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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF FRESNO**

20 FRIENDS OF CALWA, INC. and FRESNO
21 BUILDING HEALTHY COMMUNITIES,

22 Plaintiffs and Petitioners,

23 v.

24 CALIFORNIA DEPARTMENT OF
25 TRANSPORTATION, TONY TAVARES, in
his official capacity as the Director of
26 California Department of Transportation, and
DOES 1-20,

27 Defendants and Respondents

Case No. 23CECG04109

**PETITIONERS' REPLY BRIEF ON THE
CEQA MERITS**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE Geoffrey Wilson

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1 **INTRODUCTION**

2 This action challenges California Department of Transportation’s (“Caltrans”) environmental
3 review of the South Fresno State Route 99 Corridor Project (“Project”). As Caltrans’ brief makes
4 clear, the Parties fundamentally disagree about how to address Route 99’s aging infrastructure.
5 Petitioners have pressed Caltrans to repair the Route 99 corridor in a manner that reconnects
6 highway-severed neighborhoods and avoids increasing traffic flows into areas burdened by the worst
7 air pollution in the state. Caltrans has chosen a different course: enlarging the highway footprint,
8 increasing the number of interchange lanes eight-fold, and paving the way for a 33-percent capacity
9 increase on the highway mainline, all to facilitate continued industrial development in South Fresno
10 neighborhoods. The Parties’ profound disagreements about whether Caltrans’ plans violate state
11 antidiscrimination and fair housing laws are not yet before the Court. Rather, the only question before
12 this Court is whether Caltrans complied with the California Environmental Quality Act (“CEQA”) by
13 issuing an informationally sufficient Environmental Impact Report (“EIR”) to inform the agency’s
14 decision-making and public understanding of the Project and its environmental impacts. It did not.

15 At pains to defend its flawed EIR, Caltrans’ brief continues a pattern of seeking to foreclose
16 judicial review of the CEQA merits altogether. It rehashes arguments rejected by the Court of
17 Appeal, which already identified genuine disputes of material fact precluding summary adjudication
18 on Caltrans’ statute of limitations defense. Instead of setting this matter for trial to resolve factual
19 disputes, Caltrans has filed what amounts to a procedurally defective motion for summary
20 adjudication that flouts the Code of Civil Procedure and ignores the law of the case. Having failed to
21 properly present this defense, Caltrans has waived its opportunity to do so. Caltrans’ new exhaustion
22 defense fares no better. Exhaustion is satisfied where comments from any source gave sufficient
23 notice to the agency of defects in the EIR. Ample comments submitted to Caltrans did just that.

24 On the merits, the EIR was prejudicially flawed on numerous grounds. It denied the existence
25 of impacted communities; hid from public view the County Industrial Campus co-designed with the
26 highway expansion; minimized the Project’s contribution to air pollution to avoid a significance
27 determination; failed to analyze cumulative impacts and induced industrial growth; flouted Caltrans’
28 statutory duty to evaluate induced traffic; and adopted vague and toothless measures incapable of

1 mitigating the Project’s significant impacts on greenhouse gas emissions. Caltrans makes no attempt
2 to oppose nearly half of Petitioners’ claims on their merits. As to the others, Caltrans misunderstands
3 its duties under CEQA to describe the Project’s environmental setting faithfully, to analyze the
4 Project in its entirety, and to base its conclusions on actual evidence in the record.

5 With little to say on the merits, Caltrans continues to mischaracterize the Project and
6 minimize the South Fresno community’s longstanding concerns. It tries to recast the Project as a
7 “simple” and “relatively minor” upgrade to existing infrastructure. Opposition Brief (“Opp. Br.”) at
8 1, 34. These descriptors appear nowhere in the EIR. To the contrary, the EIR described the Project as
9 “a regionally significant project,” AR119, and identified “unmitigable significant impacts” on the
10 environment, AR15. Having spent the last two years accusing Petitioners of litigating in bad faith,
11 Caltrans now attempts to rewrite the history of public engagement in a similar vein, casting
12 aspersions on the community’s sincere efforts to present their concerns during the administrative
13 process.¹ Caltrans’ baseless accusations are a distraction from the issue at hand: Its EIR was legally
14 deficient in disclosing the Project’s environmental costs, and its approval must therefore be set aside.

15 ARGUMENT

16 I. Caltrans’ Continuing Efforts to Avoid the CEQA Merits Fail

17 Caltrans’ renewed statute of limitations defense is procedurally defective. The Court of
18 Appeal’s Writ, now law of the case, found a triable issue of fact regarding Caltrans’ statute of
19 limitations defense. Vaghini Decl., Ex. F at 3 (“Writ”). Judicial economy dictates that Caltrans should
20 have either renewed its motion for summary adjudication or moved for trial on the defense *before* the
21 Parties briefed and this Court adjudicates Petitioners’ CEQA challenge on the merits. Instead,
22 Caltrans tries to bootstrap its defense into this mandamus proceeding. This fails. Petitioners’
23 challenge to the EIR on the merits is adjudicated on the administrative record, for substantial

24
25 ¹ The record contradicts Caltrans’ assertion that Petitioners failed to meaningfully engage in the
26 CEQA process. Opp. Br. at 2. Petitioners, residents, and other stakeholders did so extensively,
27 including by participating in Caltrans’ Open House on November 4, 2021 (AR677); submitting a
28 comment letter on the Draft EIR on December 3, 2021 (AR281-300, 2508-33); participating in a
December 14, 2021 meeting with the South-Central Fresno Community Steering Committee and
Caltrans (AR4386); hosting meetings with Caltrans to discuss the project on April 26 and August 31,
2022 (AR198, 4316); and submitting another comment letter on October 12, 2022 (AR4331-46).

1 evidence. Caltrans’ statute of limitations defense, by contrast, is based on post-record facts reviewed
2 for preponderance of the evidence. The defense, which is anyways foreclosed by the Writ, has no
3 place in this mandamus proceeding. This Court should disregard this portion of Caltrans’ brief.

4 **A. Caltrans has waived its ability to pursue its statute of limitations defense by**
5 **failing to adhere to procedural requirements.**

6 The Court of Appeal’s Writ explicitly identified genuine disputes of fact material to Caltrans’
7 statute of limitations defense that preclude summary adjudication as a matter of law. The Writ
8 directed this Court to vacate its October 17, 2024 Order and conduct further proceedings to consider
9 the facts relevant to the reasonableness prong of equitable tolling. Writ at 3. The Writ left open the
10 possibility for Caltrans to renew its defense through a proper vehicle: either a new motion for
11 summary adjudication under section 437c, if allowed by this Court, or a trial.

12 Caltrans did neither. It instead withdrew its motion for summary adjudication and never
13 sought an opportunity from this Court to file a new one. Notice of Withdrawal [*sic*] of Caltrans’
14 Motion for Summary Adjudication (May 8, 2025). Nor would there have been any basis for doing
15 so.² Where, as here, the “running or tolling of the statute requires the adjudication of facts issues, the
16 motion will be denied.” *S.E.C. v. Seaboard Corp.*, 677 F.2d 1289, 1293 (9th Cir. 1982). Caltrans also
17 failed to ask this Court to set a trial on the statute of limitations defense or even to raise the issue in a
18 meet-and-confer. *See* Code Civ. Proc. § 597 (authorizing separate trial on statute of limitations
19 defense on motion); *Sahadi v. Scheaffer*, 155 Cal.App.4th. 704, 721 (2007) (“a separate trial is
20 authorized . . . when the defendant alleges as an affirmative defense that the action is time-barred”).

21 If it wished to further pursue its statute of limitations defense, principles of judicial economy
22 dictate that Caltrans should have sought trial on the defense prior to hearing the merits of Petitioners’
23 challenge to the EIR. When, as here, an answer “pleads that the action is barred by the statute of
24 limitations,” the court may “proceed to the trial of the special defense . . . before the trial of any other
25 issue in the case.” Code Civ. Proc. § 597. This section “contemplates a trial first of the severable

26
27 ² Caltrans itself insisted that its statute of limitations defense be considered separately from the
28 CEQA merits. *See, e.g.*, Caltrans’ Case Management Statement at 3 (Feb. 28, 2024); Caltrans’ Status
Conference Report at 3-5 (Mar. 27, 2024). The Court agreed and directed Caltrans to secure a date
for summary adjudication *prior to* the CEQA merits hearing. Minute Order (Mar. 13, 2024).

1 issue” to “obviate the necessity of a protracted trial of issues which by such determination are
2 rendered irrelevant and immaterial.” *Wilshire-Doheny Assoc. Ltd. v. Shapiro*, 83 Cal.App.4th 1380,
3 1392 (2000) (citation omitted). Doing so serves the “economical and speedy administration of
4 justice.” *Id.* Waiting until hearing on the CEQA merits does not. Caltrans had over three months after
5 withdrawing its motion to set its defense for trial before CEQA merits briefing commenced, and over
6 five months to do so before filing its brief. Having failed to do so, Caltrans has waived its ability to
7 try this defense. *See Color-Vue, Inc. v. Abrams*, 44 Cal.App.4th 1599, 1605 (1996) (when respondent
8 has “ample opportunity to raise” an affirmative defense before the commencement of trial but fails to
9 do so, “[t]heir unnecessary delay waive[s]” their defense); *Petersen v. W. T. Grant Co.*, 41
10 Cal.App.3d 217, 220 (1974) (reaffirming “long and established rule” that “statute of limitations is a
11 personal privilege that must be affirmatively evoked . . . by appropriate pleading or it is waived”).

12 Caltrans’ belief that factual disputes material to this defense can be resolved at the CEQA
13 merits hearing is plainly wrong. Here, the Court’s role, as Caltrans concedes, is to determine whether
14 Caltrans complied with CEQA’s substantive mandates and reached decisions supported by substantial
15 evidence *in the administrative record*. Pub. Res. Code § 21168.5; Opp Br. at 21. By contrast,
16 Caltrans’ statute of limitations defense turns on post-record evidence introduced through testimony
17 and reviewed for preponderance of the evidence. Evid. Code, §§ 115, 150; *see, e.g., Munoz v.*
18 *Express Auto Sales*, 222 Cal.App.4th Supp. 1, 10 (2014). Factual disputes on affirmative defenses
19 grounded in post-record testimony cannot be resolved in a CEQA merits hearing that considers the
20 existence of substantial evidence in a certified administrative record.

21 Caltrans’ briefing on this issue can thus only be understood as an unauthorized but
22 procedurally defective motion for summary adjudication. Code of Civil Procedure section 437c
23 mandates that such a motion be supported by “affidavits, declarations, admissions, answers to
24 interrogatories, depositions, and matters of which judicial notice shall or may be taken.” Code Civ.
25 Proc. § 437c(b)(1); *see Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 843 (2001). The supporting
26 papers must also include a “separate statement setting forth plainly and concisely all material facts
27 that the moving party contends are undisputed,” and each material fact must be followed by a
28 “reference to the supporting evidence” in its brief. Code Civ. Proc. § 437c(b)(1). The separate

1 statement is “not merely a technical requirement, it is an indispensable part of the
2 summary . . . adjudication process.” *Whitehead v. Habig*, 163 Cal.App.4th 896, 902 (2008). It
3 “plainly identifies factual issues and allows the trial court to determine whether a trial is required to
4 establish those facts and resolve the dispute.” *Champlin/GEI Wind Holdings, LLC v. Avery*, 92
5 Cal.App.5th 218, 226 (2023). Failure to provide a separate statement of undisputed material facts is
6 fatal to the motion. *Whitehead*, 163 Cal.App.4th at 902; *see* Code Civ. Proc. § 437c(b)(1).

7 Instead of submitting a statement of undisputed facts supported by affidavits, Caltrans relies
8 on a partial set of the same summary adjudication materials it previously withdrew. Opp. Brief at 26,
9 27; Vaghini Decl. ¶ 8 & Ex. D. This is plainly inadequate. On summary adjudication, the “relevant
10 facts” are “limited to those set forth in the parties’ statements of undisputed material facts, *supported*
11 *by affidavits and declarations . . .*” *West v. Sundown Little League of Stockton, Inc.*, 96 Cal.App.4th
12 351, 362 (2002). The “Golden Rule” of summary adjudication is that “if it is not set forth in the
13 separate statement, *it does not exist.*” *Mills v. Forestex Co.*, 108 Cal.App.4th 625, 641 (2003)
14 (citations omitted). “When the ‘fact’ is not mentioned in the separate statement, it is irrelevant that
15 such fact might be buried in the mound of paperwork filed with the court, because the statutory
16 purposes are not furthered by unhighlighted facts.” *Id.* (citation omitted); *see also San Diego*
17 *Watercrafts, Inc. v. Wells Fargo Bank, N.A.*, 102 Cal.App.4th 308, 315 (2002) (trial court may ignore
18 evidence not disclosed in separate statement). Caltrans’ failure to follow procedure, including its
19 failure to introduce and cite to a separate statement of undisputed facts, makes it practically
20 impossible for Petitioners to respond and for the Court to identify material facts in dispute. *See*
21 *Aguilar*, 25 Cal.4th at 844 (explaining that an “adverse party who chooses to oppose the motion must
22 be allowed a reasonable opportunity to do so”). This Court should disregard Caltrans’ defective re-
23 argument of its withdrawn motion for summary adjudication and deem trial on this issue waived.

24 **B. Caltrans’ re-argument is also precluded by the Court of Appeal’s holdings.**

25 Even if the Court could reach Caltrans’ defense, the Court of Appeal’s Writ would dictate the
26 outcome. The Court of Appeal’s holdings are law of the case: Its identification of material disputed
27 facts precludes Caltrans’ attempt to reargue the motion on the same papers.

28 Equitable tolling turns on three elements: “[1)] timely notice, and [(2)] lack of prejudice, to

1 the defendant, and [(3)] reasonable and good faith conduct on the part of the plaintiff.” *Addison v.*
2 *State of California*, 21 Cal.3d 313, 319 (1978). This is a fact-intensive inquiry; the reviewing court
3 must “examine the facts of each case to determine whether ‘justice and fairness’ demand that the
4 limitations period be tolled.” *Saint Francis Mem. Hosp. v. State Dept. of Pub. Health*, 9 Cal.5th 710,
5 724 (2020). Caltrans concedes the first two elements. As to the third, this Court already disposed of
6 Caltrans’ attempt to show bad faith on these same papers, Oct. 17, 2024 Order at 7, and the Court of
7 Appeal already determined that disputed facts preclude summary adjudication on the reasonableness
8 prong as a matter of law, Writ at 3. Caltrans’ invitation to reconsider the Court of Appeal’s holdings
9 fails. Law of the case doctrine applies when, as here “the appellate court issues an alternative writ”
10 after full briefing. *Kowis v. Howard*, 3 Cal.4th 888, 894 (1992). As such, “principles and rules of
11 law” stated by the Court of Appeal and necessary to its decision “must be adhered to throughout [this
12 action’s] subsequent progress, both in the lower court and upon subsequent appeal,” regardless of
13 whether this Court endorses the Court of Appeal’s reasoning. *Id.* at 893 (citations omitted).

14 Several rules reaffirmed by the Court of Appeal’s Writ dictate the outcome here. First, the
15 Court reiterated that “[c]ase law has consistently held that while an alternative action is still pending,
16 the relevant statute of limitations is tolled.” Writ at 2. The Court noted that it had “not been provided
17 authority . . . holding otherwise.” *Id.* Caltrans, again, cites to no such authority here. None exists. Per
18 the Fifth District, the undisputed fact that the first-filed action was pending when Petitioners refiled
19 their CEQA claims in this Court on October 2, 2023 means that the clock for Petitioners’ CEQA
20 claims was tolled. Accordingly, Caltrans’ defense is invalid as a matter of law. Second, the Court of
21 Appeal held that the “stop/start” test urged by Caltrans here, Opp. Br. at 26, is neither “applicable” to
22 nor “appropriate” in this case. Writ at 2, n.1. Third, in reaffirming that the statute of limitations
23 remains tolled while the first-filed action is pending, the Fifth District rejected the same invitation to
24 “adopt” the “notice standard” Caltrans urges here. Writ at 2; *see* Safdi Reply Decl., Ex. 2 at 25; Opp
25 Br. at 25. As Petitioners explained when Caltrans filed the same briefing with the Court of Appeal,
26 Caltrans’ “notice” rule is unsupported by case law and would have foreclosed tolling in a host of
27 Supreme Court and appellate decisions that extended tolling. Safdi Reply Decl., Ex. 3 at 18
28 (Petitioners’ Reply to Petition for Writ of Mandate) (citing *Addison*, 21 Cal.3d at 319 and *Tarkington*

1 v. *Cal. Unemp. Ins. Appeals Bd.*, 172 Cal.App.4th 1494 (2009)). Finally, the Court of Appeal found a
2 “genuine dispute on the question of reasonableness under the tolling doctrine” regarding Petitioners’
3 timely refiling. Writ at 3. Caltrans here reasserts the same facts based on the same record the Court of
4 Appeal reviewed.³ *Id.* (having reviewed the same papers, holding that “when comparing many of the
5 undisputed facts, actual disputes are revealed”). Caltrans cannot obtain a new outcome by
6 repackaging the same record the Court of Appeal already held raises triable issues of fact.

7 The record on Caltrans’ now withdrawn motion makes plain that the facts material to the
8 reasonableness prong remain in genuine dispute. The Parties actively litigated whether Petitioners
9 could proceed on the state court claims up until Petitioners refiled them in state court. *See* Safdi
10 Reply Decl., Ex. 5 at nos. 36-64 (Petitioners’ Statement of Undisputed Material Facts (“Pets.
11 SUMF”)). Petitioners pursued all available avenues to expedite resolution of this dispute, diligently
12 negotiating a stipulation to provide for *ex parte* dismissal without prejudice and assure tolling and
13 then securing *ex parte* relief from the district court as soon as Caltrans made clear that it would not
14 enter into a stipulation. *Id.*; Pets. SUMF no. 38-42, 44, 47, 51, 53-57, 59-64. Petitioners refiled their
15 claims in state court on the earliest date the trial court could have ruled on Petitioners’ *ex parte*
16 motion to dismiss them without prejudice, well before they were dismissed in the federal forum. Pets.
17 SUMF no. 64. Caltrans’ attempt to cast Petitioners as unreasonable is contradicted by the record.

18 Caltrans has argued its statute of limitations defense three times: on demurrer, on summary
19 adjudication, and in opposition to an alternative writ of mandate. It is time to lay this defense to rest.
20 Contrary to Caltrans’ recycled arguments, Opp. Br. at 29-30, the public interest and policy underlying
21 the equitable tolling doctrine and CEQA support the Petitioners’ right to have their day in court to
22 “ensure fundamental practicality and fairness.” *Saint Francis*, 9 Cal.5th at 725 (citation omitted).

23 **II. Caltrans’ Exhaustion Defense Fails**

24 ³ Caltrans’ only argument not presented to the Court of Appeal is that the alleged failure to exhaust
25 Petitioners’ National Environmental Policy Act (NEPA) claims meant that their decision to initially
26 file in federal court was in bad faith. This argument is just as “nonsensical” as Caltrans’ first attempt
27 to show bad faith. Oct. 17, 2024 Order at 7. As this Court rightly explained the first time, Petitioners
28 “stand[] to gain nothing from purposefully filing a state claim in an improper forum while knowing
that the defendant will not consent to jurisdiction in the improper forum.” *Id.* Further, the factual
premise of this new argument is disputed. Vaghini Decl., Ex. D at 22-23 (Petitioners’ Opposition to
Caltrans’ Motion for Summary Adjudication); Safdi Reply Decl., Ex. 1 at 17-25 (Writ Petition).

1
2 Caltrans’ new attempt to foreclose review fails. Caltrans misrepresents the liberal standard
3 that applies to exhaustion and overlooks the comments in the record that achieved it. Opp. Br. at 24.

4 **A. Caltrans misrepresents the single, lenient standard for exhaustion.**

5 Caltrans contends that comments need to include “articulated . . . legal theories” during the
6 administrative process to exhaust an issue. Opp. Br. at 31. The authority that Caltrans relies on,
7 *Arcadians for Environmental Preservation v. City of Arcadia*, states otherwise: Comments need not
8 “cite a particular statute or CEQA guideline” to preserve a challenge. 88 Cal.App.5th 418 (2023) at
9 434. “[L]ess specificity is required to preserve an issue for appeal in an administrative proceeding
10 than in a judicial proceeding.” *Cal. Nat. Gas Vehicle Coal. v. State Air Res. Bd.*, 105 Cal.App.5th
11 304, 327 (2024). The operative question is whether comments raised grounds for challenges that were
12 “sufficiently specific” to “apprise the agency of the substance of the objection so that it has an
13 opportunity to evaluate and respond to it.” *Arcadians for Env’tl. Pres.*, 88 Cal.App.5th at 431 (citation
14 omitted). Exhaustion does not demand the incantation of “magic words.” *State Water Res. Control*
15 *Bd. Cases*, 136 Cal.App.4th 674, 795 (2006). So long as comments gave the agency “an adequate
16 opportunity” to remedy the EIR, petitioners have exhausted the administrative remedies. *Id.* The
17 standard for exhaustion accounts for the fact that many participants in the administrative process are
18 not represented by counsel. To hold such persons “to knowledge of the technical rules of evidence
19 and to the penalty of waiver for failure to make a timely and specific objection would be unfair.” *Cal.*
20 *Native Plant Soc’y v. City of Rancho Cordova*, 172 Cal.App.4th 603, 616 (2009).

21 Caltrans misreads *California Native Plant Society* to invent two exhaustion standards: one for
22 parties with counsel, and one for those without. Opp. Br. at 31-32. Neither CEQA nor case law makes
23 this distinction. Rather, exhaustion is met when “the alleged grounds for noncompliance with
24 [CEQA] were presented to the public agency orally or in writing by any person during the public
25 comment period.” Pub. Res. Code § 21177(a). Exhaustion turns on whether the agency was on notice
26 of a defect, not who provided notice or whether they had counsel. “[T]he party raising an issue during
27 the administrative process need not be the same party to raise the issue in court;” what matters is that
28 “all of the issues were raised.” *Covington v. Great Basin Unified Air Pollution Control Dist.*, 43

1 Cal.App.5th 867, 873 (2019). Courts thus address exhaustion without considering whether petitioners
2 had counsel. *See, e.g., Pres. Action Council v. City of San Jose*, 91 Cal.App.5th 517, 542-43 (2023).⁴

3 **B. Petitioners preserved their CEQA claims.**

4 Caltrans contends that Petitioners failed to exhaust five of their claims about the EIR: the
5 deficient cumulative impacts analysis; flawed air quality significance determination; inadequate level
6 of service analysis; insufficient greenhouse gas mitigation measures; and unlawful piecemealing of
7 the Project. The record shows otherwise: Comments raised specific factual grounds for each claim.

8 First, Caltrans asserts that there were no “specific comments questioning cumulative impacts
9 analysis.” Opp. Br. at 31. This is false. Comments objected to the draft EIR’s “failure to acknowledge
10 existing cumulative pollution-burdens in the area.” AR285. They notified Caltrans that while “the
11 [Draft EIR] does not acknowledge it, further warehouse and industrial development that occurs as a
12 result of this Project . . . will result in individually and cumulatively significant impacts which must
13 be thoroughly analyzed.” AR292. They pointed to “concerns regarding . . . the potential future
14 industrial development within the community that may exacerbate the cumulative exposure burden
15 for community residents.” AR2409. They reminded Caltrans that “this Project would put in place
16 \$120 million worth of infrastructure improvements that further cements and entrenches existing
17 industrial land use patterns that have resulted in South Central Fresno communities’ designation as
18 the most pollution-burdened in California.” AR2508-09. They pointed out that the Project would
19 bring more pollution to an extremely overburdened community. *See* AR284 (pointing to Project’s
20 location in census tracts falling in 99th and 100th percentiles for pollution burden).

21 Second, comments objected to Caltrans’ determination that the Project would not have a
22 significant impact on air quality. The San Joaquin Valley Air Pollution Control District (“District”)
23 recommended that Caltrans undertake a health risk assessment given the Project’s potential to emit
24 toxic air pollutants. AR275. Caltrans’ response to the comment—that it would “not conduct a health
25 risk assessment because the [P]roject was considered less than significant with regard to air quality
26

27 ⁴ Even if Caltrans’ invented higher standard existed, it would not apply. Caltrans is wrong that
28 Petitioners had counsel throughout the administrative process. Opp. Br. at 32. Leadership Counsel
submitted comments on its own behalf, not as Petitioners’ representative. *See* AR281-300, 2508-33.

1 impacts”—evidenced its awareness of the District’s concern with its significance determination.
2 AR279. Numerous other comments contested Caltrans’ air quality analysis. They raised that the “EIR
3 [f]ail[ed] to [a]dequately [a]nalyze” the Project’s “[s]ignificant [a]ir [q]uality [i]mpacts,” AR288, and
4 insisted that “Caltrans must revise the DEIR to include a thorough and accurate evaluation” of the
5 Project’s effect on air pollution, AR289. Comments emphasized that the community “is subject to
6 some of the worst air quality in the entire country” and that the existing air pollution burden “make[s]
7 a thorough analysis of the project’s potential air quality impacts . . . crucial.” AR288.

8 Commenters specified exactly what Caltrans needed to add to its analysis to evaluate air
9 quality impacts adequately. For instance, comments explained at length why analysis of the Project’s
10 air quality significance specifically had to account for “diesel particulate matter . . . generated by
11 truck traffic.” AR290. Comments noted the severe human health impacts of diesel particulate matter,
12 including cancer, cardiopulmonary death, and emergency room visits for asthma. *Id.* Commenters
13 voiced concerns that “[b]y increasing the capacity of the North Avenue and American Avenue
14 interchanges to accommodate increased traffic volumes, and large trucks . . . , the Project will likely
15 expose people to significant public health risks as the result of diesel [particulate] exposure.” *Id.*

16 Comments also emphasized that Caltrans’ analysis overlooked that the Project conflicts with
17 legislative mandates to reduce the community’s pollution burden. The Air District, for instance,
18 objected that Caltrans proposed siting the Project in a community the California Air Resources Board
19 had selected as a priority under a legislative mandate to “reduce air pollution exposure in impacted
20 disadvantaged communities.” AR2409. Other commenters explained that given “high levels of air
21 pollution impacting the area already, CalTrans[’] thorough assessment of the Project’s consistency
22 with the [Community Emission Reduction Program (“CERP”)] is essential to ensure the CERP can
23 achieve its goals of reducing air pollution in the South Central Fresno community.” AR288-89.

24 Third, comments objected that Caltrans’ proposed mitigation measures were inadequate. They
25 raised Caltrans’ failure to “identify feasible mitigation measures to avoid and reduce” impacts on air
26 quality, especially because “[a]s VMT increases, so does air pollution—including emissions of
27 greenhouse gases.” AR288-89; *see also, e.g.*, AR282 (complaining that the EIR “depriv[ed] residents
28 of adequate mitigation measures”); 290 (insisting the EIR must “consider the high existing levels of

1 air pollution exposures in the area in determining the . . . mitigation required”). Caltrans was aware
2 that the Air District’s comments raised concerns about greenhouse gas mitigation: It responded by
3 describing how it had “gather[ed] recommendations for greenhouse gas mitigation measures.”
4 AR279. It also defended the EIR by citing mitigation measures—the sidewalk and a vegetative
5 barrier—challenged by this Petition. *Id.*; *see infra* Section IX.

6 Fourth, comments raised concerns about the Project’s effects on congestion—the factual issue
7 central to Petitioners’ claim that Caltrans’ level-of-service (“LOS”) analysis was flawed. *See* AR995.
8 One commenter raised “concerns that the project would increase traffic in their area.” *Id.* Another
9 named the “heavy traffic from the Amazon and Ulta businesses” creating “[c]ongestion at Central
10 Avenue” as a concern. *Id.* Comments objected that “[Caltrans’] statements make clear that the Project
11 is designed to expand the capacity of the North Avenue and American Avenue interchanges to
12 accommodate increased volumes of traffic that may occur as a result of continued industrial
13 development.” AR286. Petitioners’ challenge to how Caltrans analyzed LOS is also implicit in
14 comments on Caltrans’ failure to conduct a VMT analysis of transportation impacts. LOS and VMT
15 are alternative metrics to analyze how a project affects traffic; the first focuses on congestion, the
16 second on how a project may induce more driving. *See* Opening Br. at 40. Caltrans does not dispute
17 that commenters raised VMT expressly. *See, e.g.,* AR287 (“The [Draft EIR’s] failure to evaluate the
18 Project’s VMT effects violates CEQA . . .”). The comments did not need to use the exact phrase
19 “level of service” to bring the issue of the flawed analysis of the Project’s effects on traffic to
20 Caltrans’ attention. *State Water Res. Control Bd. Cases*, 136 Cal.App.4th at 795.

21 Fifth, comments notified Caltrans that the EIR was incomplete so long as it failed to account
22 for the entire Project—particularly the planned industrial buildout connected to the Project.
23 Comments raised that “by opening gateways for increased truck and car traffic into South Central
24 Fresno, the Project facilitates the development of new industrial facilities on land zoned for industrial
25 development throughout the area.” AR13297. Comments objected that “the Project’s purpose is to
26 allow for the buildout of industrial land uses in South Central Fresno, where thousands of acres of
27 land area [are] designated and predesignated for industrial development.” AR286; AR281
28 (complaining that Caltrans “propos[ed] to expand the capacity of interchanges . . . in order to support

1 continued industrial growth in South Central Fresno”).⁵ Comments alerted Caltrans that analysis of
2 the Project’s effects on pollution must weigh “its purpose to allow and facilitate continued industrial
3 development.” AR289. These comments notified Caltrans that the EIR was inadequate so long as
4 Caltrans analyzed the Project without the industrial development it was designed to facilitate.

5 *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* clarifies the
6 specificity needed to exhaust. There, petitioners commented that a project would contribute to traffic
7 and lead to the deterioration of a downtown area. 172 Cal.App.3d 151, 163 (1985). Petitioners later
8 sued, claiming the county failed to consider the project’s cumulative impacts. *Id.* Comments do not
9 appear to have mentioned the statutory requirement to assess cumulative impacts. Nonetheless, the
10 court held that the petitioners exhausted the claim. What mattered was that “[f]actually, plaintiffs
11 raised the failure to consider the cumulative effect of the project.” *Id.* This case is even more clearcut.

12 **C. Demanding specific mention of the Industrial Campus would be unjust.**

13 Caltrans insists that comments must have specifically called out the exclusion of the Industrial
14 Campus by name. It is wrong. Even if exhaustion required stating the magic words “Industrial
15 Campus” as a general matter, both statutory and common-law exemptions to exhaustion would apply.

16 CEQA exempts petitioners from the exhaustion requirement when “there was no public
17 hearing or other opportunity for members of the public to raise those objections orally or in writing
18 before the approval of the project.” Pub. Res. Code § 21177(e). Common law exceptions also apply
19 when “policies in favor of the exhaustion requirement are outweighed by considerations of fairness
20 and practicality.” *KCSFVI, LLC v. Florin Cnty. Water Dist.*, 64 Cal.App.5th 1015, 1035 (2021). For
21 example, the court refused to require exhaustion when a public body flouted “express procedural
22 requirements [for an administrative process] set forth in the California Constitution.” *Id.* at 1038.

23 The Supreme Court’s decision in *Plantier v. Romano Municipal Water District* is instructive.
24 There, the petitioners brought a challenge to a water district’s proposal to allocate water rates that

25 _____
26
27 ⁵ Comments made after the comment period, but before the EIR was finalized, also raised concerns
28 about how the Project will facilitate industrial development. *See, e.g.*, AR4342. (“The Project’s
Purpose of Expanding Roadway Capacity for Truck Traffic for New Industrial Development
Conflicts With Community Advocacy and CARB and the AGO’s Efforts. . .”).

1 was not raised in public comments. 7 Cal.5th 372, 384-85 (2019). The court refused to require
2 exhaustion in part because the water district had not notified the petitioners that it was changing how
3 it would allocate rates during the administrative process. *Id.* at 390. The court explained that the
4 exhaustion requirement is meant to remove any incentive for litigants “to avoid securing an agency
5 decision” in the hopes a court may be more sympathetic. *Id.* at 383. This rationale falls away if
6 litigants had no knowledge of the issue during the administrative process.

7 Just so here. Caltrans violated its duty to describe the “whole of [the] action” in its EIR when
8 it failed to disclose how the Campus determined the Project’s scope and design. CEQA Guidelines
9 (“Guidelines”) § 15378(a). The EIR does not mention the Campus. The public has only been able to
10 see the extensive collaboration between Caltrans and the County to co-design the interchange
11 expansion and the Campus because of the administrative record Caltrans certified for this litigation.
12 *Infra* Section IV. Caltrans hid from the public that it designed the Project around the Campus’ future
13 transportation needs. It cannot now “use the exhaustion doctrine as a sword rather than a shield” to
14 foreclose scrutiny into how the Campus affects the Project’s impacts. *Plantier*, 7 Cal.5th at 390.

15 **III. Caltrans Cannot Cure Its Erasure of Communities from the Environmental Setting**

16 Caltrans misapprehends one of Petitioners’ claims regarding the deficiency of the EIR’s
17 description of the environmental setting and fails to address the other. Petitioners explained in their
18 opening brief that the EIR’s description of the Project’s environmental setting is inadequate as a
19 matter of law because it did not disclose the existence of thousands of residents who live within range
20 of the Project’s potential environmental impacts. Caltrans does not appear to disagree. Instead, it
21 argues that it chose the right point in time to document baseline environmental conditions—which
22 Petitioners do not contest. Caltrans also flaunts its acknowledgment that *two* residential properties
23 could be displaced by the Project. This is unresponsive to Petitioners’ claims. Caltrans cannot
24 overcome the informational defects of an EIR that portrayed the Project’s environmental setting as an
25 “industrial and commercial zone,” AR16, despite evidence of thousands of residents living within a
26 mile-and-a-half of the Project, AR283. As to Petitioners’ other environmental setting claim—that
27 Caltrans arbitrarily cabined and misrepresented the area used to evaluate localized air quality
28 impacts—Caltrans has mustered scant opposition. Writ relief should be granted as to both claims.

1 **A. The EIR did not adequately inform the public of impacts on nearby communities.**

2 Caltrans misunderstands its duty under CEQA to describe the Project’s environmental setting
3 accurately and therefore misconstrues Petitioners’ claim. Petitioners challenge the geographic scope
4 and accuracy of the EIR’s description of the Project’s environmental setting, not, as Caltrans appears
5 to believe, its temporal baseline. *Compare* Opening Br. at 15-18 *with* Opp. Br at 32 (discussing
6 Guidelines § 15125 on use of a “historic conditions” baseline). Caltrans’ proffered authorities address
7 deviations from an “existing conditions” baseline and so are inapposite. *See* Opp. Br. at 32 (citing
8 *Citizens for East Shore Parks v. State Lands Comm’n*, 202 Cal.App.4th 549, 562-63 (2011)). Caltrans
9 asserts that a substantial evidence standard applies here. *Id.* It is wrong. The substantial evidence
10 standard applies to an agency’s choice of temporal baseline. *See Citizens for East Shore Parks*, 202
11 Cal.App.4th at 562. That standard of review is irrelevant to Petitioners’ claim that Caltrans arbitrarily
12 excluded the communities who will suffer the Project’s environmental effects from the EIR. This
13 claim is subject to de novo review because it goes to the EIR’s informational adequacy. *See John R.*
14 *Lawson Rock & Oil, Inc. v. State Air Res. Bd.*, 20 Cal.App.5th 77, 96 (2018).

15 Caltrans’ description of the environmental setting did not apprise the public of the true scope
16 of the Project’s environmental consequences, rendering the EIR “inadequate as a matter of law.” *San*
17 *Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus*, 27 Cal.App.4th 713, 734 (1994). An EIR
18 must describe the “physical environmental conditions in the vicinity of the project.” Guidelines
19 § 15125(a). The EIR’s description of the environmental setting must encompass the entire area of
20 potential effects, not just the project area. *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use*
21 *Comm’n*, 41 Cal.4th 372, 387 (2007). This is because “the purpose of CEQA would be undermined if
22 the appropriate governmental agencies went forward without an awareness of the effects a project
23 will have on areas outside of the boundaries of the project area.” *Id.* (citation omitted).

24 The EIR mischaracterizes the Project’s environmental setting by failing to disclose the
25 existence of residential communities and sensitive land uses in its vicinity. Petitioners alerted
26 Caltrans to the presence of thousands of residents within 1.5 miles of the Project (AR4332, 2509-10);
27 a place of worship and three elementary schools within a mile of it; and two other schools 1.4 miles
28 away (AR2510, 4333). Caltrans was also aware of the Fresno County Juvenile Justice Campus

1 housing schools and a population of up to 1,400 children only 300 feet from the American Avenue
2 interchange. AR6, 4448, 5787; Safdi Decl., Ex. 9. Rather than altering its description of the
3 environmental setting to reflect the existence of these sensitive land uses, Caltrans narrowed the
4 stated Project area to “approximately a half-mile from the center of State Route 99 and the
5 interchanges,” AR304, to justify its claim that “no populations were identified within the project
6 area,” AR59. But the Juvenile Justice Campus is indisputably within that half-mile radius. AR5787.

7 Caltrans’ efforts to defend these decisions in its brief only highlight the EIR’s deficiency.
8 First, Caltrans mischaracterizes its own EIR, asserting that it described the Project area as “*largely*
9 ‘designated as an industrial and commercial zone.’” *See* Opp. Br. at 32 (quoting AR16) (emphasis
10 added). The EIR contains no such qualification; rather, it depicts the area as exclusively industrial.
11 AR16. Next, Caltrans argues that Petitioners try to “attribute” the industrial character of South Fresno
12 to the Project. Opp. Br. at 32. That is not Petitioners’ claim. Petitioners challenge Caltrans’ false
13 depiction of the environmental setting as entirely industrial and devoid of residential communities.

14 Finally, Caltrans suggests that the EIR’s mention of *two* residential properties that may be
15 displaced by the Project shows it did disclose the presence of affected residences. *See* Opp. Br. at 33
16 (citing AR65). Again, Caltrans misunderstands CEQA. It must describe the area of potential effects,
17 not only the Project footprint. *Muzzy Ranch*, 41 Cal.4th at 387. Caltrans’ failure to acknowledge the
18 communities living just outside the narrowly defined Project area, or to describe their size, location,
19 and demographics, presents a picture of the environmental setting that is at best “incomplete or
20 misleading.” *Cleveland Nat’l Forest Found. v. San Diego Assn. of Gov’ts*, 17 Cal.App.5th 413, 439
21 (2017). Caltrans foreclosed a complete understanding of the Project’s impacts on nearby
22 communities, “render[ing] the identification of environmental impacts legally inadequate.” *San*
23 *Joaquin Raptor*, 27 Cal.App.4th at 729.

24 **B. Caltrans unlawfully excluded sensitive receptors from its air quality analysis.**

25 The EIR was also defective because Caltrans did not explain why it only evaluated air
26 pollution impacts in a 500-foot radius. *See Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal.3d
27 553, 568 (1990). Caltrans only touches on this issue in a passing assertion in its “Statement of Facts”
28 that the radius stems from a CARB Handbook’s recommendations on siting new sensitive land uses.

1 Opp. Br. at 14 (citing AR10156). But the EIR never references the Handbook or CARB’s siting
2 recommendations. Caltrans’ reference to the Handbook for the first time in litigation is a “*post hoc*
3 rationalization[] for actions already taken,” which courts “will not accept” in evaluating an EIR’s
4 informational sufficiency. *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*, 47 Cal.3d
5 376, 425 (1988); see *Burbank-Glendale-Pasadena Airport Auth. v. Hensler*, 233 Cal.App.3d 577, 594
6 (1991). This is because “only the EIR . . . can effectively disclose to the public the ‘analytic route
7 the . . . agency traveled from evidence to action.’” *Goleta Valley*, 52 Cal.3d at 568 (citation omitted).

8 In any event, the CARB Handbook offers no support for Caltrans’ decision to ignore air
9 quality impacts on sensitive receptors outside the 500-foot radius. The cited portion of the Handbook
10 concerns siting new sensitive land uses like schools. AR10156. Caltrans is not siting a sensitive land
11 use, nor does it explain why CARB’s recommendations would bear on evaluating the air quality
12 impacts of proposed transportation projects. Even if the recommendations were relevant, the
13 Handbook states that a “site-specific analysis would be required” to determine actual risk. AR10157.

14 Even if the 500-foot radius were defensible, Caltrans cannot justify disclaiming the existence
15 of sensitive receptors and “sensitive land uses (schools, day care facilities, senior living) within 500
16 feet of the project” in the EIR. AR143, 127. Caltrans’ brief takes these misleading statements even
17 further, arguing that it “concluded there were no sensitive receptors in the PROJECT area,” defined
18 as a half mile from the interchanges.⁶ Opp. Br. at 14. These statements are directly undercut by
19 Caltrans’ admission, in other parts of the EIR, that the Fresno County Juvenile Justice Campus is
20 “located next to the American Avenue interchange.” AR31. The 1,400-bed Juvenile Justice Campus
21 contains two schools and is only 300 feet from Route 99. AR4456, 5787; Safdi Decl., Ex. 9. In its
22 “Statement of Facts,” Caltrans tries to walk this back, asserting that during a “Noise Study,” Caltrans
23 was told that the only part of the Campus that falls within the 500-foot CARB radius is the Juvenile
24 Court building. Opp. Br. at 14 (citing AR1649). An inference from a vaguely worded⁷ “Noise Study”

25
26 ⁶ Caltrans inexplicably adopted a narrower “Project area” for its air quality analysis, reducing it from
a half mile (2,640-foot) radius to a 500-foot radius.

27 ⁷ All that the cited portion of the record states is that within the building housing the County Juvenile
28 Court, there are no “classrooms for students and there are no locations for outdoor activities.” Opp.
Br. at 14 (citing AR1649). It does not state where the Campus’s schools and beds are located.

1 is not a valid basis for an air quality analysis, which is presumably why Caltrans did not mention this
2 information in its EIR. Because this “*post hoc* rationalization[.]” does not appear in the EIR, it must
3 be disregarded. *Laurel Heights*, 47 Cal.3d at 425. Nor may an EIR “ignore [a project’s] impacts on
4 sensitive areas sitting only a little over” an arbitrary radius. *Sierra Watch v. Cnty. of Placer*, 69
5 Cal.App.5th 86, 107 (2021) (invalidating an EIR for “arbitrary line drawing”). Even if the schools
6 and juvenile facility beds are just beyond 500 feet, these sensitive receptors are well within the 1,700-
7 foot “range of relative cancer risk” and 1,000-foot range of “additional non-cancer health risk” that
8 CARB identifies in its Handbook. AR10158. The EIR has nothing to say about the air pollution
9 impacts on sensitive receptors just outside the Project footprint.

10 Caltrans’ sole defense for ignoring sensitive receptors in the Project vicinity is that because
11 the area is “‘an industrial and commercial zone’ . . . it was reasonable for CALTRANS to conclude
12 the project will not impact any sensitive receptors.” Opp. Br. at 32-33 (quoting AR16). Nonsense:
13 Caltrans knew sensitive receptors would be exposed to Project air pollution and simply chose not to
14 consider them in its air quality analysis. The EIR failed to provide the “approximate number and
15 location of sensitive receptors near planned transportation projects,” and thus “precluded informed
16 public participation and decision making.” See *Nat’l Forest Found.*, 17 Cal.App.5th at 439, 440.

17 **IV. Caltrans Unlawfully Excluded the Industrial Campus from the EIR**

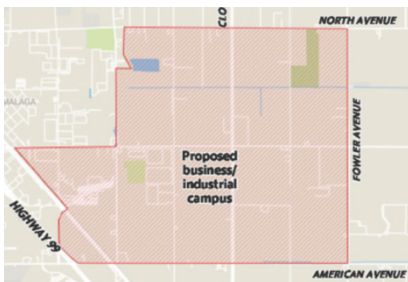
18 Caltrans omitted central components of the Project. Most notably, the County of Fresno has
19 been planning to build a 2,940-acre new industrial park—the Fresno County Business and Industrial
20 Campus (“Campus”)—in South Fresno. Safdi Decl., Ex. 1 at 2. Although Caltrans now asserts in its
21 brief that the Campus is “speculative,” Opp. Br. at 37, it considered the Campus certain enough to
22 determine the Project’s scale and design. See Opening Br. at 22-23. Caltrans’ approval must be set
23 aside so that the EIR can disclose the consequences of the whole project, including the Campus.

24 **A. Caltrans unlawfully piecemealed the Industrial Campus from the Project scope.**

25 CEQA’s rule against piecemealing requires that a “project” evaluated in an EIR encompass
26 “the whole of an action.” *POET, LLC v. State Air Res. Bd.*, 12 Cal.App.5th 52, 73 (2017) (quoting
27 Guidelines § 15378(a)). The rule ensures that “environmental considerations do not become
28 submerged by chopping a large project into many little ones—each with a minimal potential impact

1 on the environment—which cumulatively may have disastrous consequences.” *Laurel Heights*, 47
2 Cal.3d at 396 (citation omitted). Where, as here, a development project depends on a road
3 infrastructure project, the two projects are inseparable parts of a whole action that must be analyzed
4 in one EIR. *See Plan for Arcadia, Inc. v. City Council of Arcadia*, 42 Cal.App.3d 712, 726 (1974)
5 (road widening and fashion park development “should be regarded as a single project” where fashion
6 park required the road improvement to proceed); *Tuolumne Cnty. Citizens for Responsible Growth v.*
7 *City of Sonora*, 155 Cal.App.4th 1214, 1229 (2007) (proposed home improvement center and road
8 realignment were one project for CEQA review). Whether an agency has engaged in piecemealing
9 presents a question of law reviewed de novo, without deference to the agency. *Id.* at 1224-25.

10 Caltrans skirts the rule against piecemealing by casting the Campus as a “gleam in a planner’s
11 eye.” Opp. Br. at 36 (quoting *Laurel Heights*, 47 Cal.3d at 398). But the authority it relies on
12 undercuts its position. In *Laurel Heights*, the respondent similarly insisted that a possible future
13 expansion of a school beyond one section of its proposed new building was too speculative to be
14 considered part of the project. *Id.* at 395. Rejecting this argument, the Supreme Court set forth a two-
15 part test governing whether a future action is certain enough to be within a project scope. *Id.* at 396.
16 Caltrans only contests one prong of the test—that the Campus “is a reasonably foreseeable
17 consequence of” the Project. Opp. Br. at 36. The facts and the law show it is.



18
19
20
21
22 *Map of Campus’ proposed
23 footprint abutting Route 99,
24 American, and North avenues.*

25 Public and private statements in the record describe the
26 Campus as an outgrowth of the interchange expansion Project. A
27 County supervisor told a reporter that converting American Avenue
28 into a full interchange would be necessary for the Campus to
proceed at the identified location. AR12574-75. Meeting notes,
emails, and other documents record Caltrans’ efforts to design the
Project to accommodate the Campus’ transportation needs. *See, e.g.*, AR2342 (stating that American
Avenue “will eventually become a 4-lane facility with development of an industrial park”); 12541-57
(emails, notes, and memoranda). The County’s December 2021 Existing Conditions Report for the
Campus incorporates the Project in describing the Campus’ infrastructure needs. AR14239. Caltrans
too concluded as much: A draft of its EIR and funding documents identifies “additional development

1 . . . including 150+ acres of business park” in describing the need for the Project. AR3175, 5250.

2 While in *Laurel Heights* there was not even a sketch for a future pharmacy school expansion,
3 here the Campus plans were concrete, written, mapped, and accompanied by extensive analysis of
4 costs, benefits, and infrastructure needs. See AR14219-50, 12500-06, 12119-20, 12505-06, 12573,
5 12580, 14081. County plans left no room for speculation as to how the Campus space would be used,
6 denoting specific acreage and square footage allocated to each category of Campus use. AR12501-04.
7 Under *Laurel Heights*, these are more than “reasonably definite proposals” for the development of the
8 Campus following from the interchange expansion. 47 Cal.3d at 397.

9 Caltrans suggests that it is dispositive that the Campus has not yet received a final approval
10 from the County. Opp. Br. at 36; *id.* *Laurel Heights* laid this argument to rest: “[A] public agency’s
11 approval . . . is not a prerequisite for an environmental impact report under CEQA.” 47 Cal.3d at 395.
12 Further, while the Supreme Court there acknowledged section 15262’s admonition that “mere
13 feasibility and planning studies do not require an EIR,” it rejected a demanding test that would
14 exclude activities, like the pharmacy school expansion in *Laurel Heights* itself, from an EIR because
15 they were still in a planning or design phase. *Id.* at 398. As the Court explained, “[t]he fact that
16 precision may not be possible . . . does not mean that no analysis is required.” *Id.* at 399.

17 Caltrans argues that the Campus cannot be part of the Project because Caltrans does not have
18 “statutory authority to facilitate its implementation.” Opp. Br. at 36. The Court of Appeal disposed of
19 this argument in *Tuolumne County*. There, the court applied a holistic test that evaluated the “various
20 connections between the road realignment and the proposed home improvement center.” 155
21 Cal.App.4th at 1227. One factor weighed was if one “entity [was] undertaking the action,” *id.*, but the
22 court never suggested this was dispositive. Rather, a close relationship between entities undertaking
23 the activities increases “the likelihood that the matters are related—that is, are part of a larger whole.”
24 *Id.* Guidelines § 15378(c) (a single “project” may be subject to multiple agencies’ approvals).

25 The record reveals that Caltrans and the County worked together to plan the interchange
26 expansion Project to enable the Campus’ development. AR12121-22. Their collaboration shows that
27 the Campus and the interchange expansion “are part of a larger whole.” *Tuolumne Cnty.*, 155
28 Cal.App.4th at 1227. A Caltrans engineer stated in an email that the County told Caltrans that

1 “American [Avenue] should be a 4-lane facility,” and asked for Project modeling to be repeated
2 “with new industrial triangle in mind.” AR12554. In a meeting, the County again asked for four lanes
3 and a new “bridge . . . to accommodate current/future developments.” AR12549. Ultimately, Caltrans
4 approved an expansion of American Avenue with an overcrossing “with room for four lanes.” AR38.

5 Because the development of the Campus “is dependent upon” the interchange expansion
6 Project, they are one Project under CEQA. *Tuolumne Cnty.*, 155 Cal.App.4th at 1231. In 2021, the
7 County Board of Supervisors voted unanimously to direct staff to “assess[] infrastructure availability
8 and needs to serve the proposed future [Campus].” Safdi Decl., Ex. 1 at 2 & Ex. 2; *see* AR12572. The
9 resulting report showed that the Campus’s 97 million square feet, AR12504, will “focus[] on the
10 needs of trucking, warehousing and distribution industries” and on “highway-oriented mixed-use
11 industrial” uses, AR12501. The EIR discloses none of this. Nor does Caltrans dispute that it worked
12 closely with the County to design the Project to meet the Campus’ demands. Opp. Br. at 36.

13 Caltrans’ premise seems to be that its “task will be more difficult if [it] must consider the
14 environmental effects of less-than-definite future plans.” *Laurel Heights*, 47 Cal.3d at 399. “This
15 premise is flawed.” *Id.* “[N]o authority exempts an agency from complying with the law,
16 environmental or otherwise, merely because the agency’s task may be difficult.” *Id.*

17 **B. At minimum, Caltrans must consider the Campus in the cumulative impacts analysis.**

18 Even if the Campus is not part of the action as a matter of law, Caltrans still had to consider
19 the Campus’ cumulative contributions to the Project’s environmental impacts. *See id.* at 394
20 (exclusion of future expansion “is also inconsistent with the related rule that significant cumulative
21 effects of a project must be considered in an EIR”). An EIR’s cumulative impacts analysis must
22 weigh “the incremental effects of an individual project when viewed in connection with the . . .
23 effects of probable future projects.” Guidelines §§ 15130(b), Pub. Res. Code 21083(b)(2). Under
24 CEQA, a “probable future project” is “any future project where the applicant has devoted significant
25 time and financial resources to prepare for any regulatory review.” *Gray v. County of Madera*, 167
26 Cal.App.4th 1099, 1127-28 (2008). The County invested significant resources into planning the
27 Campus, undertaking extensive planning analyses, site reviews, infrastructure assessments, and
28 public hearings over a period of years. *See, e.g.*, AR14219-50, 12500-06; Safdi Decl., Ex. 1-2.

1 Caltrans' reliance on *City of Maywood v. Los Angeles Unified School District*, 208
2 Cal.App.4th 362 (2012), is misplaced. Its brief states that the Court "agreed" with the respondent's
3 assertion that no EIR was required for a road infrastructure project because it was too speculative to
4 qualify as a "probable future project" given that "specific improvements" were "yet to be
5 determined." Opp. Br. at 37 (quoting *Maywood*, 208 Cal.App.4th at 396). But the court did not adopt
6 the respondent's reasoning. Instead, its decision turned on the petitioner's failure to carry the burden
7 of proof to show that the road infrastructure project was a "probable future project." *Maywood*, 208
8 Cal.App.4th at 398. The petitioner did not provide the court with copies of the documents it claimed
9 showed that the proposal was "probable," so it was impossible for the court "to determine . . .
10 whether, as currently proposed, the project will include" the road improvement at issue. *Id.* Here, the
11 Court has an abundant factual record showing that Caltrans designed the Project to accommodate the
12 Campus. *See* AR12119-20, 12505-06, 12501-04, 12541-57.

13 The Campus is inarguably a "probable future project" within the meaning of CEQA. Contrary
14 to Caltrans' claim, Opp. Br. at 37, a "probable future project" under CEQA need not have reached
15 environmental review. *Gray*, 167 Cal.App.4th at 1127-28. Rather, it is "any future project where the
16 applicant has devoted significant time and financial resources to prepare for any regulatory review."
17 *Id.*; *see, e.g., San Franciscans for Reasonable Growth v. City & Cnty. of San Francisco*, 151
18 Cal.App.3d 61, 75 (1984). The record shows that the County has invested significant time and
19 money into planning the Campus and preparing for approval. It has undertaken extensive planning
20 analyses, site reviews, infrastructure assessments, and public hearings. *See, e.g.,* AR14219-50,
21 12500-06; Safdi Decl., Exs. 1-2. The County's "significant investment of time, money and technical
22 planning"—recorded exhaustively in the record—is sufficient to dictate its inclusion in cumulative
23 impacts review. *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 75.

24 Caltrans blinded the public to the purpose and scale of the Project when it excluded any
25 mention of the Campus. The Campus stands to significantly increase the Project's effects on traffic,
26 air pollution emissions, and noise. Because its excision undermined the public's informed decision-
27 making, the error is necessarily prejudicial and requires that the Project approval be set aside.

28 **V. Caltrans Flouted Its Duty to Analyze the Project's Growth-Inducing Impacts**

1 Caltrans failed to disclose adequately how the Project would induce unplanned industrial
2 buildout, instead reaching a conclusion contradicted by substantial evidence in the record. CEQA
3 requires that an EIR “include a detailed statement setting forth . . . [t]he growth-inducing impact of
4 the proposed project.” Pub. Res. Code § 21100(b)(5). It must inform the public how the project “may
5 encourage and facilitate other activities that could significantly affect the environment,” including by
6 inducing “economic or population growth.” Guidelines § 15126.2(e). An agency cannot avoid the
7 duty to discuss growth-inducing impacts by asserting they “will be felt outside of the project area.”
8 *Napa Citizens for Honest Gov’t v. Napa Cnty. Bd. of Supervisors*, 91 Cal.App.4th 342, 369 (2001).
9 Caltrans’ failure to address growth-inducing impacts is reviewed de novo because it goes to the EIR’s
10 sufficiency as an informational document. *Id.* at 361.

11 Caltrans’ omission of the word “detailed” in its quotation to section 21100(b)(5) is telling.
12 Opp. Br. at 34. The EIR’s one-paragraph discussion of growth-inducing impacts concluded, without
13 supporting analysis, that “[t]here are no apparent pressures from the project that would encourage
14 unplanned growth.” AR60. That perfunctory conclusion flouts CEQA’s mandate that agencies
15 analyze “the ways in which the proposed project could foster economic or population growth . . .
16 either directly or indirectly.” Guidelines § 15126.2(e); *id.* § 15126.2(a) (requiring that EIR discuss
17 “changes induced in . . . use of the land (including commercial and residential development)”).

18 Caltrans’ efforts to explain away its failure to provide the “detailed statement” required by
19 CEQA fail. First, Caltrans argues that *Clover Valley Foundation v. City of Rocklin*, 197 Cal.App.4th
20 200 (2011), vindicated its own scant analysis of growth-inducing impacts. Opp. Br. at 35. Just the
21 opposite. There, petitioners alleged that the EIR for a subdivision failed to adequately consider the
22 growth-inducing impacts of offsite sewer infrastructure. 197 Cal.App.4th at 226. Unlike here, the EIR
23 in *Clover Valley* “acknowledged the proposed sewer infrastructure would generate a growth-inducing
24 impact” by removing an obstacle to future growth. *Id.* at 225, 227. The court’s decision not to require
25 more detail turned on the fact that the “purpose and nature” of the sewer was “not to facilitate
26 additional development.” *Id.* at 227. Here, in contrast, Caltrans insists the “purpose of this project is
27 to accommodate future growth in the project area.” AR10935; *see* AR11697, 12808. Unlike in *Clover*
28

1 Valley, Caltrans concluded that the Project would put *no* pressure on unplanned growth at all. AR60.⁸

2 Finally, Caltrans asserts that it “did its due diligence” to analyze how the Project will induce
3 growth “by reaching out to the CITY and COUNTY” and confirming “there were no plans to develop
4 the area beyond the existing plans.” Opp. Br. at 35. Caltrans’ suggestion that it considered the
5 Project’s relationship to planned industrial buildout cannot be squared with its failure to mention the
6 Campus or the Campus’ role in dictating the Project’s design anywhere in the EIR, nor with Caltrans’
7 failure to disclose the Project’s role in facilitating industrial buildout under the City of Fresno’s
8 proposed South Central Specific Plan. *See* Opening Br. at 31. Whether Caltrans considered the
9 Project’s relationship to *planned* industrial buildout is irrelevant to Petitioners’ claim that Caltrans
10 failed to consider how the Project will spur *unplanned* growth. Any uncertainty about the “exact
11 extent and location” of future growth “does not excuse” Caltrans from failing to make its best efforts
12 to evaluate it. *Stanislaus Audubon Soc’y, Inc. v. Cnty. of Stanislaus*, 33 Cal.App.4th 144, 158 (1995).

13 Not only did the EIR fail to disclose the Project’s growth-inducing impacts, but its conclusion
14 that the Project will have no growth-inducing impacts is contradicted by substantial record evidence.
15 Caltrans fails to respond to this claim. *Compare* Opening Br. at 31 *with* Opp. Br. at 35. The record
16 shows the Project is designed to improve traffic flow to industrial facilities and to “open the area up
17 to more industrial and commercial business.” AR1514, 12808. Caltrans’ conclusion that the Project
18 will not induce unplanned growth conflicts with its assertion in the same paragraph that the Project is
19 meant to “improve the operations of two existing interchanges” in an area targeted for “industrial and
20 commercial business activities,” AR60, and its concession that the expansion would ease use of
21 interchanges by “traffic, especially large trucks” to serve this growth, AR30. The EIR does not even
22 acknowledge Project characteristics that would foreseeably induce this buildout, such as expanding
23 capacity for heavy-duty trucks to access new industry from the highway.

24 Caltrans asserts that it is “only rebuilding [the interchanges] to comply with modern design
25

26 ⁸ Caltrans claims that “any future impacts of additional development would undergo its own CEQA
27 analysis.” Opp. Br. at 35. But the possibility that future development *may* require its own CEQA
28 analysis does not release the agency from its statutory duty to analyze this Project’s growth-inducing
effects. *See Napa Citizens*, 91 Cal.App.4th at 369 (It is “by no means determinative, that future
effects will themselves require analysis under CEQA.”).

1 standards and not to facilitate additional development.” Opp. Br. at 35. The record shows otherwise,
2 which may explain why Caltrans does not cite the record in its growth-inducing impacts discussion.
3 *See id.* at 34-35. Caltrans proposes to expand each interchange from two to four lanes, add ramps, and
4 construct overcrossings to increase traffic capacity. AR36-39. It described the Project as “provid[ing]
5 additional capacity that will accommodate future planned growth and increased truck volumes in a
6 quickly developing industrial area.” AR10897. It asserted that the Project would “help spur additional
7 economic growth in the area,” AR11697, and that distribution centers “will likely utilize the project
8 interchanges and influence further economic growth for the region,” AR11172. These and other
9 statements by Caltrans make clear that the Project is intended to spur growth. *See* Opening Br. at 31.

10 **VI. Caltrans Fails to Defend Fatal Deficiencies in Its Cumulative Impacts Analysis**

11 Caltrans violated its duties under CEQA to provide a detailed analysis of the Project’s
12 cumulative impacts, both by considering an arbitrary and incomplete set of projects and by failing to
13 actually analyze the cumulative effects of the projects on its slapdash list. *See* Guidelines §§ 15126.2,
14 15130(b). Caltrans’ only defense of the sufficiency of its list of projects is that the Fresno Council of
15 Governments’ 2018 Regional Transportation Plan (“RTP”) “incorporates thousands of projects
16 throughout the region.”⁹ Opp. Br. at 34. But the 2018 RTP was superseded by the 2022 RTP well
17 before Caltrans certified the Project EIR in January 2023. AR15897; *see* Opening Br. at 35. The 2022
18 RTP includes transportation projects resulting in air pollution, traffic, and other impacts that would
19 add to those from the Project but that were neither included in the 2018 RTP nor otherwise
20 considered in Caltrans’ cumulative impacts review. *See* Opening Br. at 35-36. Furthermore, Caltrans
21 ignores Petitioners’ argument that it excluded its Route 99 Corridor Enhancement Master Plan and
22 Route 99 Business Plan from the analysis, both of which include projects not in the 2018 RTP.
23 *Compare* Opening Br. at 36 *with* Opp. Br. at 33-34. Nor does Caltrans offer any explanation for
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26 ⁹ Caltrans also asserts that it relied on phase 2 of San Joaquin Valley Model Improvement Plan
27 (“VMIP 2”) and that VMIP 2 incorporates land use plans and transportation projects. *See* Opp. Br. at
28 11, 34. VMIP 2 is mentioned nowhere in the EIR. The Court should disregard Caltrans’ invocation of
it now as a “*post hoc* rationalization[.]” *Laurel Heights*, 47 Cal.3d at 425. Further, the only reference
to VMIP 2 Caltrans identifies in the record is a 2023 project report mentioning that Caltrans relied on
VMIP 2’s travel demand model for demand forecasting, not for cumulative impacts analysis. AR711.

1 including the Amazon and Ulta distribution centers but not another nearby “major distribution
2 center[,]” AR3184, 3191, for omitting entire categories of stationary sources in the area, and for
3 omitting the Industrial Campus and the South Central Specific Plan. *See* Opening Br. at 37-38. This
4 Court should follow the court in *San Joaquin Raptor* and invalidate the EIR because it failed to “list
5 other development projects currently under consideration or construction in the immediate area” and
6 thus failed to consider their additive environmental effects with the Project. 27 Cal.App.4th at 739.

7 In addition to compiling an incomplete list of projects, Caltrans conducted no apparent
8 analysis of cumulative impacts for any of the projects on its list. A single paragraph containing no
9 data is the sum total of the EIR’s cumulative impacts analysis. *See* AR162. All Caltrans musters in
10 opposition is a conclusory restatement that it considered cumulative impacts but “determined they
11 were less than significant.” Opp. Br. at 34 (citing AR161). To the extent that Caltrans implies that its
12 use of VMIP 2 to analyze traffic forecasts constituted a cumulative impacts analysis, it is clearly
13 mistaken. *See* Opp. Br. at 11 (“CALTRANS used VMIP 2 for its traffic forecasting.” (citing
14 AR711)). Caltrans does not even attempt to show that it analyzed the cumulative effects of related
15 projects on impacts beyond transportation, such as noise, odors, and air quality, as CEQA requires.

16 Caltrans’ efforts to downplay the Project’s impacts in defending its cumulative impacts
17 analysis only underscore the deficiency. It argues that the Project’s scope is “relatively minor” and
18 “[t]he magnitude of the PROJECT led CALTRANS to reasonably conclude it would not contribute to
19 any cumulatively considerable impacts.” Opp. Br. at 34. Caltrans thereby doubles down on a “ratio
20 theory” that courts have rejected. *See* Opening Br. at 39 (citing *Kings Cnty. Farm Bureau v. City of*
21 *Hanford*, 221 Cal.App.3d 692, 721 (1990)). The *Kings County* court condemned the theory that “the
22 greater the overall problem, the less significance a project has in a cumulative impact analysis.” 221
23 Cal.App.3d at 721. This approach “allows the approval of projects which, when taken in isolation,
24 appear insignificant, but when viewed together, appear startling.” *Id.* Caltrans also errs by comparing
25 the Project’s incremental contribution to a significant non-attainment problem, rather than
26 considering whether the Project *together with* related transportation and industrial projects creates or
27 exacerbates cumulatively considerable air pollution, noise, transportation, or other impacts. Caltrans’
28 failure to consider whether the Project’s cumulative contributions are significant “in light of the

1 serious nature of the [existing] problem” renders the EIR inadequate as a matter of law. *L.A. Unified*
2 *Sch. Dist. v. City of Los Angeles*, 58 Cal.App.4th 1019, 1023, 1025-26 (1997).

3 **VII. Caltrans’ Unlawful Substitution of Level of Service for VMT Analysis Violates CEQA**

4 Caltrans committed two prejudicial flaws in its transportation-impact analysis. First, it
5 unlawfully circumvented VMT review. In doing so, it violated the Legislature’s 2013 directive
6 rejecting LOS (which measures congestion) in favor of VMT (which measures induced travel) as the
7 metric for analyzing transportation impacts under CEQA, as well as its own internal guidance
8 dictating application of VMT for this Project. Caltrans has not opposed this argument, which is
9 grounds alone to set aside the EIR. It then substituted a congestion analysis, which reaches a
10 conclusion unsupported by substantial evidence in the record. Though the Court need not reach this
11 second issue, if it does, it should require that the EIR be decertified on this basis too.

12 **A. Caltrans’ failure to conduct a VMT analysis is prejudicial error.**

13 Caltrans fails to oppose Petitioners’ argument that it violated CEQA by evaluating congestion
14 in lieu of vehicle miles traveled. The Court may interpret Caltrans’ silence as a concession. *See*
15 *People v. Bouzas*, 53 Cal.3d 467, 480 (1991) (recognizing failure to oppose as a concession).

16 Caltrans’ only mention of VMT is in its Statement of Facts, where it suggests that its internal
17 guidance—Caltrans’ so-called “Timing Memorandum”—allowed it to employ the abandoned LOS
18 measure. Opp. Br. at 15; AR3648. Not so. Caltrans’ Timing Memorandum required VMT analysis for
19 all projects that began environmental review after April 2020 and for certain projects that began
20 environmental review before 2020. Under the Timing Memorandum, the only factors relevant to the
21 decision whether to conduct a VMT analysis were: the timing of environmental review; whether the
22 project would include a new alignment, add lane miles, or be located in an area with existing or
23 projected congestion; and whether there is a high level of public or stakeholder interest in the process.
24 AR2764. Caltrans addresses none of these factors. Instead, it asserts that because a supervisor
25 concurred in staff’s faulty recommendation to discard VMT, Caltrans was justified in doing so. Opp.
26 Br. at 15. More nonsense. In addition to serving as an improper *post hoc* rationalization, Caltrans’
27 reasoning substitutes yet another made-up factor for criteria imposed by law. Reliance on such ad hoc
28 considerations is the hallmark of arbitrary and capricious decision-making. *See* Opening Br. at 43

1 (citing *Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal.4th 446, 460 (2012)).

2 Both Timing Memorandum criteria directing a VMT analysis for projects that began
3 environmental review after April 2020 were satisfied here. Opening Br. at 42. As to the first criterion,
4 Caltrans conceded in internal documents that the Project adds “new ramp alignments” and is in an
5 “area with congestion.” AR3566; *see* AR169 (recording that congestion will increase over time), 39
6 (recording that “[a]ll build alternatives proposed at North Avenue would include the realignment” of
7 lanes), *id.* (describing addition of ramps, lanes, and four-lane overcrossing), 3526 (classifying “the
8 project as ‘capacity’ increasing due to the addition of ramp capacity”). As to the second, residents,
9 community groups, and the Air District submitted extensive scoping comments demonstrating a high
10 level of public and stakeholder interest. AR3486-3503 (scoping comments). Caltrans conceded as
11 much in internal documents, noting “two potential environmental justice organizations that would
12 take potential legal action” if it forewent a VMT analysis. AR3564; *see* AR3566 (identifying “the
13 potential of sections of the Environmental Document to be successfully legally challenged”).

14 Caltrans also does not contest Petitioners’ argument that its failure to apply VMT contravened
15 Senate Bill 743 and its implementing regulations, in addition to Caltrans’ own guidance. Rather,
16 Caltrans asserts (again in its Statement of Facts) that the Project “is consistent with project types not
17 likely to lead to a measurable and substantial increase in vehicle travel.” Opp. Br. at 15. It is wrong.
18 The language Caltrans quotes is from a 2018 Technical Advisory on Evaluating Transportation
19 Impacts issued by the California Office of Planning and Research, which developed Guideline
20 section 15064.3 to implement Senate Bill 743. AR2791; *see* Opening Br. at 40-41. The Technical
21 Advisory states that “[i]f a project would likely lead to a measurable and substantial increase in
22 vehicle travel, the lead agency should conduct an analysis assessing the amount of vehicle travel the
23 project will induce.” AR2791. According to the Technical Advisory, projects that would add “lanes
24 through grade-separated interchanges” can be expected to “lead to a measurable and substantial
25 increase in vehicle travel.” AR2791-92. This is exactly such a project. *See* AR39 (describing
26 proposed addition of interchange lanes). By Caltrans’ own metrics, the addition of these lanes would
27 lead to a significant and measurable increase in travel. As Petitioners explained in their opening brief,
28 by just 2026, the Project would increase average daily traffic at the American Avenue interchange by

1 42% over the No Build alternative and would increase daily truck traffic by 94%. AR89; *see* AR1592
2 (“Increases in truck traffic at the intersections are to be expected, as the improvements will be
3 specifically designed to accommodate such vehicles.”); Opening Br. at 41.

4 State policy making VMT the measure for transportation impacts under CEQA recognizes
5 that reliance on LOS can perversely incentivize adding more lanes and expanding roadway capacity
6 to mitigate congestion impacts. *See* Pub. Res. Code § 21099(b). These features in turn induce more
7 vehicle use and accelerate greenhouse gas emissions. This is exactly what Caltrans has done here, as
8 manifested by its recognition that the Project as designed will significantly increase greenhouse gas
9 emissions. Caltrans’ failure to follow State policy requires that its EIR be set aside.

10 **B. Caltrans attempts to downplay the conclusions in its own Air Quality Report.**

11 Caltrans’ conclusion that the Project would not substantially impact LOS is unsupported by
12 substantial evidence. That said, because Caltrans was required to conduct VMT analysis, the Court
13 need not even reach this argument. If it does, the Court should set aside the EIR on this basis too.

14 Caltrans’ Air Quality Report, referenced throughout the EIR, indicates that under all Project
15 build alternatives, every North Avenue ramp will operate at an LOS of “F”—the worst congestion
16 grade—by 2046, AR1471-72, while six of ten American Avenue ramps will operate at an LOS of “F”
17 and two more at an LOS of “F” half the time, AR1473. *See* Opening Br. at 43. These findings
18 contradict Caltrans’ conclusion that the Project would not worsen congestion. AR157, 306.

19 Perhaps recognizing this problem, Caltrans now seeks to divert attention from its Air Quality
20 Report by focusing instead on its 2020 Traffic Operations Report. Opp. Br. at 38. In so doing,
21 Caltrans invites the Court to ignore the agency’s own documentation. The law does not permit it to
22 do so. Rather, the “reviewing court must consider the evidence *as a whole*.” *Laurel Heights*, 47
23 Cal.3d at 408. In any event, the Traffic Operations Report does not contradict the Air Quality Report:
24 It merely considers additional congestion points. Even there, the Traffic Operations Report shows
25 LOS growing worse at a number of the evaluated interchanges. For example, congestion is expected
26 to worsen to LOS “E” during PM peak travel at intersection Cedar/North from its current LOS “C.”
27 AR14157. This too undercuts Caltrans’ conclusion, as its own standards indicate that only ratings of
28 “A” through “D” are considered acceptable. Opp. Br. at 38; AR86.

1 **VIII. Caltrans Fails to Substantiate Its Air Quality Significance Determination**

2 It is firmly established that agencies must articulate a reasoned basis in their EIR for reaching
3 their conclusion about the significance of an impact. *Laurel Heights*, 47 Cal.3d at 405. “[T]he EIR
4 must contain facts and analysis, not just the agency’s bare conclusions or opinions.” *Id.* (citations
5 omitted). Toward this end, the Guidelines encourage agencies to adopt thresholds of significance—
6 meaning an “identifiable quantitative, qualitative or performance level of a particular environmental
7 effect”—to determine significance of environmental effects. Guidelines § 15064.7(a)-(b). Absent
8 generally applicable standards, an agency may adopt “thresholds on a case-by-case basis,” *id.*
9 § 15064.7(b), provided it “explain how compliance with the threshold means that the project’s
10 impacts are less than significant” and does not exclusively rely on the threshold to determine
11 significance, *id.* § 15064(b)(2). An EIR that fails to identify and apply a standard to evaluate
12 significance is insufficient as an informational document. *Lotus v. Dept. of Transp.*, 223 Cal.App.4th
13 645, 655-58 (2014) (holding that Caltrans’ failure “to identify any standard of significance, much less
14 to apply one to an analysis of predictable impacts from the project” “subverts [CEQA’s] purposes”).

15 Here, Caltrans identifies what appear to be highly significant increases in air pollution from
16 the Project—including increases to PM10 emissions at American Avenue by upwards of 854% by
17 2046 (from 0.024 pounds/day without the Project to 0.233 pounds per day with the Project) and to
18 PM2.5 pollution by 54% by 2026 over No Build. AR124-25; *see* Opening Br. at 32-33. Yet it failed
19 to apply any standard to evaluate the significance of these increases. Rather, it evaluated significance
20 by considering a subset of narrative questions from Appendix G to the CEQA Guidelines, which
21 Caltrans insisted “*do not represent thresholds of significance.*” AR139 (emphasis added).

22 Caltrans attempts two arguments to explain away this failure. Opp. Br. at 39. Both fail. First,
23 Caltrans is wrong that CEQA encourages but does not require agencies to establish thresholds of
24 significance. The Guidelines provide that agencies are “encouraged to develop and publish thresholds
25 of significance that the agency uses in the determination of the significance of environmental
26 effects.” § 15064.7(b). It does not excuse agencies from evaluating significance with respect to an
27 objective standard. Rather, “[w]hen an agency has not published a threshold of significance for a
28 particular impact, it must adopt a threshold of significance during its evaluation of the project.” *King*

1 & *Gardiner Farms, LLC, v. County of Kern et al.*, 45 Cal.App.5th 814, 884 (2020). Otherwise, the
2 public cannot discern how the agency reached its conclusion. *See Lotus*, 223 Cal.App.4th at 658.

3 Second, Caltrans tries to defend its significance conclusion by pointing out that the Project is
4 modeled in the 2018 RTP. Opp. Br. at 39. Even if true, this fact goes toward the Project’s consistency
5 with the Clean Air Act’s transportation conformity provisions and is irrelevant to a determination of
6 significance under CEQA.¹⁰ An EIR may not simply assume that “the level of effort required in one
7 context . . . will suffice in the other.” *Ctr. for Biological Diversity v. Dept. of Fish & Wildlife*, 62
8 Cal.4th 204, 227 (2015). Rather, in borrowing standards to evaluate air quality significance, an EIR
9 must close the “analytical gap” through “substantial evidence and reasoned explanation” to justify its
10 evaluation. *Id.* Here, Caltrans provides none. Tellingly, Caltrans’ only attempted authority for its
11 extrapolation from the RTP—Guidelines § 15064(h)(3)—applies to cumulative impacts analyses,
12 which are irrelevant to Petitioners’ challenge to Caltrans’ significance determination for the Project’s
13 own air quality impacts. Even so, whether the Project was included in a regional transportation plan
14 has no bearing on whether it will cause a significant impact on local air quality, which Caltrans’ own
15 analysis shows it will. AR124-25.

16 **IX. Caltrans Does Not Defend Its Flawed Mitigation Measures**

17 Caltrans has not opposed Petitioners’ argument that its greenhouse gas measures are riddled
18 with defects. The Court can interpret this silence as a concession. *See People v. Bouzas*, 53 Cal.3d at
19 480. The EIR should be vacated on this ground too, so that Caltrans takes seriously its duty to
20 investigate and adopt all feasible and enforceable mitigation for this substantial impact.


21 **CONCLUSION**

22 For the foregoing reasons, Petitioners respectfully request that the Court issue a peremptory
23 writ declaring the EIR inconsistent with CEQA and setting aside Caltrans’ Project approval.

24
25
26 Dated: November 21, 2025

27 ¹⁰ Petitioners’ Clean Air Act claims turn on whether the Project was included in a conforming RTP
28 and whether it required a hot-spot analysis to determine if its localized particulate-matter-emissions
increases would interfere with attainment of the PM NAAQS. Safdi Reply Decl., Ex. 4.

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