prohibited the
10 sale or rental of housing to immigrants and people of color outside of certain South Fresno
11 neighborhoods, setting in motion a history of exclusion, the effects of which persist today. Local
12 police enforced these color lines, criminalizing residents of color who dared to transgress them.

13 52. Over the next 25 years, the population of Fresno grew as the area attracted immigrants
14 from China, Mexico, Japan, Armenia, and Italy whose work, experience, and culture enriched the
15 local community, but who were forced to live in segregated parts of South Fresno. In 1918, the
16 City’s first general plan furthered residential segregation by designating the southern parts of the City
17 both for multi-family housing targeted toward lower-income households and for polluting land uses,
18 leading to the concentration of industrial development in the area’s poorest neighborhoods and in
19 communities of color. Even after the Supreme Court declared racially restrictive zoning
20 unconstitutional, the Fresno County Recorder’s Office recorded thousands of racially restrictive
21 covenants prohibiting the sale, lease, or occupation of property in Fresno’s White neighborhoods to
22 immigrants and people of color.

23 53. In the 1930s, “redlining maps” created by the quasi-governmental Home Owners’
24 Loan Corporation (“HOLC”) categorized neighborhood desirability for financial lending based on
25 “risk factors” including neighborhoods’ racial composition and polluting land uses. A 1936 HOLC
26 map for Fresno marked areas in Southwest and Southeast Fresno as red (“Hazardous”) and yellow
27 (“Definitely Declining”), denoting these census tracts as the riskiest for financial investment based on
28 the racial background of their populations and zoning for “business” in the area. Residents and

1 businesses in these neighborhoods were systematically denied mortgages or provided mortgages on
2 unfavorable terms compared to mortgages issued in neighborhoods classified as lower-risk. Like
3 racially restrictive covenants, the HOLC maps both recorded and furthered formal segregation
4 practices. They also drove housing instability, poverty, and the concentration of industrial land uses
5 in and around redlined neighborhoods – patterns which persist today.

6 54. In the 1950s, the construction of State Route 99 further cemented Fresno’s decades-
7 long history of government-sponsored segregation, creating a physical barrier cutting off lower-
8 income South Fresno communities of color from the public and private resources of downtown and
9 wealthier neighborhoods comprised of a greater share of White residents. The establishment of the
10 highway destroyed more than 20 blocks of existing housing; according to news reports, a former
11 member of Fresno County’s Board of Supervisors would refer to the highway as “Fresno’s Berlin
12 Wall.”

13 55. The City and County have since continued to adopt and reinforce industrial zoning and
14 approval patterns and practices which encourage the concentration of industrial land uses in South
15 Fresno, while shielding Whiter and more affluent neighborhoods from industrial development. As a
16 result, South Fresno is home to a disproportionate concentration of heavy industrial uses, compared
17 to the City and County as a whole. Industrial sources in the area range from smaller operations like
18 gasoline dispensing operations and auto body coating operations, to medium-sized operations like
19 chrome plating facilities, to larger operations like a biomass power facility, a gasoline pipeline
20 terminal facility, a steel product manufacturer, meat rendering plants, slaughterhouses, and multiple
21 warehouse facilities, as well as landfills and waste transfer stations.

22 56. Truck routes that serve industrial development cut through and surround South Fresno
23 communities, running alongside homes, places of worship, and parks. As a result, greater volumes of
24 truck traffic flow next to or through Malaga, Calwa, and Southwest and South Central Fresno
25 neighborhoods than in 55, 72, and 99 percent of census tracts across the United States, respectively.
26 By comparison, certain Northwest and Northeast Fresno neighborhoods rank in the 24th and 35th
27 percentiles nationwide for traffic volume exposures, respectively.

28 57. The County’s and City’s general plans both envision the continued proliferation of

1 industrial development in and around South Fresno communities, next to homes, schools, parks,
2 places of worship, and other community resources. In particular, the City’s General Plan proposes the
3 conversion of several historic South Fresno neighborhoods to industrial development and calls out the
4 need for transportation capital projects to service this industrial growth.

5 58. In August 2021, the Fresno County Board of Supervisors began to lay the groundwork
6 for further industrialization in South Fresno next to the community of Malaga. At a public meeting,
7 the Board voted to direct County staff to study rezoning a 3,000-acre agricultural area for
8 development of a “Fresno County Business and Industrial Campus,” which would accommodate 19
9 million square feet of building inventory. The Board also directed staff to assess utility and roadway
10 infrastructure availability and needs to support this industrial expansion. According to a public
11 statement by a Board member who also sits on the board of the Fresno County Transportation
12 Authority (a Project sponsor), the Project would directly enable the development of the campus. The
13 Supervisor acknowledged that the County is “doing the industrial park because it is potentially a fit
14 for this area with these [Caltrans projects] and other improvements” and that “interchange upgrades
15 [are] a help to the industrial park.”

16 59. City and County industrial land use zoning and approvals have gone hand-in-hand
17 with the lack of investment in community-serving infrastructure, services, and land uses in South
18 Fresno communities. South Fresno communities lack consistent access to safe and reliable drinking
19 water and wastewater service, sidewalks, streetlights, crosswalks, stormwater drainage, and other
20 investments to support safe and efficient transportation options. They likewise lack the level of access
21 to quality housing, parks, grocery stores, medical facilities, and other community-serving resources
22 available to residents of North Fresno neighborhoods and other Whiter and more affluent areas of the
23 County. South Fresno residents and non-profits organizations have worked hard to sustain local
24 businesses and community amenities despite this lack of government investment.

25 60. South Fresno residents have advocated for years for the City, County, and State to act
26 to redress these disparities and harms, including through the cessation of new industrial facility siting
27 in their neighborhoods, re-routing of truck traffic away from homes and other sensitive land uses,
28 improved environmental quality, and public and private investment in their communities.

Social Vulnerabilities Impacting South Fresno Communities

1
2 61. South Fresno communities continue to bear the marks of this long lineage of
3 discriminatory land use, housing, and transportation policies and practices.

4 62. Calwa and Malaga are disproportionately low-income communities of color relative to
5 North Fresno neighborhoods, Fresno County, and the state as a whole, and they are comprised of a
6 greater proportion of children and families with children compared to Fresno County and the state as a
7 whole.

8 63. Eighty-six percent of Calwa residents identify as Hispanic or Latino/a/e relative to 21
9 percent of residents in Census Tract 6019004405 in Northeast Fresno near State Route 41 (hereinafter
10 “Northeast Fresno neighborhood”), 39 percent Census Tract 6019004215 in Northwest Fresno near
11 State Route 99 (hereinafter, “Northwest Fresno neighborhood”), and 55 percent in Fresno County.
12 Ninety-two percent of Calwa residents identify as non-White relative to 31 percent in the Northeast
13 Fresno neighborhood, 66 percent in the Northwest Fresno neighborhood, and 74 percent in the
14 County.

15 64. Seventy-eight percent of homes in Calwa house children, and 98 percent house family
16 units (households with families and unrelated members). This compares to 30, 40, and 40 percent of
17 homes that house children and 79, 77, and 72 percent of homes that house family units in the
18 Northeast Fresno neighborhood, the Northwest Fresno neighborhood, and the County of Fresno as a
19 whole. Twenty percent of Calwa residents are children under the age of five, compared to just four
20 percent and eight percent of residents in the Northwest Fresno neighborhood and Northeast Fresno
21 neighborhood, respectively.

22 65. Thirty-seven percent of Calwa residents earn incomes that fall below the poverty line
23 – nearly 28 times the rate in the Northeast Fresno neighborhood, four times the rate in the Northwest
24 neighborhood, and double the rate in the County as a whole. And the median Calwa household
25 income is just over \$50,000, whereas the median household income for the Northeast Fresno
26 neighborhood and the Northwest Fresno neighborhood are \$135,000 and \$82,000, respectively, and
27 for the County and state as a whole are \$63,000 and \$84,000, respectively.

28 66. In Malaga, 92 percent of residents identify as Hispanic or Latino/a/e and 95 percent as

1 non-White. The median household income in Malaga is just under \$46,000. The percentage of people
2 in Malaga living below twice the federal poverty level is worse than in 94 percent of census tracts in
3 the state.

4 67. Children in Calwa and Malaga face high rates of household poverty. According to
5 2021 data from the U.S. Department of Education, 88 percent of students at Malaga Elementary
6 School and 96 percent of students at Calwa Elementary School qualified for free or reduced-priced
7 lunch. In comparison, 42 percent of children who attend Fort Washington Elementary School in
8 Northeast Fresno and 44 percent of children who attend River Bluff Elementary School in Northwest
9 Fresno qualified for free or reduced-priced lunch in that year.

10 68. Plaintiffs are informed and believe, and on that basis allege, that other South Fresno
11 communities are also disproportionately comprised of residents who identify as people of color and
12 are low-income, and they are comprised of greater shares of children and/or families with children
13 compared to the Northeast and Northwest Fresno neighborhoods and to the County as a whole. For
14 example, in a census tract in Southwest Fresno located between State Route 99 and 41, approximately
15 78 percent of residents identify as Latino/a/e, 17 percent as Black, and only two percent as White. In
16 the same census tract, 36 percent of residents are children.

17 69. According to a tool developed by HCD to classify neighborhoods according to their
18 relative levels of racial integration and segregation, a Northeast Fresno neighborhood has “High White
19 Segregation;” a Northwest Fresno neighborhood is “Racially Integrated;” and South Fresno
20 communities, including Calwa, Malaga, and Southwest Fresno, have “High [People of Color]
21 Segregation.” South Fresno communities also qualify as areas as of racially and ethnically
22 concentrated poverty (“RECAPs”), according to a definition adopted by the U.S. Department of
23 Housing and Urban Development, while a Northwest and a Northeast Fresno neighborhood do not.
24 Sixty-one percent of families in the City’s RECAPs have children, exceeding the share of families
25 with children throughout the County by up to nine percent.

26 70. South Fresno communities’ disproportionate lack of access to public and private
27 resources and amenities manifests in restricted access to opportunities. The California Tax Credit
28 Allocation Committee and HCD’s “Opportunity Area Maps,” which the agencies created as a tool to

1 identify areas whose characteristics support positive economic, educational, and health outcomes,
2 ranks a Northwest and a Northeast Fresno neighborhood as “Highest Resource,” Malaga as “Low
3 Resource,” and Calwa and other South Fresno communities as “High Segregation and Poverty.”

4 **Disparate Environmental Burdens Impacting South Fresno Communities**

5 71. Concentrated development and operation of heavy industrial uses and warehouse
6 facilities, together with heavy-duty truck traffic that serves these uses, expose South Fresno residents
7 to a wide range of negative health, safety, and environmental impacts.

8 72. The development and operation of industrial facilities and the resulting influx of
9 thousands of daily truck trips into South Fresno communities generate diesel emissions, dust, and
10 other unhealthy air emissions which infiltrate residents’ homes, degrade outdoor air quality, and
11 result in acute and long-term health impacts. Industrial facilities and trucks passing along local
12 roadways also generate significant street noise and ground-borne vibrations, which residents can hear
13 and feel in their homes; nighttime light pollution which disrupts sleep; safety risks to pedestrians,
14 cyclists, and public transit users; and odors, among other impacts. Children growing up in and
15 attending school in South Fresno communities are especially vulnerable to these impacts, which
16 effect their short and long-term health, wellbeing, safety, and quality of life.

17 73. These impacts occur against a backdrop of already severe air pollution burdens from
18 transportation emissions. The EPA has designated the San Joaquin Valley, where the Project is
19 located, in “serious” nonattainment for PM_{2.5} pollution and “extreme” nonattainment for 8-hour
20 ozone. The San Joaquin Valley is also under a maintenance plan to prevent backsliding on PM₁₀
21 pollution.

22 74. Data from mapping tools developed by California’s Office of Environmental Health
23 Hazard Assessment (“CalEnviroScreen”) and by EPA (“EJScreen”) demonstrate the excess pollution
24 burden borne by South Fresno residents. Both mapping tools assess communities at the census tract
25 level to identify relative burdens by particular kinds of pollution from multiple sources and those
26 most vulnerable to the effects of that pollution based on socioeconomic factors and underlying health
27 status. In addition, CalEnviroScreen assigns cumulative impact scores of one through 100 for each
28 census tract based on aggregate pollution burdens and population vulnerabilities of residents.

1 75. The mapping tools illustrate the environmental footprint of decades of concentrated
2 development in and around these communities. For example, within Calwa, CalEnviroScreen
3 identifies 12 cleanup sites (places that are contaminated with hazardous chemicals and require
4 cleanup by the property owner or government), a concentration higher than in 99 percent of census
5 tracts in California. Across Calwa and Malaga, EJScreen and CalEnviroScreen identify more than 50
6 facilities regulated under the Resource Recovery and Conservation Act (a federal law governing
7 management of hazardous and solid waste), 16 facilities regulated under the Toxic Substances
8 Control Act, numerous solid waste sites, and one Superfund Site.

9 76. South Fresno also bears the hallmarks of severe pollution impacts from the
10 concentration of pollution sources in close proximity to communities, including vehicular and heavy-
11 duty truck traffic. Calwa is more severely impacted by cumulative pollution burdens than 99 percent
12 of census tracts in the state, and Malaga ranks among the most impacted of all census tracts in the
13 state, falling in the 100th percentile for cumulative pollution burden. Similarly, the communities are
14 more burdened by diesel particulate matter (“DPM”) – a carcinogenic air toxin emitted by trucks and
15 industrial operations – than 68 percent and 65 percent of California census tracts, respectively. On
16 the other hand, the Northwest and Northeast Fresno neighborhoods are each more impacted by these
17 pollutants than 19 percent of census tracts in the state. The severe pollution burden scores assigned
18 to Calwa, Malaga, and other South Fresno communities led CalEPA to designate the communities as
19 Disadvantaged Communities under California Senate Bill 535.

20 77. Health outcomes for populations in these communities are worse than in most of the
21 country. The census tracts containing Calwa and Malaga have populations with life expectancies
22 lower than 80 percent or more census tracts in the United States, according to EJScreen. Calwa and
23 Malaga residents experience more emergency room visits for asthma than 94 and 93 percent of all
24 census tracts in the state, respectively. South Central and Southwest Fresno experience more
25 emergency room visits than 98 percent of the state. Calwa and Malaga respectively rank in the 74th
26 and 71st percentiles of census tracts in the state for rates of cardiovascular disease, while South
27 Central and Southwest Fresno rank in the 92nd percentile. By contrast, the Northwest Fresno and
28 Northeast Fresno neighborhoods rank in the 66th and 25th percentiles, respectively. And Calwa and

1 Malaga residents experience greater lifetime cancer risks from the inhalation of air toxins than
2 residents in 98 and 93 percent of census tracts in the country, compared with residents of the
3 Northwest Fresno and Northeast Fresno neighborhoods, who experience risks greater than 54 and 26
4 percent of census tracts.

5 **State Efforts to Redress Harms to South Fresno**

6 78. The State Legislature and State agencies, including Caltrans, have recognized the need
7 for concerted action to reverse the environmental disparities, disinvestment, and segregation which
8 impact low-income communities of color across the state, and South Fresno in particular.

9 79. In 2020, for instance, Caltrans adopted an Equity Statement acknowledging that
10 communities of color and under-served communities have experienced fewer benefits and a greater
11 share of negative impacts associated with the State’s transportation system, and that its own highway
12 projects “quite literally put up barriers, divided communities, and amplified racial inequities,
13 particularly in [] Black and Brown neighborhoods.” To address this legacy, the Equity Statement
14 committed Caltrans to “meaningfully engage communities most impacted by structural racism in
15 creating and implementing programs and projects that affect their daily lives” and “reform [its]
16 programs, policies, and procedures to avoid harm to frontline and vulnerable communities.” Caltrans
17 has failed to act consistently with or implement these commitments.

18 80. State legislation, policies, and programs aimed at overcoming this legacy of
19 disinvestment and segregation and improving environmental quality in impacted communities like
20 South Fresno include the following:

21 *“South Central Fresno” AB 617 Designation and Community Emissions Reduction Program*

22 81. California Assembly Bill (“AB”) 617 (Garcia, Stats. of 2017, ch. 136) initiated a
23 statewide effort to reduce air pollution exposure and improve public health in communities most
24 impacted by air pollution, including by implementing community-specific air quality monitoring
25 networks and Community Emission Reduction Programs (“CERPs”) in selected communities.

26 82. In 2018, CARB selected an area which includes Calwa, Malaga, and portions of
27 Southwest, South Central, Southeast, and Downtown Fresno as a priority community for the first year
28 of AB 617 implementation due to the heavy burden of air pollution and other health and

1 environmental challenges in these communities and neighborhoods. CARB designated these
2 neighborhoods collectively as “South Central Fresno” for purposes of AB 617 implementation
3 (referred to herein as “AB 617 South Central Fresno Community”). CARB and other agencies have
4 since expended \$1.2 billion in efforts to reduce excess pollution burdens in this and other AB 617
5 communities.

6 83. Residents of Calwa, Malaga, and other nearby communities, as well as Plaintiffs and
7 other community-based organizations, have been heavily involved in AB 617 implementation
8 through membership and participation in the South Central Fresno Community Steering Committee
9 facilitated by the San Joaquin Valley Air Pollution Control District (“District”). In July 2019, the
10 District published a Community Air Monitoring Plan for South Central Fresno, developed in
11 partnership with the Steering Committee, which identifies heavy-duty trucks and industrial processes
12 in the area as among the “top sources of concern” and provides for air monitoring to inform and
13 monitor the success of emission reduction strategies.

14 84. In September 2019, the District approved a CERP for South Central Fresno. The
15 CERP, also developed in partnership with the Steering Committee and with input from other
16 community partners and residents, sets forth a holistic set of emission reduction strategies – including
17 community-centered investments, enhanced enforcement, increased outreach and training, cross-
18 agency collaboration, and regulatory strategies – to reduce cumulative air pollution burdens
19 impacting the community. The CERP highlights heavy-duty trucks and passenger vehicles traversing
20 major freeways, interchanges, and main roads that run through the community as major sources of
21 pollution, as well as industrial sources located near sensitive receptors.

22 85. CERP strategies target heavy-duty vehicles, passenger cars, and new industrial
23 developments to reduce air pollution burdens. The CERP also puts in place policies to reduce
24 community exposure to fine particulate matter, Toxic Air Contaminants, and nitrous oxides (NO_x).

25 86. In addition, the City is currently undertaking a truck re-route study to implement a
26 policy contained in the CERP. The study aims to identify and evaluate strategies to abate truck
27 traffic impacts and reroute trucks away from sensitive land uses within the AB 617 South Central
28 Fresno Community.

Senate Bill 1000

1
2 87. Senate Bill (“SB”) 1000, Cal. Gov. Code § 65302(h), mandates that local agencies
3 identify and describe disadvantaged communities and include environmental justice policies in their
4 general plans to “reduce the unique or compounded health risks” for those communities. Among
5 other requirements, SB 1000 mandates policies to improve air quality, reduce pollution exposures,
6 and promote safe and sanitary homes for disadvantaged communities. SB 1000 also requires
7 environmental justice policies that “promote public engagement in the public decisionmaking
8 process.”

9 88. California law defines environmental justice to include “deterrence, reduction, and
10 elimination of pollution burdens for populations and communities experiencing the adverse effects of
11 that pollution, so that the effects of the pollution are not disproportionately borne by those
12 populations and communities.” Cal. Gov. Code § 65040.12(e)(2). It requires, “at a minimum, the
13 meaningful consideration of recommendations from communities most impacted by pollution into
14 environmental and land use decisions.” *Id.*

15 89. The County is in the process of updating its general plan to include an environmental
16 justice element and policies, as required by SB 1000. In July 2021, the County released a draft
17 General Plan update.

18 90. In March 2022, California Attorney General Rob Bonta issued a letter to the County
19 highlighting multiple deficiencies in the draft General Plan update’s implementation of SB 1000.
20 The letter explained that the proposal failed to address the breadth of environmental issues faced by
21 Calwa and Malaga, failed to reduce pollution exposure for disadvantaged communities or buffer
22 existing or new sensitive land uses from many other sources of pollution, and failed to include
23 policies to address housing needs in these communities. The letter further pointed out that the draft
24 General Plan update failed to prioritize improvements and programs that address the needs of
25 disadvantaged communities such as Calwa and Malaga.

26 91. The Attorney General’s letter took particular issue with proposed Policy No. ED-A.7,
27 titled “Locating New Industrial Sites,” which would “encourage the location of new and expanding
28 industry within Fresno County” and provided that the “[i]nitial focus of potential new or redeveloped

1 industrial areas shall include Malaga [and] Calwa....” According to the Attorney General, “[t]he
2 County’s ‘clear commitment’ and ‘unequivocal directive’ to prioritize Malaga and Calwa for new or
3 redeveloped industrial sites in light of the known pollution burdens, health risks and population
4 demographics raises civil rights and environmental justice concerns.” These include likely violations
5 of the California Fair Employment and Housing Act, the duty to Affirmatively Further Fair Housing
6 under Government Code section 8899.50, and inconsistency with the South Central Fresno CERP.

7 **B. The South Fresno State Route 99 Corridor Project and its Adverse Impacts on**
8 **South Fresno**

9 92. Caltrans has recognized that heavy-duty truck traffic flowing from State Route 99 onto
10 local roadways in South Fresno is already resulting in cracked and deteriorating pavement, potholes,
11 and hazardous conditions for local residents.

12 93. Instead of simply addressing the existing issues, Caltrans proposed to initiate a Project
13 that would increase heavy-duty truck capacity from State Route 99 into and around South Fresno
14 communities and allow for further industrial expansion in the area, including next to homes, schools,
15 and other land uses with vulnerable populations.

16 94. Currently, vehicles traveling along State Route 99 access local roadways around
17 Calwa and Malaga by way of “half interchanges” at North, Cedar, and American Avenues; these half
18 interchanges separate on- and off-ramps, limiting traffic flow between the highway and local roads.

19 95. The Project would replace the existing half interchanges with two new and expanded
20 “full” highway interchanges at North and American Avenues. Among other things, the Project will
21 involve expanding each of these interchanges from two to four lanes as well as development of new
22 ramps and grade separations for the purpose of increasing traffic capacity at the crossings and
23 allowing for bidirectional traffic flow at the interchanges. The Project will also involve construction
24 of a new four-lane bridge structure crossing over State Route 99. Caltrans’ Environmental Impact
25 Report (“EIR”) for the Project states that the interchange expansion is needed to increase capacity for
26 heavy-duty truck traffic and other vehicles entering and exiting State Route 99 from local roadways.

27 96. Caltrans is undertaking the Project jointly with the Federal Highway Administration
28 (“FHWA”). As a result, the Project is subject to the National Environmental Protection Act

1 (“NEPA”), 42 U.S.C. § 4321, et seq., which similar to CEQA, requires agencies to disclose and
2 analyze projects’ potential significant environmental impacts and consider alternatives and mitigation
3 measures to avoid or reduce those impacts. Pursuant to a December 23, 2016 Memorandum of
4 Understanding, as extended effective May 27, 2022, between FHWA and Caltrans and entered into
5 under 23 U.S.C. section 327(a)(2)(A) (“NEPA Assignment MOU”), the FHWA has assigned
6 responsibilities for compliance with NEPA with respect to the Project to Caltrans. The NEPA
7 Assignment MOU applies to the Project.

8 97. According to the Project EIR, Caltrans is also pursuing the Project in coordination
9 with the Project sponsors, the Fresno County Transportation Authority (“FCTA”) and the Fresno
10 Council of Governments, as well as “in cooperation” with the City and County. FCTA’s governing
11 board includes elected officials representing the City, County, and other local governments.

12 98. Caltrans entered into Cooperative Agreements with FCTA in which FCTA assumed
13 responsibility for establishing the Project’s scope and securing funding, and Caltrans assumed
14 responsibilities for the development of Project plans, serving as the lead agency under CEQA,
15 obtaining permits, awarding construction contracts, and acquiring and developing rights-of-way
16 required for the Project.

17 99. The Project will channel an estimated \$119-146 million of state, local, and regional
18 funds to build out the new interchanges to further industrialization in South Fresno, rather than
19 support efforts that could repair local roadways and improve bicycle and pedestrian infrastructure.

20 100. Caltrans considered just two build alternatives for each interchange, which differed
21 only in their configuration (for instance, a “spread diamond” versus “partial cloverleaf”
22 configuration). Caltrans did not consider alternatives for the Project that would remediate the current
23 infrastructure without increasing traffic capacity.

24 101. According to Caltrans, the Project is part of an “ultimate route concept” for State
25 Route 99 that would expand the highway from six to eight lanes – a 33 percent increase of road
26 capacity.

27 102. According to the Project EIR the new interchanges are intended to “serve as main
28 points of access for the existing and developing industrial and commercial businesses” in the South

1 Fresno area. This Project is one of dozens of Caltrans projects planned and ongoing in Caltrans
2 District Six to expand traffic flow along State Route 99. As stated in Caltrans' State Route 99
3 Business Plan, the purpose of these interchange projects is to accommodate expanding industrial
4 development and goods movement along State Route 99.

5 103. The EIR identifies that the Project would increase annual average daily traffic
6 volumes at the American Avenue interchange by thousands of vehicles by 2046.

7 104. The EIR's air quality report identifies that each Project alternative would increase
8 vehicle miles traveled "because the additional capacity of the interchanges increases the efficiency of
9 the interchanges and allows more direct access to local areas along [State Route] 99."

10 105. As a result of these changes, the Project would adversely affect air quality in the
11 region and South Fresno in particular by increasing particulate matter pollution. In particular, the
12 Project would increase the total emissions of PM₁₀ at the American Avenue Interchange by 65
13 percent in 2026 and by nearly 842 percent by 2046 (from 0.024 pounds/day at baseline to 0.23
14 pounds per day in 2046). The EIR also identifies a 50 percent increase in PM_{2.5} pollution at
15 American Avenue by 2026.

16 106. PM_{2.5} particles pose a significant health risk to humans because of their ability to
17 penetrate the lungs and enter the bloodstream. Short and long-term exposure to both PM₁₀ and PM_{2.5},
18 especially at high concentrations, can trigger illness, hospitalization, and premature death from
19 respiratory, cardiovascular and other causes.

20 107. DPM is a type of PM_{2.5} comprised of the solid material emitted in diesel exhaust
21 derived from combustion engines in trucks, industrial operations, construction equipment and other
22 sources. CARB has identified DPM as a toxic air contaminant due to its carcinogenic properties.
23 DPM also contributes to other health effects associated with PM_{2.5}.

24 108. NO_x is another form of air pollution emitted from combustion engines and industrial
25 operations. Exposure to NO_x may increase the risk of premature death, cardiopulmonary effects,
26 intensified allergic responses, emergency room visits for asthma, and decreased lung function and
27 growth in children.

28 109. Children, infants, the elderly, and people suffering from heart or lung disease, asthma,

1 or chronic illness are particularly sensitive to the effects of exposure to air pollution. Increased rates
2 of infant mortality, reduced lung function and development, and increased severity of asthma attacks
3 and hospitalization for asthma are among the heightened risks experienced by children and infants
4 compared to adults as a result of air pollution exposure. People of color and people with lower
5 socioeconomic status may also face higher health risks from exposure to particulate matter pollution.

6 110. In addition to operational impacts, the EIR acknowledges that Project construction
7 would cause degradation of air quality while construction activities are ongoing due to release of
8 particulate emissions, including CO, NO_x, volatile organic compounds, PM_{2.5}, PM₁₀, and Toxic Air
9 Contaminants like DPM. Based on Caltrans' proposed construction schedule, Project construction is
10 expected to last for almost four years, from January 2025 through December 2028 (18 or more
11 months at each of the two interchange locations).

12 111. The EIR further identifies a significant increase in emissions of carbon dioxide, a
13 greenhouse gas, due to population growth and commercial and industrial development attributable to
14 the Project. By 2046, carbon dioxide emissions would increase by 3,414 tons per year at the
15 American Avenue interchange and by 4,281 tons per year at the North Avenue interchange.

16 112. Plaintiffs are informed and believe, and on that basis allege, that increased traffic
17 capacity, induced truck and car traffic, increased vehicle miles traveled, induced industrial
18 development, related light, glare, aesthetic, air quality, traffic safety, and public health impacts from
19 the Project would be significantly greater than identified in the EIR. Plaintiffs are informed and
20 believe, and on that basis allege, that these impacts would disproportionately, and in some cases
21 exclusively, impact South Fresno communities and South Fresno roadways utilized by traffic on the
22 American Avenue and/or North Avenue interchanges.

23 113. Plaintiffs are informed and believe, and on that basis allege, that increased traffic
24 capacity and induced truck and car traffic associated with the Project would result in significant noise
25 and ground-borne vibrational impacts, which would negatively affect nearby residential
26 neighborhoods and communities, worsen already significant noise pollution from industrial
27 development, warehouse facilities, highways, and other sources, and contribute to negative public
28 health impacts associated with the Project. Plaintiffs are informed and believe, and on that basis

1 allege, that these impacts would disproportionately, and in some cases exclusively, impact South
2 Fresno communities and South Fresno roadways utilized by traffic that travels on the American
3 Avenue and/or North Avenue interchanges.

4 114. Plaintiffs are informed and believe, and on that basis allege, that the Project will allow
5 for, incentivize, contribute to, and/or expedite increased industrial buildout in and around South
6 Fresno communities, exacerbating existing traffic, noise, odor, air quality, aesthetic, and other
7 environmental, public health, and housing burdens and reducing the land available to meet residents'
8 needs for access to educational opportunities, medical centers, affordable housing, groceries and fresh
9 food, green space, recreational centers, retail and other opportunities. Plaintiffs are informed and
10 believe, and on that basis allege, that these impacts would disproportionately, and in some cases
11 exclusively, impact South Fresno communities located close to the Project Site and South Fresno
12 roadways utilized by traffic that travels on the American Avenue and/or North Avenue interchanges.

13 115. Plaintiffs are informed and believe, and on that basis allege, that construction and
14 operation of the Project would exacerbate South Fresno communities' disconnection from other more
15 affluent neighborhoods with greater access to resources and amenities. Plaintiffs are informed and
16 believe, and on that basis allege, that as a result, the Project will disproportionately negatively impact
17 South Fresno communities compared to Northwest Fresno and Northeast Fresno neighborhoods and
18 the County as a whole by compounding barriers for residents of South Fresno communities to access
19 such resources and amenities.

20 116. As a result of the foregoing, the Project conflicts with State policies and efforts
21 intended to promote and prioritize environmental justice, such as SB 1000, as well as ongoing efforts
22 by the Attorney General and South Fresno residents to ensure that the County's General Plan update
23 aligns with these state requirements and civil rights laws. The Project also conflicts with the AB 617
24 South Central Fresno CERP's goal of reducing South Fresno residents' exposure to unhealthy air
25 emissions from industrial facilities and mobile sources. And by cementing the North Avenue and
26 American interchanges as interchanges designed to facilitate high-volume truck traffic, Petitioners
27 are informed and believe that the Project would undermine implementation of the CERP's truck re-
28 route study by predetermining its outcome.

1 **C. Environmental Review Process, Public Input, and Project Approval**
2 **Draft Environmental Impact Report/Environmental Assessment**

3 117. Caltrans is the public agency with principal responsibility for reviewing the Project
4 under CEQA. Caltrans is also the public agency with principal responsibility for reviewing this joint
5 state/federal highway Project under NEPA, pursuant to the NEPA Assignment Memorandum.

6 118. On March 8, 2019, Caltrans issued a Notice of Preparation that it would prepare a
7 Draft EIR for the Project under CEQA.

8 119. Caltrans issued and circulated the Draft EIR to the public for review and comment
9 under CEQA between October 14, 2021 and December 3, 2021. The Draft EIR specified that the
10 document would also serve as an Environmental Assessment (“EA”) for purposes of NEPA.

11 120. Caltrans did not include technical studies relied on and underlying the Draft EIR in the
12 environmental document or make them publicly available on the Project website. The missing
13 studies include but are not limited to: the Noise Impact Study (2020), the Paleontological Evaluation
14 Report (Feb 2020), the Draft Relocation Impact Study (2020), the Initial Site Assessment (2020), the
15 Historic Resource Evaluation Report (April 2020), the Historic Property Survey Report (May 2020),
16 the Traffic Study (2020), the Location Hydraulics Study and Floodplain Evaluation Report (2018),
17 Community Studies (2018-2022), and a Community Impact Memorandum (2020).

18 121. On November 29, 2021, counsel for Plaintiffs requested that an electronic copy of a
19 Spanish translation of the Draft EIR be made available to the public, and that the comment period be
20 extended to run from the date that the Spanish translation was released.

21 122. Caltrans circulated a Spanish-language version of the Draft EIR for public review and
22 comment from December 15, 2021 to January 28, 2022.

23 123. Despite the numerous barriers to public participation, a number of organizations
24 submitted comments expressing concern with the Project. These included written comments by the
25 District and by a coalition of local community-based organizations and residents, including Plaintiff
26 and Petitioner Fresno BHC. Friends of Calwa hosted meetings with Caltrans on April 22 and August
27 31, 2022, at which residents and staff expressed concerns with the likelihood that the Project would
28 spur more industrial development and generate more truck traffic in the area, worsening air quality

1 and habitability of these communities.

2 124. Comments expressed numerous concerns with the Draft EIR and with Defendants’
3 support for the Project, including but not limited to the following:

4 *Failure to Consider Impacts on Nearby Communities*

5 125. The Draft EIR did not acknowledge the presence of Calwa, Malaga, or any other
6 communities within the Project vicinity, nor did it acknowledge the poor quality of existing
7 environmental conditions in these communities or the particular vulnerability of their residents to
8 added pollution burdens. Rather, the Draft EIR stated that there are “no neighborhoods in or close to
9 the project area,” that “no minority or low-income populations were identified in the project area,”
10 that “no sensitive receptors have been identified for this project,” and that “the closest residential
11 neighborhoods [are] over two miles away” despite multiple communities being located within a 1.5
12 mile radius of the Project.

13 126. The Draft EIR did not acknowledge the presence of schools, places of worship, and
14 other sensitive land uses, in addition to residential neighborhoods, along North Avenue, American
15 Avenue, and other local roads onto which traffic using the Project interchanges flows.

16 127. As a consequence, the Draft EIR failed to record an accurate environmental baseline
17 for the Project or to appropriately consider impacts on sensitive receptors, nearby communities, and
18 environmental justice.

19 *Failure to Analyze Vehicle Miles Traveled*

20 128. CEQA establishes vehicle miles traveled (“VMT”) as the “most appropriate measure
21 of transportation impacts.” CEQA Guidelines § 15064.3(a); see Cal. Pub. Res. Code § 21099(b).

22 129. The California Governor’s Office of Planning and Research requires that, “[f]or any
23 project that increases vehicle travel, explicit assessment and quantitative reporting of the amount of
24 additional vehicle travel should not be omitted from the [CEQA] document.”

25 130. The Draft EIR did not perform a VMT analysis. Instead, the Draft EIR stated that the
26 Project is a “project type [] assumed to not lead to a measurable and substantial increase in vehicle
27 miles traveled” and therefore does not require a VMT analysis under the “Caltrans Policy Memo
28 (September 10, 2020) regarding analysis of transportation impacts under [CEQA] for projects on the

1 State Highway System.” This was so even though the EIR’s air quality analysis pointed out that “the
2 VMT estimated for each of the build alternatives would be slightly higher than for the No Build
3 Alternative because the additional capacity of the interchanges increases efficiency of the
4 interchanges and [allows] more direct access to local areas along [State Route] 99.”

5 131. The Draft EIR did not explain what “project type” the Project falls under pursuant to
6 the Caltrans Policy Memo.

7 132. The Draft EIR did not explain what characteristics of the Project contribute to its
8 unlikelihood to increase vehicle miles traveled.

9 133. The Draft EIR did not explain why Caltrans assumed for purposes of a VMT analysis
10 that the Project would not increase vehicle miles traveled, even as Caltrans identified increases in
11 VMT and traffic capacity in other sections of its environmental analysis.

12 134. Failure to consider and quantify the Project’s VMT impacts infects and invalidates
13 other components of the environmental analysis, including analysis of the Project’s greenhouse gas
14 (“GHG”) emissions, air quality impacts, noise, vibration, light pollution, housing impacts,
15 environmental justice impacts, and public health impacts.

16 *Failure to Fully Consider Cumulative Impacts*

17 135. The Draft EIR purported to perform a cumulative impacts analysis that considered the
18 Project together with similar past, present, and reasonably foreseeable future actions.

19 136. The Draft EIR’s cumulative impacts analysis listed only a handful of “cumulatively
20 considerable projects:” development of the Central Pacific Railroad in the 1870s; construction of the
21 Golden State Highway in 1927, later relocated to its existing site as State Route 99 in 1965; ongoing
22 construction of the California High-Speed rail Project in the Project area; two nearby industrial
23 projects (an Amazon Fulfillment Center and Ulta Beauty Distribution Center); implementation of the
24 2000 Fresno County General Pan and related Specific Plan; and the 2018 Regional Transportation
25 Plan.

26 137. The Draft EIR did not consider in its cumulative impacts analysis similar State Route
27 99 projects, including the 19 capacity-increasing project candidates (two in Fresno County), 45
28 operational improvement project candidates (10 in Fresno County), and three new interchange

1 candidate projects listed in the 2020 Route 99 Business Plan for Caltrans Districts Six and Ten. Nor
2 did Caltrans consider the cumulative impacts of its 2005 Route 99 Corridor Enhancement Master
3 Plan intended to guide public and private sections decisions with the goal of “reliev[ing] congestion
4 and improv[ing] the movement of goods” along State Route 99. It also did not adequately consider
5 cumulative impacts of the Project together with existing and planned industrial projects, such as the
6 planned Fresno County Business and Industrial Campus.

7 *Failure to Adequately Analyze Air Quality Impacts or Conflicts with Air Quality Plans*

8 138. The Draft EIR failed to acknowledge or consider inconsistencies with applicable air
9 quality plans, including the South Central Fresno CERP and other measures to reduce air quality
10 burdens under AB 617. This was so even though the CERP recognized that the majority of air
11 pollution emissions in South Central Fresno come from mobile and industrial sources and identified
12 DPM from mobile sources as “the main contributor to community air toxics health risk” in the area.

13 139. The Draft EIR did not consider the Project’s conflict with CERP Policy HD.11, Heavy
14 Duty Truck Routing, which calls for the District to work with the City and County and with Caltrans
15 to support a Heavy Duty Truck Routing Study to evaluate alternative truck routes. Nor did it
16 consider the possibility of conflicts with the Heavy Duty Truck Routing Study currently in
17 development under the CERP.

18 140. The Draft EIR failed to conduct a reasonably thorough analysis of the Project’s
19 potential, during both construction and operation, to degrade air quality and adversely impact
20 sensitive receptors in the Project vicinity by compounding already severe particulate matter, ozone,
21 and other air pollution. The Draft EIR’s air quality analysis also notably omitted consideration of
22 certain emission categories highlighted in the CERP for reduction, including NO_x.

23 141. In comments to Caltrans, Plaintiff Fresno BHC and others raised concerns with the
24 Draft EIR’s failure to analyze DPM associated with truck and car traffic and industrial development
25 that would occur as a result of the Project or the potential public health impacts of this pollution on
26 sensitive receptors near the Project Site. They also pointed out that the Draft EIR did not consider
27 dust impacts on sensitive receptors from Project construction and operation or emissions resulting
28 from tire wear.

1 142. Because the Draft EIR did not conduct a quantitative VMT analysis, it did not fully
2 consider air quality impacts resulting from increases in VMT caused by the Project.

3 143. The EIR also did not consider indirect air quality impacts associated with industrial
4 buildout in South Fresno communities, which the Project is intended to support.

5 *Failure to Include a Health Risk Assessment and Comply with Indirect Source Rule*

6 144. In its comment on the Draft EIR, the San Joaquin Valley Air Pollution Control District
7 requested that a Health Risk Assessment be performed to evaluate Project-related impacts, including
8 by quantifying potential air pollution emissions from Project operation.

9 145. The District specifically asked that the Health Risk Assessment identify operational
10 emissions of Toxic Air Contaminant pollutants, which pose hazards to human health and which were
11 not assessed by Caltrans in the EIR. Adverse health impacts of Toxic Air Contaminants include
12 damaged organs, birth defects, cancer, immune system damage, neurological damage, and
13 reproductive damage. The District noted the existence of numerous sensitive receptors in the Project
14 area, including residences, a juvenile facility, healthcare facilities, and day-care facilities, all of which
15 could be impacted by such emissions. The District emphasized its strong recommendation that
16 projects resulting in a significant health risk not be approved by the lead agency.

17 146. The District also notified Caltrans in its comment that Caltrans was required to ensure
18 compliance with District Rule 9510 (Indirect Source Rule) in its approval of the Project. The purpose
19 of District Rule 9510 is to reduce NO_x and PM₁₀ emissions associated with construction and
20 operation of development and transportation projects. Because the Project's construction exhaust
21 emissions exceed two tons of NO_x or PM₁₀, the Project is subject to the rule. Caltrans was therefore
22 required to submit an application to the District *prior to* Project approval with documentation
23 supporting an Air Impact Assessment to quantify NO_x and PM₁₀ emissions and ensure appropriate
24 mitigations.

25 *Failures to Comply with State Civil Rights Laws*

26 147. Comments submitted by Plaintiffs' counsel on December 3, 2021 also warned
27 Caltrans that its approval of the Project as proposed and without correcting the Draft EIR's
28 deficiencies conflicts with Caltrans' duties to avoid discrimination in its programs and activities and

1 to affirmatively further fair housing under state civil rights laws. The letter explained that the Project
2 and Caltrans' failure to thoroughly analyze and effectively mitigate environmental impacts would
3 disproportionately adversely impact South Fresno communities of color.

4 148. Plaintiffs, along with other community-based organizations, issued another letter to
5 Caltrans on October 12, 2022 in which they requested that the agency not proceed with the Project.
6 The letter stated that the Project would exacerbate environmental health inequities impacting South
7 Fresno, undercut efforts by CARB and the Attorney General's Office to address these inequities, and
8 conflict with Caltrans' commitments expressed in its 2020 Equity Statement and its duties under civil
9 rights laws. In response, Caltrans issued a letter identifying steps Caltrans had taken to accept public
10 input on the Project and stating that the Project's Final EIR "will address the comments that were
11 submitted during the public review period" of the Draft EIR, which had closed in December 2021.

12 **Final EIR and Project Approval**

13 149. On February 6, 2023, Caltrans filed a Notice of Determination of its approval of the
14 Project, triggering the 30-day statutory deadline under CEQA to challenge the certification of the
15 Final EIR. CEQA Guidelines § 15112(c)(1).

16 150. The Notice of Determination stated that Caltrans approved the Project on January 30,
17 2023. It also linked to a Caltrans website containing the Final EIR/Environmental Assessment, dated
18 "January 2023."

19 151. The Final EIR set forth a new alternative not included or considered in the Draft EIR –
20 a hybrid of Alternatives 1 and 2 for the American Avenue Interchange – which Caltrans identified as
21 the Preferred Alternative along with Alternative 2 for North Avenue. The final EIR failed to analyze
22 multiple categories of environmental impacts for the Hybrid Alternative, including but not limited to
23 a traffic and VMT analysis and air quality analysis.

24 152. In response to comments, the Final EIR defended its decision not to consider impacts
25 on Calwa, Malaga, and other adjacent communities and sensitive land uses like the nearby juvenile
26 detention facility, instead deeming them "outside the project area." And it declined to update the
27 substantive analyses in the EIR to consider impacts on these and other adjacent communities. In
28 support of this finding, the Final EIR reduced the Project area for the environmental justice and

1 community cohesion analysis from two miles in the Draft EIR to 0.5 miles, asserting that the Project
2 area in the Draft EIR was “incorrectly labeled.”

3 153. The Final EIR defended Caltrans’ decision not to conduct a VMT analysis by stating
4 that Project sponsors determined, based on “the project timeline, which is tied to critical funding, and
5 the absence of an established process to complete [VMT] analysis” “to proceed with the
6 recommendation not to implement [VMT] analysis on this project.” The Final EIR did not explain
7 why the Project was subject to a case-by-case determination for VMT analysis.

8 154. The Caltrans Policy Memo sets forth factors that ordinarily require a VMT analysis for
9 projects subject to a case-by-case determination, including “[a] high level of public and stakeholder
10 interest in the project.” The Final EIR did not explain whether this or any other factors that would
11 trigger a VMT analysis apply to the Project, despite concerns with the Project raised to Caltrans by
12 the District, Plaintiffs, other community-based organizations, and residents.

13 155. The Final EIR brushed aside Plaintiffs’ request that Caltrans delay approval of the
14 Project pending completion of the Heavy-Duty Truck Routing Study, asserting in response to
15 comments that the study “is being conducted by the City of Fresno, independent of” the Project.

16 156. The Final EIR dismissed Plaintiffs’ concerns relating to the Project’s potential air
17 quality impacts and their associated public health impacts on the basis of FHWA’s determination and
18 the EPA’s concurrence that the Project would not result in new violations of the Clean Air Act and on
19 the basis that the Project would “benefit traffic circulation.”

20 157. The Final EIR acknowledged that the Project is subject to Rule 9510 but defended its
21 failure to submit an Air Impact Assessment application prior to Project approval, asserting that an
22 application need only be submitted prior to construction. Caltrans ignored the District’s
23 recommendation to condition approval of the Project on demonstration of compliance with District
24 Rule 9510, instead stating that “Caltrans and the construction contractor will work with the [District]
25 to obtain approval of the Air Impact Assessment” but without specifying any timeline for
26 compliance. The Final EIR also set forth a new mitigation measure, HW-7, that purported to make
27 the future Project construction contractor responsible for the Air Impact Assessment.

28 158. The Final EIR set forth new mitigation for significant GHG increases attributable to

1 the Project, including the installation of a vegetative barrier and sidewalk on Cherry Avenue by
2 Orange Center Elementary School, in addition to the installation of one electric charging station
3 proposed in the Draft EIR. The Final EIR describes the vegetative barrier as a “recognized metho[d]
4 of mitigation greenhouse gas emissions” but provides no details about the barrier, such as type of
5 vegetation, size, or time to maturity. And the Final EIR makes no attempt to quantify or otherwise
6 evaluate the extent of GHG reductions likely to result from this or other mitigation.

7 159. Caltrans adopted the new Hybrid Alternative for the American Avenue interchange
8 and Alternative 2 for North Avenue as the Project and certified the Final EIR. Caltrans also adopted
9 a statement of overriding considerations to support its approval of the Project despite “significant and
10 unavoidable” impacts on GHG emissions but failed to explain why these impacts could not be
11 reduced to insignificance through feasible mitigation measures.

12 160. Together with issuance of the Final EIR/Environmental Assessment, Caltrans issued a
13 Finding of No Significant Impact (“FONSI”) for the Project under NEPA, dated January 24, 2023.
14 The FONSI stated that the Hybrid Alternative at American Avenue and Alternative 2 at North
15 Avenue “will have no significant impact on the human environment,” without further analysis or
16 explanation.

17 161. Caltrans did not provide a public comment period on the Final EIR/Environmental
18 Assessment or FONSI, despite requests by Plaintiffs’ counsel.

19 162. After filing of the Notice of Determination, counsel for Plaintiffs contacted Caltrans
20 via email on January 27, 2023, requesting underlying technical studies relied on by the EIR. Caltrans
21 responded on February 13, 2023 with a subset of the documents relied on by the EIR. Upon
22 subsequent request, Caltrans disclosed a further set of studies between February 22 and February 24,
23 2023.

24 **D. Federal District Court Litigation**

25 163. Pursuant to the NEPA Assignment MOU and 23 U.S.C. section 327(d)(1), the Federal
26 courts have exclusive jurisdiction for the compliance, discharge, and enforcement of Caltrans’
27 responsibilities under NEPA with respect to the Project.

28 164. On March 8, 2023, Plaintiffs filed a Verified Petition for Writ of Mandate and

1 Complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Eastern District of
2 California, Fresno Division, against Caltrans and the FHWA alleging violations of CEQA and NEPA
3 relating to approvals of the Project (E.D. Cal. Case No. 1:23-CV-00353 (the “Federal Action”)),
4 invoking federal question jurisdiction over the NEPA claims pursuant to 28 U.S.C. section 1346, 23
5 U.S.C. sections 327(c) and 327(d), and the NEPA Assignment MOU, and invoking supplemental
6 jurisdiction over the CEQA claims pursuant to 28 U.S.C. section 1367(a).

7 165. On May 16, 2023, the District Court entered an Order on stipulation of the Parties
8 allowing Plaintiffs to file an amended petition and complaint by June 22, 2023 and Caltrans and
9 FHWA to file responsive pleadings by August 21, 2023.

10 166. On June 22, 2023, Plaintiffs filed its First Amended Verified Petition for Writ of
11 Mandate and Complaint for Declaratory and Injunctive Relief in the Federal Action. The amended
12 petition and complaint alleged violations by Caltrans and its Director, Tony Tavares, in his official
13 capacity, of Government Code sections 11135 and 8899.50, in addition to violations of CEQA and
14 NEPA. It also alleged that the U.S. Department of Transportation, FHWA, and their respective
15 Secretary and Administrator, in their official capacity, violated the transportation conformity
16 provisions of the federal Clean Air Act, 42 U.S.C. section 7506 and its implementing regulations at
17 40 C.F.R. Part 93, by failing to properly consult with the public and appropriate agencies in making
18 their determination that the Project conforms with state plans to achieve national ambient air quality
19 standards for particulate matter and ozone pollution and by failing to conduct a “hot spot” analysis of
20 the Project’s localized impacts from particulate matter pollution on the areas surrounding the
21 interchange.

22 167. The parties met and conferred on their joint scheduling report on July 20, 2023, as
23 required by the district court’s Order Setting Mandatory Scheduling Conference dated May 16, 2023.
24 During that meet-and-confer, Caltrans informed Plaintiffs for the first time of its intention to file a
25 motion to dismiss Plaintiffs’ state law claims on the grounds that Caltrans was immune from suit in
26 federal court on the claims under the Eleventh Amendment of the United States Constitution.

27 168. On July 27, 2023, the Parties continued to meet and confer regarding the joint
28 scheduling report and the asserted grounds for Caltrans’ anticipated motion to dismiss. As to

1 Eleventh Amendment immunity, Plaintiffs pointed out that sovereign immunity can be waived by
2 State consent and noted, among other things, that Caltrans has repeatedly consented to suit in federal
3 court in cases involving both CEQA and NEPA claims. Caltrans' counsel requested citations to prior
4 cases in which it had consented to federal jurisdiction over its CEQA claims. Plaintiffs' counsel also
5 explained that Plaintiffs intended to pursue their state law claims in state court if those claims were
6 dismissed from the Federal Action but would be required to maintain its Clean Air Act and NEPA
7 claims in federal court due to the federal court's exclusive jurisdiction. This would result in
8 separately litigating Plaintiffs' state claims in state court and related NEPA and Clean Air Act claims
9 in federal court and a duplicative and inefficient process that would result in a significant waste of
10 judicial resources.

11 169. On July 28, 2023, Plaintiffs sent Caltrans' counsel a letter providing Caltrans with
12 further detail regarding the legal and practical bases to proceed with all claims together in a single
13 federal court case. In response to Caltrans' request for examples of cases in which Caltrans has
14 previously defended against both CEQA and NEPA claims in federal court, Plaintiffs referred
15 Caltrans to, for instance: *City of Carmel-By-The-Sea et al. v. U.S. Dept. of Transp. et al.*, Case No.
16 CIV 92-20002 SW, 1994 WL 190839 (N.D. Cal. 1994); *City of South Pasadena v. Volpe et al.*, Case
17 No. CV-73-81-EC, 418 F. Supp. 854 (C.D. Cal. 1976); *Ralph W. Keith et al. v. John A. Volpe et al.*,
18 Civ. No. 72-355-HP, 352 F.Supp.1324 (C.D. Cal. 1972). Plaintiffs reiterated that requiring Plaintiffs
19 to litigate the state law claims against Caltrans in state court and the related federal claims against
20 Caltrans and federal defendants in federal court would result in substantial waste of judicial and the
21 parties' resources, scheduling challenges for all parties, delayed resolution of the merits, development
22 and lodging of duplicative administrative records, and potentially conflicting results. Plaintiffs also
23 explained that maintaining two lawsuits to pursue related claims would impose a severe hardship on
24 Plaintiffs – community-based non-profit organizations with limited resources which advocate for and
25 are staffed by members of the disadvantaged and marginalized communities of color impacted by the
26 challenged Project and Caltrans' long history of inequitable decision-making in transportation
27 infrastructure. Plaintiffs' July 28, 2023 letter to Caltrans is attached as Exhibit C hereto.

28 170. On August 9, 2023, Caltrans' counsel sent Plaintiffs' counsel an email requesting a

1 meet-and-confer on Plaintiffs' July 28 letter. At the meet-and-confer on August 10, 2023, Caltrans'
2 counsel informed Plaintiffs that Caltrans appreciated the concerns and rationale articulated in
3 Plaintiffs' July 28, 2023 letter and was considering Plaintiffs' request to waive Eleventh Amendment
4 defenses. Caltrans' counsel further requested that Plaintiffs provide Caltrans with a proposal for how
5 it could effectuate a case-specific waiver.

6 171. On August 15, 2023, Plaintiffs' counsel sent Caltrans' counsel by email a proposed
7 agreement memorializing Caltrans' consent to federal jurisdiction for the adjudication of the state law
8 claims in the Federal Action, together with proposed language for the joint scheduling report
9 reflecting the agreement.

10 172. On August 17, 2023, following further meet-and-confer exchanges, Plaintiffs' counsel
11 sent Caltrans' counsel a letter reasserting the grounds for litigating state and federal claims
12 challenging the same Project in a single action and reasserting Plaintiffs' willingness to confer in
13 good faith on options for Caltrans to effectuate a case-specific waiver of sovereign immunity.
14 Plaintiffs' August 17, 2023 letter is attached as Exhibit D hereto.

15 173. The afternoon of August 17, 2023, following further meet-and-confer exchanges,
16 Caltrans' counsel sent a letter by email to Plaintiffs' counsel confirming that she was discussing
17 Eleventh Amendment waiver with her clients. Caltrans' August 17, 2023 letter is attached as Exhibit
18 E hereto. Later that day, Caltrans and Plaintiffs conducted a meet-and-confer, at which Plaintiffs'
19 counsel further confirmed that she was continuing to discuss Eleventh Amendment waiver with her
20 clients.

21 174. On August 21, 2023, Caltrans filed a motion to dismiss Plaintiffs' NEPA and state law
22 claims. That same day, Caltrans' counsel sent Plaintiffs' counsel a letter by email stating that
23 Caltrans would not consent to federal jurisdiction or waive its sovereign immunity from suit in the
24 Federal Action for the state law claims. Caltrans' August 21, 2023 letter is attached as Exhibit F
25 hereto.

26 175. On August 22, 2023, Plaintiffs' counsel sent Caltrans' counsel an email requesting to
27 meet and confer regarding Plaintiffs' state law claims in light of Caltrans' motion to dismiss. Having
28 received no response, Plaintiffs' counsel renewed this request with Caltrans' counsel on August 24,

1 2023. On August 25, 2023, Caltrans' counsel responded proposing times for the meet-and-confer.
2 Due to scheduling conflicts, the meet-and-confer could not take place until August 31, 2023.

3 176. On August 31, 2023, counsel for Plaintiffs and Caltrans participated in a meet-and-
4 confer during which Plaintiffs' counsel informed Caltrans that having assessed its motion and in light
5 of its unwillingness to consent to federal jurisdiction to allow the state and federal claims to be heard
6 in a single case, Plaintiffs would move their state law claims to state court and recommended that the
7 parties enter a stipulation to efficiently effect dismissal of the state law claims. Caltrans' counsel
8 stated that she would send Plaintiffs a draft stipulation. That same day, Plaintiffs confirmed this
9 discussion by email, and Caltrans approved language reflecting for inclusion in the joint scheduling
10 report reflecting that Caltrans would be amenable to entering into a stipulation for voluntary
11 dismissal of Plaintiffs' state law claims from the Federal Action.

12 177. On Saturday, Caltrans' counsel sent Plaintiffs' counsel a draft stipulation to dismiss
13 the state law claims with prejudice. On September 6 and 7, 2023, Plaintiffs' counsel sent to Caltrans'
14 counsel their proposed revisions to the stipulation, which would clarify, among other things, that the
15 dismissal is not a final determination on the merits and would be without prejudice and without
16 preclusive effect on adjudication of the state law claims in state court.

17 178. On September 7, 2023, counsel for Caltrans sent Plaintiffs' counsel an email
18 expressing concerns as a general matter with the scope of requested revisions to Caltrans' proposed
19 stipulation but without providing edits or otherwise indicating whether Caltrans would agree to the
20 operative terms other than the tolling language.

21 179. The morning of September 8, 2023, counsel for Plaintiffs sent an email to counsel for
22 both federal and state defendants recirculating the draft stipulation and proposed order, requesting
23 edits or approvals as soon as possible to avoid Plaintiffs' need to move the court for leave to amend
24 or other relief, and noting Plaintiffs' availability for a meet-and-confer to resolve any disputes on the
25 manner of effecting dismissal without prejudice. The email reiterated that Plaintiffs' NEPA claims
26 are subject to the exclusive jurisdiction of the federal court and therefore could not be refiled in state
27 court and that Federal Rule of Civil Procedure 41(a) does not allow Plaintiffs to dismiss only the state
28 law claims against Caltrans without stipulation of the parties. Plaintiffs further reiterated that

1 dismissal should have the effect of a Rule 41(a) dismissal – that it be without prejudice and not
2 constitute a final determination on the merits of the state law claims.

3 180. The afternoon of Friday September 8, 2023, counsel for Caltrans responded by email
4 objecting to the tolling language in the revised stipulation and certain language regarding the
5 environmental justice impacts of the project in the recitals. Counsel for federal defendants also
6 responded by email clarifying that federal defendants would not object to dismissal of the state law
7 claims without prejudice. Plaintiffs’ counsel informed opposing counsel by email that, due to the
8 filing deadline for their opposition to Caltrans’ motion that same day, an outage affecting the
9 CM/ECF federal electronic filing system, and the need to discuss and obtain approvals from clients,
10 Plaintiffs would require until the beginning of the following week to circulate a revised stipulation
11 taking into account Caltrans’ objections and federal defendants’ recommendations.

12 181. On September 12, 2023, Plaintiffs circulated a revised stipulation that attempted to
13 address concerns raised by Caltrans and federal defendants. Federal defendants approved the revised
14 stipulation on September 15, 2023 contingent on Caltrans’ approval.

15 182. Following additional exchanges attempting unsuccessfully to resolve any dispute over
16 the language of the stipulation, Plaintiffs provided Defendants notice on September 20, 2023 that
17 they would proceed to file the instant ex parte application for dismissal of the state law claims
18 without prejudice. As counsel for Caltrans had informed Plaintiffs that they would be wholly
19 unavailable for any discussion until September 25, 2023, Plaintiffs requested a final meet-and-confer
20 on September 25, 2023 to attempt to avoid the need for Court intervention and informed Defendants
21 that they would move the Court for ex parte relief on September 26, 2023 if a stipulation could not be
22 reached to avoid further prejudice to Plaintiffs’ ability to have their state law claims heard in an
23 available forum.

24 183. On September 25, 2023, counsel for Caltrans and Plaintiffs held a meet-and-confer in
25 advance of Plaintiffs’ ex parte application. At the meet-and-confer, Caltrans requested that Plaintiffs
26 draft an alternative stipulation for leave to amend the complaint to remove the state law claims.
27 Plaintiffs circulated the proposed stipulation to Caltrans that same day.

28 184. On September 27, 2023, Caltrans responded to Plaintiffs with a revised stipulation

1 removing language that would clarify that amendment would not prejudice Plaintiffs’ ability to refile
2 the state law claims in a competent court and subsequently confirmed that it would not agree to
3 language clarifying that the stipulation would effect dismissal without prejudice.

4 185. On September 28, 2023, having exhausted efforts to resolve this issue without Court
5 intervention, Plaintiffs notified Defendants that they would proceed with filing an ex parte
6 application for dismissal of state law claims without prejudice. Plaintiffs filed the ex parte
7 application with the district court on September 29, 2023 and noticed the application for hearing at
8 9:00 AM on October 2, 2023.

9 **VI. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

12 186. Plaintiffs incorporate herein by reference the allegations contained in the foregoing
13 paragraphs.

14 187. Caltrans’ failure to satisfy its environmental review and disclosure obligations under
15 CEQA constitutes a prejudicial abuse of discretion and is actionable under California Public
16 Resources Code sections 21168 or in the alternative section 21168.5, as well as California Code of
17 Civil Procedure section 1094.5 or in the alternative section 1085.

18 188. Plaintiffs have a clear, present, and beneficial right to the proper performance by
19 Caltrans of its duties alleged herein, and Plaintiffs will suffer irreparable harm for which there is no
20 plain, speedy, or adequate remedy unless the Court grants the requested writ of mandate.

21 189. Caltrans violated CEQA by certifying a legally deficient EIR and by approving the
22 Project without adequate environmental review, including but not limited to the following defects:

23 **Inadequacy of Environmental Impact Report**

24 190. Caltrans failed to “include a description of the physical environmental conditions in
25 the vicinity of the project” that reflects conditions “as they exist at the time the notice of preparation
26 is published.” CEQA Guidelines § 15125(a), (a)(1). Among other things, the EIR unlawfully failed
27 to acknowledge the presence of numerous proximate communities, residences, schools, places of
28 worship, and thousands of sensitive receptors that could be impacted by the Project, or to disclose the

1 unique vulnerabilities of adjacent disadvantaged communities. The incomplete and inaccurate
2 baseline description infects and invalidates the entirety of the EIR’s environmental analysis.

3 191. Caltrans failed to adequately consider the full scope of the Project’s direct and indirect
4 effects on the environment. Among other shortcomings, Caltrans failed to adequately consider and
5 disclose the Project’s indirect effects on air quality and other environmental impacts from industrial
6 buildout (including but not limited to buildout associated with the Fresno County Business and
7 Industrial Campus) and traffic that will be induced by the Project, despite Caltrans’ knowledge of
8 plans for future industrial buildout and other commercial expansion in South Fresno. CEQA
9 Guidelines § 15126.2(a).

10 192. Caltrans failed to adequately identify and analyze cumulative effects of the Project by
11 ignoring its incremental effects “in connection with the effects of past projects, the effects of other
12 current projects, and the effects of probable future projects.” CEQA Guidelines §§ 15065(a)(3),
13 15130(a). The EIR’s cumulative impacts analysis considered only around seven projects and plans,
14 one of which dates back to 1870 and another to 1927. It wholly ignored numerous closely related
15 past, present, and probable future projects, including related Caltrans District Six highway expansion
16 activities (over a dozen of which are in Fresno County alone), the Fresno County Business and
17 Industrial Campus, and all but two industrial development projects in the Project area. As to the
18 related projects it did consider, the cumulative impacts analysis was conclusory and lacked reasoning,
19 analysis, or supporting documentation.

20 193. Caltrans failed to present quantitative VMT information in its transportation analysis
21 as required by Public Resources Code section 21099(b) and CEQA Guidelines sections 15064.3(a)
22 and 15007(d). Indeed, Caltrans failed to perform any VMT analysis at all even though the EIR’s air
23 quality analysis pointed out that “the VMT estimated for each of the build alternatives would be
24 slightly higher than for the No Build Alternative because the additional capacity of the interchanges
25 increases efficiency of the interchanges and [allows] more direct access to local areas along [State
26 Route] 99.”

27 194. Caltrans failed to comply with the requirements for conducting a VMT analysis under
28 Caltrans’ September 10, 2020 Memorandum regarding Caltrans Policy on Transportation Impact

1 Analysis and CEQA Significance Determinations for Project on the State Highway System.

2 195. Caltrans failed to adequately analyze the Project’s impacts on important sources of air
3 pollution emissions impacting nearby communities, including NO_x, dust, and emissions associated
4 with tire wear, as well as pollution resulting from further industrial buildout facilitated by the Project.

5 196. The EIR’s discussion of construction and operational impacts of the Project on air
6 quality, dust, aesthetic impacts, light and glare, noise, and vibration, among other impacts, is
7 inadequate, conclusory, and lacking substantial evidentiary support.

8 197. Caltrans failed to adequately analyze the Project’s air quality impacts from NO_x and
9 PM₁₀ by refusing to submit documentation for and undertake the Air Quality Assessment required by
10 District Rule 9510 prior to Project approval.

11 198. Caltrans failed to adequately discuss the inconsistencies between the Project and State
12 laws and local air quality implementation plans. CEQA Guidelines § 15125(d). For example, the
13 EIR fails to evaluate the Project’s consistency with the CERP. Likewise, Caltrans failed to discuss
14 the conflict between the Project and other land use plans and policies under development, including
15 but not limited to the pending updates to the County of Fresno General Plan (including environmental
16 justice policies to reduce industrialization and polluting land uses in South Fresno).

17 199. The EIR impermissibly defers developing the details of mitigation measures to reduce
18 GHG impacts, including details regarding installation of a vegetative barrier. CEQA Guidelines
19 § 15126.4(a)(1)(B). By failing to set forth details regarding when and by whom the vegetation
20 barrier will be installed, the EIR also impermissibly fails to ensure that mitigation will be
21 implemented before adverse impacts occur.

22 200. Mitigation measure HW-7 in the Final EIR impermissibly defers developing details of
23 mitigation for adverse air quality impacts from NO_x and PM₁₀ and fails to ensure that mitigation will
24 be timely implemented before construction-related air quality impacts occur. *Id.*

25 201. Caltrans failed to make adopted mitigation measures, including mitigation for GHG
26 impacts, NO_x, and PM₁₀, “fully enforceable through permit conditions, agreements, or other legally-
27 binding instruments.” *Id.* § 15126.4(a)(2). Among these shortcomings, Caltrans impermissibly
28 outsourced Rule 9510 compliance to a third-party contractor, and it failed to condition Project

1 approval on or otherwise adopt legally-binding instruments to ensure Rule 9510 compliance and
2 development of a vegetative barrier and other mitigation to offset Project-related GHG emissions.

3 **Inadequacy of Statement of Overriding Considerations**

4 202. Caltrans unlawfully approved the Project despite substantial and unmitigated GHG
5 impacts without evaluating whether feasible mitigation could be developed and implemented to
6 reduce GHG impacts to insignificance.

7 203. Caltrans failed to support the adopted Statement of Overriding Considerations with
8 substantial evidence in the record. The findings do not provide the reasoning or analytic route from
9 facts to conclusions, as required by law. CEQA Guidelines § 15093(b).

10 **Failure to Provide for Meaningful Public Participation**

11 204. Caltrans failed to adequately evaluate and respond to comments received on the Draft
12 EIR and failed to offer a good faith, adequately reasoned analysis in its responses. For instance,
13 among other shortcomings, Caltrans did not: adequately explain its failure to acknowledge the
14 existence of thousands of residents and sensitive land uses within the vicinity of the Project or its
15 decision to narrow the Project area in the Final EIR to 2 miles; adequately explain its decision not to
16 require compliance with Indirect Source Rule 9510; or adequately explain its decision not to conduct
17 a VMT analysis for the Project. Cal. Pub. Res. Code § 21091(d); CEQA Guidelines § 15088(a), (c).

18 205. Caltrans failed to adequately respond to major environmental issues raised in
19 comments, including issues related to air quality and health concerns raised by the San Joaquin Air
20 Pollution Control District. CEQA Guidelines § 15088(c). In particular, Caltrans failed to provide
21 reasoning and data to support its conclusion that a Health Risk Assessment was not needed for the
22 Project.

23 206. Caltrans failed to make technical studies relied on and incorporated into the EIR and
24 data underlying the findings and conclusions in the EIR “readily available for public examination.”
25 CEQA Guidelines § 15147. For instance, Caltrans failed to post any technical appendices to the EIR
26 on the Project website or make them otherwise available for public examination through state
27 clearinghouses or other public forums either in English or in Spanish, the language spoken by a
28 majority of residents who will be impacted by the Project.

1 this mission because increased truck traffic, noise, and pollution degrades school conditions and
2 conditions for children travelling to and from schools, including walkability to schools. Plaintiffs’
3 will face more and almost insurmountable obstacles to the advancement of their mission in regards to
4 education.

5 214. The Project will degrade environmental quality, worsen public health outcomes,
6 reduce opportunities for the development of public and private amenities and housing, and negatively
7 impact the quality of housing and residents’ use and enjoyment of housing, and will perpetuate,
8 contribute to, and/or exacerbate racial segregation in Calwa, Malaga and other South Fresno
9 communities surrounding the Project Site by allowing, facilitating, and/or inducing increased
10 industrial development and truck and car traffic on roadways in and near these communities and
11 neighborhoods.

12 215. These harms will disproportionately adversely impact Latino/a/e and Black residents,
13 members of other racial and ethnic groups, members of certain national origins, children, and other
14 protected classes compared to residents of Fresno County and the State of California as a whole, and
15 other communities in Northeast and Northwest Fresno near interchanges in violation of Government
16 Code 11135.

17 216. Caltrans has not engaged in an analysis of the Project’s impacts on Latino/a/e or Black
18 residents, children, or members of other protected classes. Rather, Caltrans refused to complete such
19 an analysis because it determined that there “are no populations within the project area,” despite
20 CARB’s recognition that the area surrounding the Project Site includes communities which are
21 among the most impacted by air pollution statewide and its designation of the area for special
22 protections from air pollution exposures.

23 217. Caltrans’ actions and omissions, as alleged, will have a predictably discriminatory
24 effect and discriminate based on race, ethnicity, and age in that they perpetuate, contribute to,
25 exacerbate, and/or result in the degradation of the environment in communities disproportionately
26 comprised of these protected classes.

27 218. This degradation of the environment results in poor public health outcomes,
28 inadequate access to public and private amenities, and patterns of segregation based on race,

1 ethnicity, and/or age for the communities Plaintiffs serve.

2 219. This degradation of the environment impacts housing terms as it adversely affects the
3 ability of families to use and enjoy their homes. The exacerbation of adverse environmental
4 conditions in South Fresno caused by Caltrans' action and inactions will also negatively impact the
5 potential for development of housing and other resources necessary to a healthy and safe environment
6 and a thriving South Fresno. The Project as designed will worsen and perpetuate the environmental
7 burdens and housing and other resource disparities experienced by current and future residents in the
8 Project area.

9 220. Plaintiffs have had to and will have to continue to use their resources, including staff
10 time, to inform and protect South Fresno community members about the adverse impacts from the
11 Project and to advocate to avoid and/or reduce those impacts instead of using their resources to
12 improve public safety and health outcomes and access to other amenities and services in South
13 Fresno.

14 221. Plaintiffs will suffer irreparable injury via the frustration of their missions and the
15 diversion of their resources as a result of Defendants' unlawful acts and omissions unless enjoined.
16 The injuries suffered are not easily quantified or compensable. No monetary damages or other legal
17 remedy could adequately compensate Plaintiffs for the irreparable harm that would result from
18 Caltrans' construction and operation of the Project.

19 222. An actual controversy exists between Plaintiffs and Defendant Caltrans as to whether
20 Defendant Caltrans has violated and/or is imminently threatening to violate the law.

21 223. Unless enjoined, Caltrans will violate, or continue to violate, Government Code
22 section 11135, adversely impacting Plaintiffs, residents of Calwa, Malaga and other South Fresno
23 communities surrounding the Project Site, and other members of the public and protected classes
24 under Government Code section 11135.

25 224. Plaintiffs are directly and beneficially interested in Defendants' compliance with all
26 applicable provisions of law and with all legal duties set forth herein.

27 225. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.
28

1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CALIFORNIA’S DUTY TO AFFIRMATIVELY FURTHER FAIR**
3 **HOUSING**

4 **Cal. Govt. Code § 8899.50; Cal. Code Civ. Proc. § 1085**

5 226. Plaintiffs incorporate herein by reference the allegations contained in the foregoing
6 paragraphs.

7 227. California Government Code section 8899.50(b) requires public agencies in
8 California, including State agencies, to administer their programs and activities relating to
9 community development in a manner that affirmatively furthers fair housing, including by addressing
10 significant barriers to opportunities and replacing segregated living patterns with balanced and
11 integrated living patterns.

12 228. Caltrans is subject to clear, mandatory duties and prohibitions imposed by section
13 8899.50.

14 229. The Project will degrade environmental quality, worsen public health outcomes,
15 reduce opportunities for the development of public and private amenities and housing, and negatively
16 impact the quality of housing and residents’ use and enjoyment of housing and other amenities and
17 resources, and it will perpetuate, contribute to, and/or exacerbate racial segregation in Calwa, Malaga
18 and other South Fresno communities surrounding the Project Site by allowing, facilitating, and/or
19 inducing increased industrial development and truck and car traffic on roadways in and near these
20 communities and neighborhoods in contradiction to the requirement to take actions to overcome
21 patterns of segregation and address disparities in access to opportunities in all activities related to
22 community development. These harms will disproportionately adversely impact Latino/a/e and
23 Black residents, children, and other protected classes compared to residents of Fresno County and the
24 communities in Northeast and Northwest Fresno near interchanges.

25 230. Caltrans has not engaged in an analysis of the Project’s impact on Latino/a/e or Black
26 residents or children or based on residents’ membership in other protected classes. Rather, Caltrans
27 refused to complete such an analysis because it determined that there “are no populations within the
28 project area,” despite CARB’s recognition of the area surrounding the Project Site as including

1 communities which are among the most impacted by air pollution statewide and designation of the
2 area for special protections from air pollution exposures. These actions and omissions are
3 inconsistent with Caltrans' duty to affirmatively further fair housing and violates the law's mandate
4 that the agency "take no action that is materially inconsistent with its obligations to affirmatively
5 further fair housing." Cal. Govt. Code § 8899.50(b)(1).

6 231. Caltrans' actions and omissions, as alleged, have a discriminatory effect and
7 discriminate based on race, ethnicity, and age in that they perpetuate, contribute to, exacerbate, and/or
8 result in the degradation of the environment and worsen public health outcomes for people living
9 proximate to the Project.

10 232. This degradation of the environment impacts housing terms as it adversely affects the
11 ability of families to use and enjoy their homes. The exacerbation of adverse environmental
12 conditions in South Fresno caused by Caltrans' actions and omissions will also negatively impact the
13 potential for development of housing and other resources necessary to a healthy and safe environment
14 and a thriving South Fresno. As a result, Caltrans' actions and omissions, as alleged herein,
15 perpetuate, reinforce, and exacerbate patterns of segregation and disparities in access to opportunity
16 based on race, ethnicity, and age.

17 233. Plaintiffs are informed and believe, and on that basis allege, that Caltrans has failed to
18 take actions to affirmatively further fair housing in South Fresno communities by failing to
19 implement commitments contained in its Racial Equity Action Plan, including policies to adopt a
20 District Six Equity Strategic Action Plan by Fall 2021 and to convene a District Six Equity Advisory
21 Committee by Spring 2022.

22 234. Plaintiffs are informed and believe, and on that basis allege, that Defendant Caltrans
23 violated its duty to affirmatively further fair housing by failing to take meaningful actions to remove
24 barriers to fair housing and access to opportunity and to undo patterns of segregation, including
25 engaging in activities such as: supporting the improvement of transportation alternatives that enhance
26 mobility within South Fresno and between South Fresno and other areas, such as by improving
27 walking, bicycling, and public transportation options in South Fresno; and seeking and responding to
28 input from South Fresno residents and other state agencies to redress environmental harms,

1 disinvestment, and segregation impacting those communities and neighborhoods.

2 235. Plaintiffs bring this request for a writ of mandate in the public's interest and have a
3 direct and beneficial interest in Caltrans' compliance with its duties, as set forth herein.

4 236. Unless compelled by this Court to comply with its legal duties, Caltrans will continue
5 to refuse to carry out and act consistently with its duties pursuant to Government Code section
6 8899.50 and will continue to violate the law.

7 237. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.

8 **VII. REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs request that the Court grant the following relief:

- 10 1) A peremptory writ of mandate commanding Defendant Caltrans to:
- 11 a. Vacate and set aside the certification of the EIR, approvals of the Project, and any
12 and all approvals rendered pursuant to and/or in furtherance of all or any part of
13 the Project and remand to the agency;
- 14 b. Act consistently with its duty to affirmatively further fair housing in its community
15 development activities pursuant to California Government Code section 8899.50
16 including taking affirmative steps to remove patterns of segregation and
17 discontinuing the Project.
- 18 2) For declaratory judgment that Defendant Caltrans' policies, practices, approvals, and
19 conduct regarding this Project:
- 20 a. Violate CEQA;
- 21 b. Violate Plaintiffs' rights under section 11135 of the California Government Code.
- 22 5) Issue a preliminary and permanent injunction ordering Defendant Caltrans to cease
23 actions which discriminate against people based on their race, ethnicity, and/or age by
24 approving and funding this Project.
- 25 6) Issue a preliminary and permanent injunction ordering Caltrans to cease constructing
26 and operating the Project, and from taking any action to implement, fund, or initiate any
27 portion or aspect of the Project, unless and until it complies with CEQA, Government
28 Code section 11135, and Government Code section 8899.50.

1 7) Award Plaintiffs their reasonable attorneys' fees, costs, expenses, and disbursements
2 associated with this action.

3 8) Grant Plaintiffs such additional relief as the Court may deem just and proper.
4

5 Respectfully submitted,
6

7 DATED: October 2, 2023

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

8
9
10 By: /s/ Stephanie L. Safdi

Stephanie L. Safdi
Rica V. Gacia

11
12 DATED: October 2, 2023

LEADERSHIP COUNSEL FOR JUSTICE AND
ACCOUNTABILITY

13
14
15 By: /s/ Ashley E. Werner

Ashley E. Werner

16
17
18 DATED: October 2, 2023

PUBLIC INTEREST LAW PROJECT

19
20 By: /s/ Valerie Feldman

Valerie Feldman

21
22 Attorneys for Plaintiffs and Petitioners
23 FRIENDS OF CALWA, INC. and FRESNO
24 BUILDING HEALTHY COMMUNITIES
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VERIFICATION

I, Sandra Celedon-Castro, am the President and Chief Executive Officer (CEO) of Fresno Building Healthy Communities, which is a non-profit organization and party to this action. I am authorized to make this verification for and on behalf of Plaintiffs and Petitioners, and I make this verification for that reason. I hereby certify that I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and the contents thereof are true and accurate to the best of my knowledge and belief.

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

Executed on October 2, 2023, at Fresno, California.



Sandra Celedon-Castro
FRESNO BUILDING HEALTHY COMMUNITIES

EXHIBIT A

October 2, 2023

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 725-8571
Fax 650 723-4426
www.law.stanford.edu

Via U.S. Mail

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

Re: Friends of Calwa, Inc. and Fresno Building Healthy Communities v. California Department of Transportation and Director Tony Tavares et al.

Dear Attorney General Rob Bonta,

Enclosed please find a copy of the Verified Petition for Writ of mandate and Complaint for Declaratory and Injunctive Relief ("Complaint") in the above-captioned action. Plaintiffs and Petitioners Friends of Calwa, Inc. and Fresno Building Healthy Communities filed suit against the California Department of Transportation and Director Tony Tavares, in his official capacity, (collectively, "Caltrans") for failure to observe the requirements of the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"), and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in Caltrans' decision to approve the South Fresno State Route 99 Corridor Project on January 30, 2023 and certify the Environmental Impact Report for this Project, as noticed in Caltrans' Notice of Determination dated February 6, 2023. Additional civil rights claims are made against Caltrans under California Government Code sections 11135 and 8899.50.

A copy of the Complaint is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388.

Sincerely yours,



Stephanie L. Safdi
Rica V. Garcia

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

*Attorneys for Friends of Calwa, Inc. and Fresno
Building Healthy Communities*

PROOF OF SERVICE

At the time of service, I was over 18 years of age **and not a party to this action**. I am employed in the County of Santa Clara, State of California. My business address is 559 Nathan Abbot Way, Stanford CA 94305

On October 2, 2023, I served true copies of the following document(s) described as:

NOTICE OF FILING CEQA COMPLAINT

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

on the parties in this action as follows:

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

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the person at the address listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the Stanford Environmental Law Clinic's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on October 2, 2023 at Stanford, California.



Ana Villanueva

EXHIBIT B

September 29, 2023

Environmental Law Clinic

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 725-8571
Fax 650 723-4426
www.law.stanford.edu

Via Electronic Mail and U.S. Mail

Tony Tavares
Director
California Department of Transportation
1120 North Street
Sacramento, CA 95814

John Thomas
Senior Environmental Planner
California Department of Transportation, District 6
2015 E. Shields Avenue, Suite 100
Fresno, CA 93726
John.q.thomas@dot.ca.gov

Cassandra Hoff
Deputy Attorney
Caltrans – Legal Division
P.O. Box 1438
1120 N Street, MS 57
Sacramento, CA 95812-1438
Cassandra.hoff@dot.ca.gov

Re: South Fresno State Route 99 Corridor Project (SCH# 2019039121)

Dear Director Tavares, Mr. Thomas, and Ms. Hoff,

This letter is to notify you that Fresno Building Healthy Communities and Friends of Calwa, Inc. will file suit in Fresno County Superior Court against the California Department of Transportation (“Caltrans”) for failure to observe the requirements of the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”), and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in Caltrans’ decision to approve the South Fresno State Route 99 Corridor Project on January 30, 2023 and certify the Environmental Impact Report for this Project, as noticed in Caltrans’ Notice of Determination dated February 6, 2023. Additional civil rights claims are made against Caltrans as well as Director Tavares, in his official capacity, under California Government Code sections 11135 and 8899.50. This notice is given pursuant to Public Resources Code section 21167.5.

Sincerely yours,



Stephanie L. Safdi
Rica V. Garcia

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

*Attorneys for Friends of Calwa, Inc. and Fresno
Building Healthy Communities*

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is 559 Nathan Abbott Way, Stanford CA 94305.

On September 29, 2023, I served true copies of the following document(s) described as:

NOTICE OF INTENT TO SUE LETTER

on the parties in this action as follows:

Tony Tavares
Director
California Department of
Transportation
1120 North Street
Sacramento, CA 95814

via U.S. Mail

John Thomas
Senior Environmental
Planner
California Department of
Transportation, District 6
2015 E. Shields Avenue,
Suite 100
Fresno, CA 93726
John.q.thomas@dot.ca.gov

via Electronic Mail

Cassandra Hoff
Deputy Attorney
Caltrans – Legal Division
P.O. Box 1438
1120 N Street, MS 57
Sacramento, CA 95812-1438
Cassandra.hoff@dot.ca.gov


via Electronic Mail

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the Stanford Environmental Law Clinic's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address anamv@stanford.edu to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 29, 2023 at Stanford, California.



Ana Villanueva

EXHIBIT C

July 28, 2023

Via Email and U.S. Mail

Cassandra Hoff
California Department of Transportation
Legal Division – MS 57
1120 N Street, Sacramento CA 95814

Re: *Friends of Calwa et al. v. California Department of Transportation et al.*
Eastern District of California, Case No. 1:23-cv-00353-JLT-EPG

Dear Ms. Hoff,

Thank you for your July 21, 2023 letter and for meeting and conferring to discuss the position of your client, Defendant California Department of Transportation (“Caltrans”), on the District Court’s jurisdiction over claims brought against Caltrans in this action under the California Environmental Quality Act, Pub. Res. Code §§ 21000 et. seq (“CEQA”), and California Government Code sections 11135 and 8899.50 (collectively, “state law claims”). We understand from these communications that Caltrans intends to file a motion to dismiss these state law claims based on California’s sovereign immunity under the Eleventh Amendment of the U.S. Constitution.

As we discussed in our meet-and-confer yesterday, it is Plaintiffs’ position that the state and federal claims are most appropriately resolved together in a single forum. Plaintiffs have brought claims in this case against Caltrans and its Director for violations of state law as well as the National Environmental Policy Act, 43 U.S.C. §§ 4321 et seq. (“NEPA”), and against the U.S. Department of Transportation and Federal Highway Administration and their respective Secretary and Administrator (collectively, “Federal Defendants”), which are based on coordinated reviews and approvals of the same project (the South Fresno State Route 99 Corridor Project). Because the Federal Defendants cannot be sued in state court, Plaintiffs’ claims against them can only be litigated in the federal forum, and Caltrans concedes that the California Legislature has waived California’s immunity to suit from the NEPA claims pursuant to California Streets and Highway Code section 820.1, making the federal forum the appropriate venue for resolution of those claims as well.

Litigating the state law claims against Caltrans in state court and the closely related federal claims against Caltrans and Federal Defendants in federal court would result in substantial waste of judicial and the parties’ resources, scheduling challenges for all parties, delayed resolution of this matter, development and lodging of duplicative administrative records across the two venues, and potentially conflicting results. It would also pose severe hardship to the Plaintiffs in this case – community-based organizations which advocate for and are staffed by members of the disadvantaged

and marginalized communities of color impacted by the challenged project and a long history of inequitable decision-making in transportation infrastructure and land use.¹

As we mentioned in our conference, Caltrans has defended against both CEQA and NEPA claims in federal court on a number of occasions in the past. In response to your request for specific examples, we refer Caltrans to, for instance: *City of Carmel-By-The-Sea et al. v. U.S. Department of Transportation et al.*, Case No. CIV 92-20002 SW, 1994 WL 190839 (N.D. Cal. 1994); *City of South Pasadena v. Volpe et al.*, Case No. CV-73-81-EC, 418 F.Supp. 854 (C.D. Cal. 1976); *Ralph W. Keith et al. v. John A. Volpe et al.*, Civ. No. 72-355-HP, 352 F.Supp.1324 (C.D. Cal. 1972). Indeed, in remanding an EIR/EIS to Caltrans and the Federal Highway Administration for failure to comply with the cumulative impact requirements of both NEPA and CEQA, the Ninth Circuit explained that CEQA’s “cumulative impacts requirements closely mirror the federal standards” and that the two statutes are “similar in application” for purposes of the court’s review of the highway project at issue. *City of Carmel-By-The-Sea v. Dept. of Transp.*, 123 F.3d 1142, 1163, 1165 (9th Cir. 1997). Such is the case here as well.

Eleventh Amendment sovereign immunity is not absolute. Where “a State waives its immunity and consents to suit in federal court, the Eleventh Amendment does not bar the action.” *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 (1985). The State may waive its sovereign immunity expressly, or by declining to assert the defense in the litigation. *See ITSI TV Prods., Inc. v. Agric. Assn’s*, 3 F.3d 1289, 1291 (9th Cir. 1993) (“Eleventh Amendment immunity . . . may be expressly waived, and may even be forfeited by the State’s failure to assert it”) (citations omitted). As discussed at our conference, should the State proceed to seek dismissal on Eleventh Amendment grounds, Plaintiffs will assess the grounds for the motion and make a swift determination on how to proceed on these claims. Plaintiffs wish to inform Caltrans, however, that should their state law claims be dismissed either voluntarily or by court order, Plaintiffs intend to immediately refile and vigorously pursue the state law claims in the state forum. For the reasons set forth above – including judicial and parties’ efficiency and respect for the community-based organizations bringing these challenges on behalf of the disadvantaged communities impacted by this Project – we urge Caltrans to avoid motions practice and extra process on this issue and agree to have these closely related claims be litigated before the same judge in federal court as it has done in the past.

\\
\\
\\
\\

¹ See Caltrans Equity Statement (Dec. 10, 2020), <https://dot.ca.gov/about-caltrans/equity-statement> (recognizing “history of transportation decision-making . . . that ‘quite literally put up barriers, divided communities, and amplified racial inequities, particularly in our Black and Brown neighborhoods’” and committing to “meaningfully engage communities most impacted by structural racism in the creation and implementation of the programs and projects that impact their daily lives”).

July 28, 2023

Page 3

We look forward to conferring further after you have had an opportunity to discuss our position with your clients.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Safdi". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Stephanie Safdi
Stanford Environmental Law Clinic
Counsel for Plaintiffs/Petitioners Friends of Calwa, Inc.
and Fresno Building Healthy Communities

EXHIBIT D

August 17, 2023

Via Email and U.S. Mail

Cassandra Hoff
California Department of Transportation
Legal Division – MS 57
1120 N Street, Sacramento CA 95814

Re: *Friends of Calwa et al. v. California Department of Transportation et al.*
Eastern District of California, Case No. 1:23-cv-00353-JLT-EPG

Dear Ms. Hoff,

Thank you for your letter sent yesterday evening, August 16, 2023. To reaffirm our understanding of our discussion at our meet-and-confer on August 10, 2023, we understood Caltrans' request to be for a proposal as to how Caltrans could operationalize a waiver of sovereign immunity and effectuate consent to federal jurisdiction specific to this case, without affecting any sovereign immunity defense that it may have to the same or similar claims in other cases. We understood that you were requesting that information to inform your discussion with your client of options for it to effectuate case-specific consent to federal jurisdiction.

We appreciate that, as you expressed at our August 10th meeting, Caltrans is attentive to the equity concerns motivating our clients' desire to adjudicate these closely related claims in a single forum. As we explained in our July 28th letter and further on our call, Plaintiffs bringing this case are resource-constrained non-governmental organizations founded and led by persons of color and based in and advocating for the interests of members of the communities that will be directly impacted by the challenged project. Indeed, the existence of these resource constraints is connected to the long history of inequitable transportation planning and infrastructure like State Route 99 itself, which slices through South and West Fresno communities and separates them from commercial and economic resources of downtown. We appreciate your affirmation of Caltrans' commitment to engaging productively with communities impacted by inequitable transportation planning and infrastructure decisions. Caltrans' consent to adjudication of this dispute in a single court — rather than pursuing a strategy to attempt to force Plaintiffs (and Caltrans) to litigate closely related claims over the same project concurrently in state and federal court, with the waste of

resources, confusion, and potential for conflict that would attach to that result — would be in line with these commitments. The alternative would not be.

Likewise, Caltrans would benefit from avoiding motions practice on this issue (as we have discussed, the application of a sovereign immunity defense to the claims presented in this case raises novel questions) and the waste of resources that would result for the agency if Plaintiffs were forced to split their related claims against Caltrans across two forums. We responded to Caltrans' request for information on how it could operationalize a case-specific waiver to assist in identifying a mutually agreeable mechanism to have claims arising from reviews and approvals of the Project heard in a single proceeding.

As we discussed at our August 10th meet-and-confer, Caltrans has multiple avenues available to it to effectuate a waiver of its sovereign immunity defense to federal jurisdiction specifically tailored to this case, if that is what Caltrans is looking to achieve. The law in the Ninth Circuit Court of Appeals is clear that Eleventh Amendment immunity is an affirmative defense that can be waived, for case-specific purposes, through litigation conduct. *See, e.g., Hill v. Blind Indus. & Servs. of Md.*, 179 F.3d 754 (9th Cir. 1999). Caltrans appears to have exercised this option on multiple occasions in prior cases, as we cited in our July 28th letter. Caltrans can also expressly consent to jurisdiction for purposes of this case through a stipulation, side agreement, or letter clarifying that Caltrans intends to waive its Eleventh Amendment sovereign immunity defense specific to this case for the limited purpose of consenting to have the claims brought against it by Plaintiffs in this matter adjudicated and resolved by the federal court.

In response to your request that we provide an example of such language, we sent you on August 15th a draft side agreement and draft language for the joint status report that we believe would represent a simple and mutually agreeable approach to effectuating a narrow waiver, in line with the concerns that we understood Caltrans to have about preserving its rights to assert this defense in other cases. However, we wish to make clear, as we explained last week, that Plaintiffs are certainly open to working with Caltrans to accommodate its preferences for how it would like to effectuate a waiver of immunity defenses in this case, and we are ready to confer in good faith on the options. We hope that Caltrans will do the same.

Regarding Plaintiffs' NEPA claims, we understood from your July 21, 2023 letter and our July 20, 2023 meet-and-confer that Caltrans was intending to move to dismiss the NEPA claims for failure to satisfy Federal Rule of Civil Procedure 8 pleading standards. You stated that Caltrans' position is that the claims are "generic in nature" and not pled with sufficient factual specificity in the following respects: Caltrans' failure "to acknowledge the existence of vulnerable communities" (FAC ¶ 232); Caltrans' failure to "make technical information, studies, and reports relies on and incorporated into the EIR/EA . . . readily available to the public" (FAC ¶ 233), and Caltrans' failure to "adequately respond to public comments on the EIR/EA" (FAC ¶ 235). During our meet-and-confer, we pointed Caltrans to specific

allegations in the complaint that provide factual foundation for these claims, and we further point Caltrans to the following factual allegations to this effect:

- Paragraphs 69 - 75 (setting forth specific factual allegations regarding existence of residential communities and other sensitive receptors in the project vicinity, including within 1.5 miles or less of the Project).
- Paragraph 146 (setting forth the specific “technical studies relied on and underlying the Draft EIR/EA” that were not included in the environmental document or made “publicly available on the Project website,” including, among other listed technical studies, the Noise Impact Study (2020), the Draft Relocation Impact Study (2020), the Traffic Study (2020), Community Studies (2018-2022), and a Community Impact Memorandum (2020)).
- Paragraph 151 (“The Draft EIR/EA did not acknowledge the presence of Calwa, Malaga, or any other communities within the Project vicinity Rather, the Draft EIR/EA stated that there are ‘no neighborhoods in or close to the project area,’ that ‘no minority or low-income populations were identified in the project area,’ that ‘no sensitive receptors have been identified for this project,’ and that ‘the closest residential neighborhoods [are] over two miles away’ despite multiple communities being located within a 1.5 mile radius of the Project.”).
- Paragraph 152 (setting forth Draft EIR/EA’s failure to acknowledge the “presence of schools, places of worships, and other sensitive land uses, in addition to residential neighborhoods, along North Avenue, American Avenue, and other local roads on which traffic using the Project interchanges flows”).
- Paragraph 168 (“Because the Draft EIR/EA did not conduct a quantitative VMT analysis, it did not fully consider air quality impacts resulting from increases in VMT caused by the Project,” as set forth in Petitioners’ comment letters).
- Paragraph 189 (“In response to comments, the Final EIR/EA defended its decision not to consider impacts on Calwa, Malaga, and other adjacent communities and sensitive land uses . . . , deeming them ‘outside the project area.’ . . . In support of this finding, the Final EIR/EA reduced the Project area for the environmental justice and community cohesion analysis from two miles in the Draft EIR/EA to 0.5 miles, asserting that the Project area in the Draft EIR/EA was ‘incorrectly labeled.’”).
- Paragraphs 190 - 195 (alleging Final EIR/EA’s failure to address concerns about absence of a VMT analysis, inadequate air quality impacts, and other deficiencies raised by Plaintiffs and other commenters).

We also understand from your letter yesterday evening that Caltrans intends to assert a new defense that Plaintiffs have not satisfied administrative exhaustion requirements. It is not clear to us from your letter what claims or issues Caltrans believes have not been exhausted. Since this is a newly raised ground, we would request that we re-calendar the meet-and-confer originally scheduled for yesterday morning to discuss this issue and any other concerns that Caltrans’ may have with the specificity or clarity of the pleadings. As we noted during our meet-and-confers, Plaintiffs’ position is that we have amply satisfied the

August 17, 2023

Page 4

pleading standards, and if Caltrans has unresolved concerns, we invite continued conversation to see if we can resolve issues going to specificity or clarity of the pleadings without motions practice.

We are available this afternoon, August 17th, from 3 - 5 pm for this discussion. We also suggest continuing the discussion about Caltrans' preferred approach to effectuating waiver at that time. Please let us know if that time works for you and we will circulate a calendar invitation.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Safdi". The signature is fluid and cursive, with the first name being more prominent.

Stephanie Safdi
Stanford Environmental Law Clinic
Counsel for Plaintiffs/Petitioners Friends of Calwa, Inc.
and Fresno Building Healthy Communities

EXHIBIT E

California Department of Transportation

LEGAL DIVISION – MS 57
1120 N STREET, SACRAMENTO, CA 95814
P.O. BOX 1438, SACRAMENTO, CA 95812-1438
(916) 654-2630 FAX (916) 654-6128 TTY 711
www.dot.ca.gov



August 17, 2023

VIA EMAIL and U.S. MAIL

Deborah A. Sivas
Matthew J. Sanders
Stephanie L. Safdi
Rica V. Garcia
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
Stanford, CA 94305

Ashley E. Werner
Phoebe S. Seaton
LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY
2210 San Joaquin Street
Fresno, CA 93721

Re: *CALWA v. California Department of Transportation*
Eastern District Court of California Case No. 1:23-CV-00353-JLT-EPG

Counsel,

Thank you for your continued efforts to meet and confer regarding the Department of Transportation's (Caltrans) motion to dismiss the First Amended Petition and Complaint (FAC). The FAC includes claims under the California Environmental Quality Act (CEQA), and California Government Code sections 11135 and 8899.50 (collectively state law claims) and the National Environmental Policy Act (NEPA).

During our August 10th 2023, meeting over Webex, I began the meeting by stating the grounds for Caltrans motion to dismiss. I addressed both the state law claims and the NEPA claim. I specifically raised the exhaustion of administrative remedies argument when discussing the motion to dismiss the NEPA cause of action. I also specifically stated that the NEPA allegations failed to raise a cognizable legal theory.

During the August 10th meeting, we also discussed your July 28th, 2023 letter, in which you requested that Caltrans consent to federal jurisdiction and waive its Eleventh Amendment sovereign immunity for the state law claims included in the FAC. I asked questions concerning your request regarding the scope and method of waiver.

On August 15, 2023, you provided me with additional details regarding your request that Caltrans waive its sovereign immunity for the state law claims.

On August 16, 2023, I sent a further Meet and Confer Letter confirming that I received the information you provided in response to the questions I raised during the August 10th meeting and that I would present it to my clients. I also included the basis for my motion to dismiss that I had previously discussed during the August 10 meeting, including the exhaustion argument and caselaw.

I received your letter dated August 17. In this letter, you allude to novel questions of law concerning sovereign immunity, but I have not been provided any information on this.

I have provided the information concerning waiver to my clients. We are discussing it. Although I note that I raised the exhaustion of administrative issue previously, I am happy to discuss it with you further today. I am available from 3-4 on August 17, 2023.

I can be contacted at (916) 475-5896, or by e-mail at Cassandra.hoff@dot.ca.gov

Sincerely,



Cassandra Hoff
Attorney

EXHIBIT F

California Department of Transportation

LEGAL DIVISION – MS 57
1120 N STREET, SACRAMENTO, CA 95814
P.O. BOX 1438, SACRAMENTO, CA 95812-1438
(916) 654-2630 FAX (916) 654-6128 TTY 711
www.dot.ca.gov



August 21, 2023

VIA EMAIL and U.S. MAIL

Deborah A. Sivas
Matthew J. Sanders
Stephanie L. Safdi
Rica V. Garcia
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
Stanford, CA 94305

Ashley E. Werner
Phoebe S. Seaton
LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY
2210 San Joaquin Street
Fresno, CA 93721

Re: *CALWA v. California Department of Transportation*
Eastern District Court of California Case No. 1:23-CV-00353-JLT-EPG

Counsel,

Thank you for your continued efforts to meet and confer regarding the Department of Transportation's (Caltrans) motion to dismiss the First Amended Petition and Complaint (FAC). The FAC includes claims under the California Environmental Quality Act (CEQA), and California Government Code sections 11135 and 8899.50 (collectively state law claims) and the National Environmental Policy Act (NEPA).

As discussed in detail in Caltrans' July 21 letter (July 21 Letter) and the numerous meet and confer conferences, Caltrans intends to file a motion to dismiss under Federal Rules of Civil Procedure (FRCP), rule 12(b)(6) for failure to state a claim upon which relief can be granted for the NEPA cause of action. Caltrans basis for this motion is that Plaintiffs failed to exhaust its administrative remedies. The requirement to exhaust administrative remedies applies to claims under NEPA. *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 965 (9th Cir. 2006) (citing 5 U.S.C. § 704). The allegations failed to state a cognizable legal theory and failed to provide facts in support of a cognizable legal theory. Dismissal is proper where there is either a "lack of cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory."

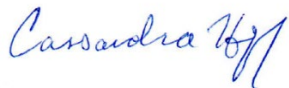
Nat. Res. Def. Council v. Norton, 236 F. Supp. 3d 1198, 1211 (E.D. Cal. 2017). The claims are also conclusory. A pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” (*Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Additionally, as discussed in detail in my July 21 Letter and during the numerous meet and confer conferences, Caltrans intends to file a motion to dismiss under FRCP, rule 12(b)(1) for lack of subject matter jurisdiction over the state law claims as those state law claims are barred by sovereign immunity under the Eleventh Amendment of the United States Constitution. It is settled law that federal jurisdiction cannot extend to the state without the states explicit consent. *Edelman v. Jordan*, 415 U.S. 651 (1974). Caltrans has not provided such consent in relation to the South Fresno State Route 99 Corridor Project.

In your July 28, 2023 letter you request that Caltrans consent to federal jurisdiction for the state law claims. On August 15, 2023, you provided additional specificity about the scope and method of waiver. I presented this information to my clients. Caltrans will not consent to federal jurisdiction or waive its sovereign immunity for the state law claims. I have not received legal support demonstrating that federal jurisdiction can be exercised over the state law claims absent Caltrans express consent.

In Plaintiffs' July 28th letter and during meetings, Plaintiffs' counsel indicated that they would assess the grounds for dismissal in Caltrans' motion and then determine how to proceed. Caltrans intends to file the motion to dismiss. I look forward to hearing from you.

I can be contacted at (916) 475-5896, or by e-mail at Cassandra.hoff@dot.ca.gov
Sincerely,



Cassandra Hoff
Attorney