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(NO FEE PURSUANT TO GOV. CODE, § 6103)

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8 CALIFORNIA DEPARTMENT OF TRANSPORTATION, TONY TAVARES, in his official  
capacity as Director of the California Department of Transportation (CALTRANS)  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF FRESNO**

12 FRIENDS OF CALWA, INC., and FRESNO )  
13 BUILDING HEALTHY COMMUNITIES, )

14 Plaintiffs and Petitioners, )

15 v. )

16 CALIFORNIA DEPARTMENT OF )  
17 TRANSPORTATION, TONY TAVARES, in )  
his official capacity as Director of the )  
18 California Department of Transportation; and )  
19 DOES 1-20, )

20 Defendants and Respondents, )

Case No. 23CECG04109

**RESPONDENT CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION and TONY  
TAVARES, in his official capacity as  
Director of the California Department  
of Transportation's, OPPOSITION  
BRIEF TO PETITIONER'S  
OPENING BRIEF ON THE CEQA  
MERITS**

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE Geoffrey Wilson  
DEPARTMENT 20

**Date:** January 9, 2026

**Time:** 1:30 p.m.

**Dept.:** 32

**Action filed:** October 2, 2023

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1 **I. INTRODUCTION**

2 Nothing lasts forever. All transportation facilities have expiration dates. In California, the  
3 agency responsible for operating and maintaining outdated facilities along state highways is the  
4 California Department of Transportation and its Director<sup>1</sup> who is appointed by the Governor  
5 (collectively referred to as “CALTRANS”). (Sts. & Hy. §§ 90, 91; Gov. Code § 14003.) The South  
6 Fresno Route 99 Corridor Project (PROJECT) is the fulfillment of that duty.

7 Contrary to the Petitioners’ assertions the PROJECT is not a “major highway expansion” nor  
8 will it transform South Fresno into a “spaghetti bowl of ramps, lanes, and overcrossings.” It has  
9 nothing to do with a non-existent industrial campus that the Fresno County may or may not pursue at  
10 some nebulous future date. (Pets. Brief p. 7.) The PROJECT merely consolidates three existing  
11 partial interchanges into two full interchanges. The PROJECT will rebuild these outdated on-ramps  
12 and two antiquated bridge structures to bring them into compliance with CALTRANS’ current  
13 design standards. The PROJECT will not add any capacity to the State Route 99 (SR 99) mainline.  
14 This is a simple project with the explicit purpose of modernizing and updating old, outdated facilities  
15 that predate the Moon landing. Petitioners’ attempt to mischaracterize that reality is central to this  
16 hearing.

17 Petitioners are clearly outraged by the industrial development in South Fresno. The  
18 Petitioners’ outrage and frustration at the local zoning and land use decisions have led them to view  
19 any improvement along SR 99 as a conspiracy to industrialize the area further. Contrary to the  
20 evidence, Petitioners believe stopping this PROJECT will stop future industrial development in  
21 South Fresno. However, the South Fresno area has been industrializing for decades and is projected  
22 to continue to do so with or without the PROJECT. CALTRANS does not and cannot make land use  
23 decisions. The facts show that the past and future planned industrialization of South Fresno is an  
24 existing condition consistent with existing land use plans, not an impact of the PROJECT.

25 \_\_\_\_\_  
26 <sup>1</sup> At the time this Petition was filed Tony Tavares was the Director of CALTRANS. Tony Tavares  
27 retired in May 2025. On July 1, 2025 Dina El-Tawansy was sworn in as the new Director of  
CALTRANS.

1 Further, the PROJECT is specifically designed to address some of the negative impacts  
2 industrialization has brought to the area. The PROJECT will streamline traffic flows, decrease the  
3 number of interchanges in the area, lessen the traffic burden on local streets, and centralize access to  
4 the SR 99 mainline, thus reducing idling times and improving air quality. The PROJECT also invests  
5 in multimodal infrastructure by incorporating pedestrian and bike facilities into the design. The  
6 Petitioners were informed about all of this from the beginning. CALTRANS met with Petitioners  
7 multiple times throughout the process and repeatedly sought their input before certifying the  
8 Environmental Impact Report (EIR).<sup>2</sup> All of these efforts were in vain as the Petitioners never  
9 engaged in any meaningful manner.

10 Despite the benefits, the Petitioners are determined to kill this PROJECT to the detriment of  
11 all parties involved. This effort started in federal court, where the Petitions chose to file this CEQA  
12 challenge along with other state law claims despite CALTRANS' clear sovereign immunity. Once it  
13 was clear that this was a failed strategy, Petitioners then unreasonably delayed in bringing this action  
14 to this Court. This untimely lawsuit is the latest attempt to stop this PROJECT. Stopping these  
15 improvements to SR 99 only ensures (1) traffic conditions will continue to deteriorate along the SR  
16 99 corridor in South Fresno and (2) residents and businesses of South Fresno will be denied the  
17 PROJECT's ample benefits. The Petitioners' challenge to the EIR was untimely and should be  
18 dismissed. Alternatively, CALTRANS has met all legal requirements in certifying the PROJECT's  
19 EIR, therefore the Petitioners' writ should be denied.

## 20 **II. STATEMENT OF FACTS**

### 21 **A. THE SOUTH FRESNO STATE ROUTE 99 CORRIDOR PROJECT**

#### 22 1. Purpose and Need of the South Fresno State Route 99 Corridor Project.

23 The purpose of the PROJECT is to reconstruct and modernize the timeworn interchanges  
24 along SR 99 at North/Cedar Avenues and American Avenue and bring them into compliance with  
25 \_\_\_\_\_

26 <sup>2</sup> In the Administrative Record (AR) an English version of the EIR can be found at AR 000008-  
27 000320 and a Spanish version of the EIR can be found 000321-000667. All citations to the EIR will  
be to the English version and will be in **BOLD** for the Courts convenience.

1 current CALTRANS design standards. (AR 000030.) The existing interchanges were originally built  
2 in 1965. The bridge structures (also referred to as “overcrossings”) at American Avenue and North  
3 Avenue are even older having been built in 1962 and 1963 respectively. (AR 000714.) Currently, the  
4 vertical clearances of the two overcrossings are well below the modern standard of 16’6”. (AR  
5 000678.) This has resulted in vehicles hitting the soffits (underside of the bridge structures). (AR  
6 000714.) Contrary to the Petitioners’ assertions, the American Avenue overcrossing, per the current  
7 design, will be a 3-lane facility with two traffic lanes and a central median. (AR 000703-704; AR  
8 015283.)

9           These improvements are needed because traffic is expected to increase with the  
10 implementation of planned development along the SR 99 corridor. (AR 000030.)  
11 Currently, this stretch of SR 99, from post mile (PM) 12.5 (American Avenue) in the south and PM  
12 19.1 (North Avenue) in the north, is served by a series of five (5) interchanges. These existing  
13 facilities are located at North, Cedar, Central, Chestnut, and American Avenues. (AR 003183.) The  
14 initial project plan was to downsize these five (5) partial interchanges into three full interchanges to  
15 alleviate negative impacts on local roads and to accommodate the planned future growth in the area.  
16 (AR 000751-752.) The Central/Chestnut interchange improvements were dropped from the  
17 PROJECT for financial reasons. (AR 003523.)

18           2. The South Fresno Route 99 Corridor Project Setting.

19           State Route 99 is the primary transportation artery linking the San Joaquin Valley to  
20 Sacramento in the north and to Los Angeles (via Interstate 5) in the south. (AR 000675.). This is a  
21 historic transportation corridor, first established with the completion of the Central Pacific Railroad  
22 in 1870. (AR 000074; AR 000161.) The railroad established the area as a transportation corridor that  
23 facilitated economic development in the region, particularly agriculture. (AR 000074.) In 1927, the  
24 Golden State Highway was built along the railroad and served as a major north-south road running  
25 from the Canadian border to the Mexican border. (AR 000074.) This road would eventually become  
26 SR 99 and was realigned to the present location in 1965. (AR 000074.) Today SR 99 is a vital  
27 transportation corridor for the movement of agricultural products and commercial goods to and from

1 the San Joaquin Valley. (AR 000675.)

2 The PROJECT is located in Fresno County (COUNTY). The COUNTY is one of the fastest  
3 growing counties in California, having seen a population growth of 125% between 1970 and 2010.  
4 (AR 015673). The City of Fresno (CITY) is the most populous in the COUNTY. According to data  
5 from the California Department of Finance the population of the COUNTY was under 414,000  
6 people and the CITY was under 166,000 people when these interchanges were first constructed. (AR  
7 015941.) As of May 1, 2020, the COUNTY had a population of 1,023,353 and the CITY had a  
8 population of 557,320. (AR 000168.)

9 The COUNTY's central location along the SR 99 corridor makes it an ideal location for the  
10 development of logistics and distribution centers. (AR 000675.) As a result, the CITY and  
11 COUNTY's land use plans have prioritized the area for industrial and commercial development.  
12 (AR 000016; AR 000067; AR 000169.) The PROJECT interchanges serve as "main points of access  
13 for the existing and developing industrial and commercial businesses." (AR 000169.) As such, much  
14 of the PROJECT area has been zoned heavy and light industrial by the CITY and the COUNTY.  
15 (AR 000069-70.) These existing and future planned land use practices are why the "interchanges  
16 need updating now because traffic conditions and the subsequent air quality will continue to worsen  
17 if no improvements are made." (AR 000030.)

18 This stretch of SR 99 is also designated as part of the "National Network." (AR 000679; 23  
19 C.F.R. § 658, App. A.) The National Network was established under the Surface Transportation  
20 Assistance Act of 1982 (STAA). Under the STAA all National Network routes must be available for  
21 use by large freight trucks and are subject to federal regulations. (*see* 23 C.F.R § 658.1 et seq.)  
22 Therefore, Caltrans is federally required to ensure any improvement to SR 99 must "safely and  
23 efficiently accommodate the large vehicles authorized by the STAA." (23 C.F.R. § 658.3.)

24 *i. Existing Conditions*

25 As noted repeatedly throughout the EIR, the PROJECT area is dominated by industrial and  
26 commercial zoning. (AR 000026; AR 000058; AR 000059; AR 000060; AR 000062; AR 000064-  
27 70; AR 000074-75; AR 000100; AR 000133; AR 000141; AR 000161; AR 000169) The EIR also

1 makes clear that these baseline conditions are consistent with long-term plans adopted by the  
2 COUNTY and CITY. (AR 000026; AR 000058; AR 000060; AR 000064-70; AR 000074; AR  
3 000144; AR 000161; AR 000169.) Even the Petitioners acknowledge the “existing industrial land  
4 use patterns” in the Project area. (AR 0002508-2509.) The Petitioners repeatedly admit the  
5 PROJECT is surrounded by land “zoned for industrial development throughout the area” and  
6 “thousands of acres” are “designated and pre-designated for industrial development.” (AR 002518;  
7 AR 002509.) This pattern dates back to when the area was established as a transportation corridor in  
8 1870. Every CITY general plan since 1956 “reiterated the importance of this industrial area to the  
9 economic stability of [the CITY]” (AR 000067.) The 1973 North Avenue Industrial Triangle -  
10 Specific Plan established the CITY’s “intention to place industrial and commercial uses” in the area  
11 surrounding the North Avenue interchange. (AR 000068.) This intention continues today in both the  
12 COUNTY’s and CITY’s general plans and policy documents. (AR 000074.) This pattern is expected  
13 whether or not the PROJECT is implemented.

14 *ii. Induced Growth*

15 The PROJECT is improving existing facilities and does not provide any new access to SR 99.  
16 (AR 002236.) In October 2020, CALTRANS interviewed CITY and COUNTY officials about  
17 potential growth in the area. Both the CITY and COUNTY informed CALTRANS that there were no  
18 plans to develop beyond the existing general planning, and no specific plans or environmental  
19 documents being reviewed to indicate a change in the project area. (AR 000060-61; AR 002236.)  
20 CALTRANS relied on the information provided by the locals to conclude the project would not  
21 encourage unplanned growth. (AR 000060.) As discussed above, much of the area is zoned  
22 industrial and has been prioritized for industrial and commercial development by the COUNTY and  
23 CITY. (*see* sections II.A.2 and II.A.2.i.) Any anticipated growth in the area would be planned  
24 growth consistent with existing local plans.

25 *iii. Community Impacts*

26 CALTRANS studied the communities surrounding the PROJECT area and engaged  
27 repeatedly with community members. In preparing the Community Impact Memorandum,

1 CALTRANS explored the community beyond the defined PROJECT area. (AR 011110-11124.)  
2 CALTRANS also reviewed APN maps and aerial imagery of the surrounding communities to  
3 identify which parcels would be impacted by the project. (AR 011125-011166; AR 014056-14063.)  
4 CALTRANS identified and notified numerous community organizations and service providers in the  
5 surrounding area about the PROJECT. (AR 000212-213; AR 010922-010928). CALTRANS  
6 identified and notified local schools about the PROJECT. (AR 000213-214; AR 010939-10942.)  
7 CALTRANS identified parks and recreational sites in the surrounding area. (AR 010929-10932.)  
8 CALTRANS identified numerous religious institutions in the surrounding area. (AR 010933.) This  
9 work was done in addition to CALTRANS' community engagement. (*see* Section II.A.3 below.) All  
10 these efforts and studies informed the conclusions found in the Community Impact Memorandum.  
11 (AR 002231-002244.)

12 3. Community Outreach and Engagement.

13 CALTRANS continuously engaged with the public and other agencies throughout the  
14 environmental studies process. CALTRANS distributed the notice of preparation (NOP) to 83  
15 parties, including the San Joaquin Valley Air Pollution Control District (SJVAPCD). (AR 000192;  
16 Cal. Code of Regs., tit. 14 § 15082.) CALTRANS also held a Public Scoping/Information Meeting  
17 on March 20, 2019. (AR 000192; *see also* Meeting Summary Report AR 000758-000813).  
18 CALTRANS only received 11 comments at the meeting with the majority of them directed at the  
19 Central/Chestnut interchanges, a portion of the PROJECT that was later removed. (AR 000193.)

20 i. ***Outreach with SJVAPCD's AB 617 South Central Fresno Community***  
21 ***Steering Committee.***

22 In addition to the scoping meeting CALTRANS repeatedly engaged with the SJVAPCD's  
23 AB 617 South Central Fresno Community Steering Committee (Steering Committee). AB 617  
24 requires the California Air Resource Board (CARB), along with the local air districts, to perform  
25 additional emissions reporting and monitoring and to develop Community Emissions Reduction  
26 Plans (CERPs). SJVAPCD is the local district responsible for the PROJECT area. CALTRANS  
27 worked with the SJVAPCD and attended multiple meetings with the Steering Committee to discuss

1 the project. The first informational meeting about the PROJECT was on July 10, 2019. (AR 000197;  
2 AR 003517-3518). CALTRANS participated in a second meeting on December 14, 2021. (AR  
3 000197-198; AR 004201-4202.)

4 As a result of those discussions, CALTRANS will use EPA Tier 4-rated construction  
5 equipment for the PROJECT. (AR 000240.) CALTRANS also incorporated a pedestrian walkway  
6 and vegetative barrier along Cherry Avenue into the PROJECT that will connect Orange Center  
7 Elementary School to the unincorporated community of Daleville. (AR 000239; AR 000318.)  
8 Vegetative barriers were identified in SJVAPCD’s CERP as a means to “reduce particulate matter,  
9 odor, and other emissions.” (AR 015547.) The PROJECT will also reduce vehicle idling including  
10 that of heavy-duty diesel trucks, invest in clean infrastructure and multi-modal transportation  
11 alternatives, and improve road pavement. All identified goals in the CERP. (AR 015476; AR  
12 015513; AR 015527; AR 015548.)

13 *ii. Outreach with Friends of Calwa and the Leadership Counsel for*  
14 *Justice and Accountability.*

15 CALTRANS also repeatedly engaged with the Petitioners. CALTRANS first met with  
16 Friends of Calwa on April 26, 2022. Petitioners and their counsel, the Leadership Counsel for Justice  
17 and Accountability (LCJA), hosted the meeting at the Friends of Calwa community center. (AR  
18 000198.) At the meet the community raised concerns about the COUNTY roads which CALTRANS  
19 passed on to the COUNTY. (AR 004288-4290; AR 004294-004298).

20 Following the meeting CALTRANS made repeated efforts to get feedback from Petitioners.  
21 On May 4, 2022, Ashley Werner, an attorney with LCJA, said Petitioners would provide  
22 CALTRANS “with a complete list of their mitigation measure requests . . . within the next few  
23 weeks” and indicated any future meetings would be scheduled after the Petitioners provided  
24 CALTRANS “with the list.” (AR 004281.) CALTRANS received no list. Petitioners provided an  
25 update on June 8, 2022, informing CALTRANS they were “continuing outreach efforts” and asked  
26 for “patience in receiving a final response.” (AR 004301.) Again, CALTRANS received no list.  
27 CALTRANS followed up on June 20, 2022, asking for an “update on this endeavor.” (AR 004309-  
4310.) Petitioners responded, saying they would “have a substantive update for you within the next

1 two to three weeks and will provide it sooner if we are able to.” (AR 0004309.) Again, CALTRANS  
2 received no list or substantive response.

3 After waiting for over a month, CALTRANS followed up on August 4, 2022. (AR 004308.)  
4 On August 12, 2022, Petitioners finally provided another update. At this point the Petitioners,  
5 contrary to the May 4th email, requested another meeting with CALTRANS. (AR 004308.) On  
6 August 17, 2022, Petitioners provided some dates for the second meeting. (AR 004312.)  
7 CALTRANS agreed to meet on August 31, 2022. (AR 004317.) Before that meeting, CALTRANS  
8 informed Petitioners that CALTRANS had extended a meeting invitation to the COUNTY and again  
9 asked for a “list of transportation concerns” to review before the meeting. (AR 004316.) Again,  
10 CALTRANS received no list. The meeting took place on August 31, 2022, in front of a smaller  
11 turnout than the initial meeting. (AR 004323.) The COUNTY observed “only four or five residents”  
12 and noted their opposition was more about “industrial development in their area than it was about the  
13 interchange improvements.” (AR 004323.) Ultimately, the Petitioners made it clear that the only  
14 alternative they would accept was the no-build alternative. On October 12, 2022, Petitioners sent  
15 another letter mischaracterizing the PROJECT and demanding it be stopped. (AR 004331-4346.)

16 *iii. Comments to the Draft Environmental Impact Report.*

17 CALTRANS circulated the Draft Environmental Impact Report/Environmental Assessment  
18 (DEIR) on October 14, 2021. The DEIR was available for 45-days until November 27, 2021. At the  
19 community’s request, the comment period was extended to 51 days until December 3, 2021. (AR  
20 **000198-199**.) A Notice of Completion and a Summary Form were filed with the State Clearinghouse  
21 (AR 001275-001276; AR 001277-001278). The Public Notice of Availability and the public meeting  
22 announcement were distributed in both English and Spanish. (AR **000199**; AR 001279 (English);  
23 AR 001280 (Spanish).) A total of 52 individuals were recorded as “visiting the virtual hearing/open  
24 house meeting” hosted on November 4, 2021 (AR **000199-200**.) During the meeting attendees  
25 requested that the DEIR be circulated in Spanish. In response, CALTRANS circulated a Spanish  
26 translation of the DEIR for another 45-day comment period between December 15, 2021, to January  
27 28, 2022. (AR **000200**; *see also* Spanish DEIR AR 001035-1274.)

1 CALTRANS received limited comments on the DEIR. All the comments received during the  
2 public comment period are provided in Appendix G of the EIR. (*see* AR 000246-000312.)  
3 CALTRANS received no comments regarding NEPA or its level of analysis. CALTRANS received  
4 no comments regarding the non-existent industrial campus allegedly being considered by the  
5 COUNTY. CALTRANS received no comments on DEIR questioning the inclusion of any of the  
6 project listed under cumulative impacts. The only comment related to the list of projects was from  
7 the CITY requesting CALTRANS include the CITY’s 2014 General Plan, which CALTRANS did.  
8 (AR 000257; AR 000259.) Petitioners did not allege any other “projects” were omitted from the list  
9 in either their official comment letter or in their October 2022 letter to CALTRANS’ Director. (AR  
10 000281-000300; AR 002508-002524; AR 004331-4346.) CALTRANS received no comments  
11 regarding the federal air conformity determination or the air quality significance determination.  
12 CALTRANS received no comments regarding the Level of Service (LOS) traffic impact analysis.  
13 CALTRANS also received no comments on the proposed greenhouse gas reduction strategies or  
14 mitigation efforts.

15 Petitioners did not raise any of these issues in either their official comment to the DEIR (AR  
16 002508-2524) or the letter sent to CALTRANS’ Director dated October 12, 2022 (AR 004331-  
17 4346.) The Petitioners DEIR comments mainly focused on the environmental setting/baseline and  
18 sensitive receptors (AR 002509-2512; AR 002514-2515; AR 002516-2517), vehicle miles traveled  
19 (AR 002512-2514), conflicts with SJVAPCD CERP (AR 002515-2516), aesthetic impacts (AR  
20 002517-002519), noise impacts (AR 002519-2521), local planning (AR 2521-2523), and civil rights  
21 and housing laws (AR 002523.) While they referenced CEQA 22 times, not once in the DEIR  
22 comment letter or in their October 2022 letter did the Petitioners mention NEPA, the Environmental  
23 Assessment (EA), or any NEPA statutes or regulations.

24 4. The South Fresno Route 99 Corridor Project is a Collaborative Effort with many  
25 Stakeholders.

26 Transportation project development is a long process. This PROJECT had the added  
27 challenge of the COVID-19 pandemic during the environmental review process. The American and

1 North Avenue interchange improvements have been in development for decades. Both the American  
2 Avenue Interchange and the North/Cedar Avenue Interchange projects were identified as Tier 1  
3 projects in the Measure C 2006 Extension Plan and are included in the Measure C expenditure plan.  
4 (Vaghini Decl. Ex. A at CT000029; **AR 000194**). Measure C is a sales tax revenue stream from the  
5 COUNTY that is used for transportation improvements. (**AR 000026**.) In 2006, voters approved a  
6 20-year extension of Measure C. (AR 015681.) The Fresno Council of Governments (FCOG)  
7 coordinates Measure C and conducts transportation planning, delivers projects, and manages  
8 transportation programs. (**AR 000194**.)

9 The Fresno County Transportation Authority (FCTA) oversees Measure C and a citizen’s  
10 oversight committee ensures Measure C revenues and expenditures are spent as mandated by the  
11 FCTA. (**AR 000194**.) CALTRANS, FCOG, and FCTA agreed to conduct environmental studies  
12 concurrently as a significant cost-saving measure. (**AR 000194**.) CALTRANS entered into a  
13 Cooperative Agreement with FCTA to complete a project initiation document and complete the  
14 Project Approval and Environmental Document (PA&ED) phase for the PROJECT. (**AR 000194**.)

15 Along with FCOG and the FCTA the PROJECT requires additional coordination between  
16 numerous partners including the Federal Highway Administration (FHWA), the COUNTY, the  
17 CITY, Fresno Irrigation District, High-Speed Rail Authority, Union Pacific Railroad and others. (AR  
18 000721-722.) The complexity and interconnectivity of our modern transportation system require  
19 collaboration and regular communication with a wide range of stakeholders. CEQA recognizes this  
20 complexity by mandating these consultations. (Pub. Res. Code § 21092.4)

21 *i. FCOG’s Regional Transportation Plan and Travel Demand Model*

22 A metropolitan planning organization (MPO) is a policy board that carries out “the  
23 transportation planning process” for “an urbanized area with a population of more than 50,000  
24 individuals.” (23 U.S.C. § 134, subd. (d)(1); 49 U.S.C. § 5303, subd. (d)(1).) FCOG is the MPO for  
25 Fresno County. (AR 015680.) Under federal and state law, an MPO prepares a Regional  
26 Transportation Plan (RTP) every 4 years. (49 U.S.C. § 5303, subd. (i); 23 U.S.C. § 134, subd. (i);  
27 Gov. Code § 65080.) When developing their RTPs, MPOs create and use Travel Demand Models

1 (TDMs) to analyze transportation and land use impacts. These TDMs are subject to guidelines  
2 established by the California Transportation Commission (CTC), in consultation with CALTRANS  
3 and CARB. (Gov. Code § 14522.1.)

4 In 2018, FCOG prepared the 2018 Regional Transportation Plan and Sustainable  
5 Communities Strategy (2018 RTP/SCS). FCOG prepared a Program Environmental Impact Report  
6 (PEIR) for the 2018 RTP/SCS. (AR 015651; Vaghini Decl. Ex. B, CT000045-607.) The 2018  
7 RTP/SCS assessed “all forms of transportation available in Fresno County as well as travel and  
8 goods movement needs through 2042.” (AR 015671.) The 2018 RTP/SCS included “over 3,000  
9 projects and programs” (AR 015648.) The PEIR included a complete list of those projects and  
10 programs. (Vaghini Decl. Ex. B at CT000194-289.) The PROJECT at both American Avenue and  
11 North Avenue was included in that list. (Vaghini Decl. Ex. B at CT000284.) The PEIR also analyzed  
12 the cumulative impacts associated with transportation plans in the COUNTY. (Vaghini Decl. ~~Ex. B~~  
13 at CT000520-542.)

14 The TDM used for the 2018 RTP/SCS was the San Joaquin Valley Model Improvement Plan  
15 (VMIP). (AR 015742-15743.) The VMIP was a collaborative effort between FCOG and the other  
16 San Joaquin Valley MPOs (AR 015742.) In 2017, phase 2 of the VMIP was completed (VMIP 2).  
17 (AR 015743.). At the time, VMIP 2 was “recognized as the finest available source of information on  
18 existing area traffic and future condition projections.” (AR 015744.). CALTRANS used VMIP 2 for  
19 its traffic forecasting. (AR 000711.) CALTRANS has no authority to make changes to VMIP 2. (AR  
20 012543.)

21 As part of the 2018 RTP/SCS, FCOG provided community organizations with “mini-grants”  
22 to support community outreach and solicit public input. LCJA and one of the Petitioners, Fresno  
23 Building Healthy Communities (FBHC), both received grants from FCOG (AR 015857.) FCOG also  
24 consulted with both LCJA and FBHC during the development of the 2018 RTP/SCS (AR 015866.)  
25 FCOG’s 2018 RTP/SCS also included a chapter on Environmental Justice. (AR 015867-15884.)  
26 FCOG analyzed whether the 2018 RTP/SCS benefited low-income and minority communities  
27 equitably and whether the 2018 RTP/SCS’s “transportation investments have any disproportionate

1 negative effects on minority and/or low-income populations.” (AR 015870). FCOG concluded “The  
2 results show that in terms of overall equity, the 2018 RTP’s projects appear to distribute benefits and  
3 impacts equitably over Fresno County. In most cases, EJ communities fared better than non-EJ  
4 communities.” (AR 000060; AR 015884.)

5 Current law also requires MPOs to integrate a Sustainable Communities Strategy (SCS)  
6 analysis into the RTP. (Gov. Code § 65080, subd. (b)(2)(B).) The “SCS is intended to show how  
7 integrated land use and transportation planning can lead to lower greenhouse gas (GHG) emissions  
8 from autos and light trucks.” (AR 015702.) CARB establishes and updates the regional GHG  
9 emission reduction targets for MPOs. (Gov. Code, § 65080, subd. (b)(2)(iv).) After an MPO adopts  
10 an SCS within an RTP, it is submitted for CARB to “accept” or “reject.” (Gov. Code, § 65080,  
11 subd. (b)(2)(J)(ii).) CARB evaluated FCOG’s SCS in September 2019. CARB “accepted” FCOG’s  
12 “determination that its 2018 SCS plan would meet the targets of a 5 percent reduction in GHG per  
13 capita emissions from light-duty passenger vehicles in 2020 and a 10 percent reduction in 2035,  
14 compared to 2005 levels, when fully implemented.” (Vaghini Decl. Ex. C at CT000612.)

15 5. Air Conformity and the Air Quality Significance Determination.

16 *i. Affected Environment*

17 The PROJECT is located in the San Joaquin Valley Air Basin. SJVAPCD has jurisdiction  
18 over the basin. (AR 000114.) The mountainous topography around the valley and predominant wind  
19 patterns created a circular air pattern known as the Fresno eddy. (AR 000114.) These natural  
20 phenomena create inversions in the San Joaquin Valley. These inversions are a significant factor that  
21 causes air pollutants to be trapped in the San Joaquin Valley where the PROJECT is located. (AR  
22 000114-115.)

23 *ii. Project-Level Air Conformity Determination*

24 As discussed above, the PROJECT at both American and North Avenue were included in  
25 FCOG’s 2018 RTP/SCS. The North/Cedar Avenue interchange project was identified as a Tier 1  
26 Urban Project (AR 015742 [Figure 4-5 Project M]; Vaghini Decl. Ex. C at CT000284.) The  
27 American Avenue interchange was identified as a Tier 1 Rural Project (AR 015743 [Figure 4-6

1 Project K]; Vaghini Decl. Ex. C at CT000284.) The North Avenue and American Avenue  
2 interchange projects were also included in the 2019 Federal Transportation Improvement Program  
3 (FTIP) (AR 011239-11240.) The FHWA determined the 2018 RTP/SCS conformed to the State  
4 Implementation Plan (SIP) on July 26, 2018. (AR 001580.) FHWA determined the FTIP conformed  
5 with the SIP on April 16, 2021. (AR 001580.)

6 The PROJECT received a project-level conformity determination from FHWA on October 3,  
7 2022. (AR 000243-244.) CALTRANS performed the required Interagency Consultation process.  
8 (AR 001590-1615.) The Interagency Consultation Partners (IAC) were provided a Hot-spot  
9 Conformity Assessment memorandum requesting concurrence that the PROJECT was not a “Project  
10 of Air Quality Concern” (POAQC). (AR 001437-1443; AR 001602-1608; AR 003622-3623) On  
11 August 18, 2020, both FHWA and the Federal Environmental Protection Agency (US EPA)  
12 concurred that the PROJECT was not a POAQC. ([US EPA] AR 003621; [FHWA] AR 003624) On  
13 August 24, 2022, CALTRANS provided FHWA with an Air Quality Conformity Analysis report and  
14 requested a project-level conformity determination for the PROJECT. (AR 001564-1615.) In its  
15 cover letter, CALTRANS noted that the air conformity analysis had been available for public  
16 comment for 51 days and that no public comments had been received.

17 On October 3, 2022, FHWA issued its project level conformity determination. FHWA found  
18 that “the project will not create any new violations of the standards or increase the severity or  
19 number of existing violations” and that “the South Fresno State Route 99 Corridor Project conforms  
20 with the State Implementation Plan (SIP) in accordance with 40 CFR Part 93.” (AR 000243-244.)  
21 As part of the Petitioners federal action against CALTRANS and the FHWA (*see* Section IV.B.1  
22 below), the Court issued an order granting FHWA’s motion for voluntary remand (Vaghini Decl. Ex.  
23 D, CT002450-2451.) On September 29, 2025, FHWA filed a Notice of Action with the federal court  
24 affirming the October 3, 2022, air conformity determination. (Vaghini Decl. Ex. E, CT002702-  
25 2707.) CALTRANS conducted an in-depth Air Quality Report (AR 001444-1559) and concluded the  
26 PROJECT would not result in a significant adverse impact because the PROJECT received a  
27 regional and project-level conformity determination and complied with all regulatory standards. (*see*

1 EIR Sections 2.2.3 and 3.2.3, **AR 000111-132; AR 000141-143.**)

2 *iii. Sensitive Receptors*

3 According to CARB sensitive receptors are children, the elderly, asthmatics, and others who  
4 are at a heightened risk of adverse health outcomes due to exposure to air pollution. (AR 001492.)  
5 CARB recommends not siting sensitive land uses within 500 feet of a freeway or urban roads with  
6 100,000 vehicles/day, or rural roads with 50,000 vehicles/day. (AR 010156.) Using this 500-foot  
7 buffer, CALTRANS concluded there were no sensitive receptors in the PROJECT area. (AR  
8 0001492.) The closest facility that could potentially be identified as a sensitive receptor was the  
9 Fresno County Juvenile Justice Facility (Facility). During the Noise Study, CALTRANS staff visited  
10 the Facility and noted that the only building within 500-feet of the PROJECT was the Juvenile Court  
11 building. (AR 001649). Facility staff informed CALTRANS that those offices “do not include  
12 classrooms for students and there are no locations for outdoor activities.” (AR 001649; *see also* AR  
13 001652 [“offices do not include classrooms for students; in addition, a field visit on June 18, 2020,  
14 concluded there were no locations for outdoor activities.”].) Additionally, traffic projections at the  
15 American Avenue PROJECT location estimated the future Annual Average Daily Traffic (AADT) to  
16 peak at 10,800, well below, the 50,000 vehicles per day CARB threshold.

17 The Facility was notified numerous times about the PROJECT. CALTRANS mailed the  
18 NOP and the Notice of Availability of the draft environmental document to the Facility at three  
19 different addresses. (**AR 000212-213.**) CALTRANS received no comments from anyone associated  
20 with the Facility. As mentioned above, CALTRANS also notified thirteen area schools about the  
21 PROJECT and only received one response. (**AR 000213.**) Balderas Elementary School concluded  
22 “the project is far enough from [the school] that it won’t affect us much.” (AR 003454.)

23 *iv. Greenhouse Gas Emissions and Statement of Overriding*  
24 *Consideration.*

25 CALTRANS concluded the project would lead to a significant unavoidable impact on  
26 greenhouse gas emissions (GHGs). CALTRANS was clear that the increased emissions at the  
27 PROJECT location were the result of population growth and the implementation of planned

1 development. (AR 000148) The increase at the PROJECT’s on-ramps was also attributed to the  
2 redistribution of future traffic flows. (AR 000148-149.)

3 CALTRANS reached this conclusion because “emerging requirements to model and measure  
4 mitigation to reduce greenhouse gas emissions are narrowly defined and limited” and the modeling  
5 results focused “on the state highway only, don’t consider the local street system.” These parameters  
6 “effectively require zero increase from existing emissions to meet California’s emissions reduction  
7 goals.” (AR 000149.) Under this

8 CALTRANS included numerous measures to reduce greenhouse gas emissions in the  
9 PROJECT. (AR 000182-184). All of these strategies are consistent with CALTRANS’ GHG  
10 Reduction Measures Toolbox. (AR 003586-3595.) However, since there are no “established  
11 regulatory, industry-wide methods to accurately measure whether the project features and measures  
12 would reduce emissions enough to mitigate the project impacts,” CALTRANS erred on the side of  
13 caution and determined these impacts were significant and unavoidable. (AR 000149; AR 000178-  
14 179.) CALTRANS then properly adopted a Statement of Overriding Consideration under Pub. Res.  
15 Code § 21081. (AR 000005-7.)

16 6. Vehicle Miles Traveled (VMT).

17 The PROJECT was not required to perform VMT-based significance determination per  
18 CALTRANS internal policy in effect at the time of the environmental analysis. (AR 000063; AR  
19 003647-3659.) Pursuant to internal timing guidelines, the PROJECT was to “be evaluated by the  
20 Department in consultation with project sponsors on a case-by-case basis to determine if the use of a  
21 VMT-based transportation impact significance determination in the draft environmental document is  
22 warranted.” (AR 003650.) As required, the PROJECT team sought concurrence from CALTRANS  
23 Headquarters Environmental Coordinator on its determination, not to perform a VMT Analysis and  
24 received that concurrence on May 5, 2020. (AR 003571) The PROJECT received a confirmation of  
25 that decision again on August 9, 2020 (AR 003627.) Further, the PROJECT is consistent with  
26 project types not likely to lead to a measurable and substantial increase in vehicle travel. (AR  
27 003653-3654.)

1           **B. PROCEDURAL HISTORY**

2                   1. Federal Court Action

3           On March 8, 2023, the last day of the 30-day CEQA statute of limitations, Petitioners filed  
4 their CEQA claim in the U.S. District Court for the Eastern District of California (Eastern District).<sup>3</sup>  
5 (Vaghini Decl. Ex. D CT001013-1054.) Petitioners, despite never raising the NEPA issue during  
6 public comments, elected the federal forum to pursue the NEPA claim concurrently with the CEQA  
7 claim.<sup>4</sup> (See Section II.A.3.iii above) The Federal Petition alleged that CALTRANS’ approval of the  
8 Project violated CEQA and that FHWA and CALTRANS violated NEPA. (Vaghini Decl. Ex. D  
9 CT001013-1054.)

10           Since, the Petitioners failed to serve CALTRANS in the manner required by statute,  
11 CALTRANS was not properly served until March 30, 2023. (Pub. Res. Code § 21167.6 subd. (a);  
12 Vaghini Decl. Ex. D CT001098, lines 1-2) On April 20, 2023, the Parties entered a stipulation.  
13 (Vaghini Decl. Ex. D CT001097-1101) The stipulation contained the following language “Nothing  
14 in this stipulation is intended to be a consent to the Court’s jurisdiction over the parties or this  
15 matter. . .,” thus putting the Petitioners on notice of the jurisdictional issue. (*Id.* at CT001098, lines  
16 21-23.)

17           Shortly after the April stipulation, Petitioner informed CALTRANS that they intended to  
18 amend the Federal Petition, and the Parties agreed to another stipulation on May 12, 2023. (Vaghini  
19 Decl. Ex. D CT001102-1105.) That stipulation contained the same language as the April stipulation,  
20 once again putting the Petitioners on notice of the jurisdictional issue. (*Id.* at CT001103, lines 26-28)

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21  
22 <sup>3</sup> The Eastern District is a notoriously overburdened court and continues to experience a severe  
23 judicial resource emergency concerning the backlog of civil cases. (Vaghini Decl. Ex. D CT001079-  
24 1082) Due to this emergency, motions are decided on the papers only. (*Id.*) In response to the  
25 districts backlog Congress introduced the CASE LOAD Act of 2023 to ease the case burden on the  
26 Eastern District. The bill notes as of June 2022, the Eastern District had over 1300 pending cases  
27 “over 2.6 times larger than the average for all districts within the United States Court of Appeals for  
the Ninth Circuit.” (see H.R. No. 3223, 118th CONGRESS, 1st Sess., § 2 (2023).

<sup>4</sup> A Federal Rules of Civil Procedure Rule 12(b)(6) motion to dismiss the NEPA is currently pending  
before the Federal Court for failing to exhaust administrative remedies. (Vaghini Decl. Ex. D  
CT001359-1573)

1 The Petitioners provided no specifics on how the Federal Petition would be amended, only that it  
2 intended to amend the causes of action. (Vaghini Decl. Ex. D at CT000687, ¶ 8.)

3 Over three months after the initial filing, Petitioners filed the First Amended Petition (FAP)  
4 on June 22, 2023 (Vaghini Decl. Ex. D CT001111-1185.) The FAP significantly overhauled the  
5 original filing. Petitioners added two more state law claims, under Government Code §§ 11135 and  
6 8899.50. (*Ibid.*) Petitioners did not ask CALTRANS if it would waive its sovereign immunity on the  
7 Government Code claims before filing the FAP. The FAP also added CALTRANS’ Director Tavares  
8 as a defendant for the same claims alleged against CALTRANS. (*Ibid.*) Finally, the FAP dropped the  
9 NEPA claim against FHWA and added a Clean Air Act violation against it. (*Ibid.*)

10 On June 28, 2023, within a week of receiving the FAP, CALTRANS notified the Petitioners  
11 that “Caltrans intends to challenge the Complaint.” (Vaghini Decl. Ex. D CT002588-2589) On July  
12 20, 2023, a month before CALTRANS’ response was due, CALTRANS informed the Petitioners of  
13 its intent to move for dismissal of the CEQA and Government Code claims under the Eleventh  
14 Amendment. (Pets. Petn. p. 36 ¶ 167; Vaghini Decl. Ex. D at CT000688, ¶ 10) CALTRANS noted  
15 that the law in this area was settled; therefore, the Petitioners had no grounds to oppose. (*Ibid.*)  
16 CALTRANS also informed the Petitioners that it would not waive sovereign immunity to litigate  
17 state law claims in federal court, nor would CALTRANS toll the limitations period. (*Ibid.*) The  
18 following day, on July 21, 2023, CALTRANS sent Petitioners a letter providing specific citations to  
19 controlling caselaw establishing CALTRANS’ sovereign immunity. (Vaghini Decl. Ex. D  
20 CT002591-2593)

21 During a meeting on July 27, 2023, CALTRANS reiterated that it has a policy not to consent  
22 to federal jurisdiction for state law claims. (Vaghini Decl. Ex. D CT000689, ¶ 12.) CALTRANS  
23 again declined the Petitioners’ request that it waive its sovereign immunity and toll the limitations  
24 period. (*Ibid.*) The Petitioners represented that if CALTRANS proceeded with its motion to dismiss,  
25 they would immediately file their CEQA claim in state court. (*Ibid.*) Again despite never referencing  
26 NEPA before the litigation, Petitioners relied on NEPA to justify their choice of forum. (Pets. Petn.  
27 p. 36-37 ¶ 168.)

1 In a letter dated July 28, 2023, the Petitioners again asked CALTRANS to waive its  
2 sovereign immunity. (Vaghini Decl. Ex. D CT002595-2597.) Petitioners raised judicial efficiency  
3 again despite never having raised NEPA before the litigation. (*Id.* at CT002595.) In the letter,  
4 Petitioners identified three cases in which CALTRANS waived its sovereign immunity in the past 50  
5 years.<sup>5</sup> (*Id.* at CT002596.) Petitioners reiterated their intention to “to immediately refile” the state  
6 law claims in state court if their state law claims weren’t actionable in federal court. (*Ibid.*)

7 On August 10, 2023, CALTRANS met with the Petitioners to address concerns raised in their  
8 July 28 letter. (Vaghini Decl. Ex. D CT000689-690, ¶ 14.) CALTRANS explained that the decision  
9 to assert sovereign immunity was not based on the Petitioners’ status but instead was consistent with  
10 CALTRANS’ policy. (*Ibid.*) CALTRANS also noted that litigating the CEQA claim in state court  
11 would result in a faster resolution than in the overburdened federal court and would not be  
12 duplicative because NEPA and CEQA are independent, distinct, and separate causes of action  
13 pursuant to different statutes, which have different standards of review, caselaw, regulations and  
14 requirements. (*Ibid.*)

15 On August 21, 2023, as expected, CALTRANS filed its motion to dismiss the CEQA and  
16

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17 <sup>5</sup> During their research Petitioners missed the more abundant and often more recent cases showing  
18 Caltrans repeatedly asserting sovereign immunity against state law claims brought in federal court.  
19 *See Southern Pacific Transp. Co. v. City of Los Angeles* (9th Cir. 1990) 922 F.2d 498 [affirming the  
20 granting of Caltrans’s motion to dismiss CEQA claim on sovereign immunity grounds]; *Nat. Res.*  
21 *Def. Council v. Cal. Dep’t of Transp.* (9th Cir. 1996) 96 F.3d 420 [noting lower court’s dismissal of  
22 claims against Caltrans on sovereign immunity grounds]. *City of South Pasadena v. Mineta* (9th Cir.  
23 2002) 284 F.3d 1154 [Reversing district court for denying Caltrans’s motion to dismiss CEQA claim  
24 on sovereign immunity grounds]; *San Diego Minutemen v. California Business Transp. and Housing*  
25 *Agency’s Dept. of Transp.* (S.D. Cal. 2008) 570 F.Supp.2d 1229 [granting Caltrans’s motion to  
26 dismiss on sovereign immunity grounds]; *Rohnert Park Citizens to Enforce CEQA v. Cal. Dept. of*  
27 *Transp.* (N.D. Cal. 2008) 2008 WL 2157002 [court granted motion to dismiss CEQA claim on  
sovereign immunity grounds]; *Romero v. Cal. Dept. of Transp.* (C.D. Cal. 2009) 2009 WL 650629  
[court granted motion to dismiss on sovereign immunity grounds]; *Blain v. Cal Dept. of Transp.*  
(N.D. Cal. 2022) 2022 WL 3702106 [dissolving a temporary restraining order against Caltrans on  
sovereign immunity grounds]; *Stewards of Mokelumne River v. Cal. Dept. of Transp.* (E.D. Cal.,  
2021) 2021 WL 2983302 [granting Caltrans’s motion to dismiss on sovereign immunity grounds];  
*Keep 70 Safe v. Dept. of Transp.* 2023 WL 1096196 (2023) [discussing Caltrans’s move to dismiss  
CEQA claim from federal court on sovereign immunity grounds.]

1 Government Code claims based on sovereign immunity and the NEPA claim based on Petitioner’s  
2 failure to exhaust administrative remedies. (Vaghini Decl. Ex. D CT001359-1573.) That same day,  
3 CALTRANS sent Petitioners a letter notifying them of the filing and reiterating that CALTRANS  
4 would not waive sovereign immunity or toll the statute of limitations. (Vaghini Decl. Ex. D  
5 CT002599-2600.) On August 25, 2023, CALTRANS sent a follow-up e-mail reiterating that it  
6 would not toll the limitations period. (Vaghini Decl. Ex. D CT002602-2603)

7 On August 31, 2023, ten days after CALTRANS filed its motion to dismiss, the Petitioners  
8 stopped pursuing the CEQA and other state claims in the federal court. On that day, the Petitioners  
9 invited CALTRANS to a virtual meeting. (Pets. Petn. p. 39 ¶ 176; Vaghini Decl. Ex. D CT00690-  
10 691, ¶ 17; CT002605-2607.) At this meeting, Petitioners informed CALTRANS that they would stop  
11 pursuing their state law claims in federal court and would not oppose CALTRANS’ motion to  
12 dismiss. (*Ibid.*) That same day, Petitioners filed a Scheduling Report, in which Petitioners notified  
13 the federal court their desire to dismiss the state law claims. (Vaghini Ex. D CT001595, lines 5-6.)

14 On September 7, 2023, during a scheduling conference with the federal court, the Petitioners  
15 again represented to the magistrate judge that they were no longer pursuing their state claims in  
16 federal court. (Vaghini Decl. Ex. D CT000691, ¶ 21.) On September 8, 2023, Petitioners filed their  
17 opposition to CALTRANS’ motion to dismiss “solely as to the dismissal of their NEPA claims.”  
18 (Vaghini Decl. Ex. D CT001625.) In their opposition, Petitioners admitted CALTRANS’ motion to  
19 dismiss the state law claims was “moot” because they were no longer pursuing them in the federal  
20 court. (*Ibid.*)

21 Despite conceding on August 31, 2023, and not opposing the MTD on September 8, 2023,  
22 the Petitioners did not immediately refile the claims in this Court. On September 29, 2023,  
23 Petitioners filed an Ex Parte Application for Dismissal of State Law Claims. (Vaghini Decl. Ex. D  
24 CT001717-1719.) In the Ex Parte Application, the Petitioners claimed they could not refile their  
25 claim in state court until the federal court had dismissed the state law claim, without citing any case  
26 law or authority supporting this contention. (*Id.* at CT001718, lines 19-23.) Then, contradicting their  
27 own representations, the Petitioners refiled the CEQA and Government Code claims in state court on

1 October 2, 2023, seventeen (17) days before the federal court granted the Petitioners’ application on  
2 October 19, 2023. (Vaghini Decl. Ex. D CT001828.)

3 2. The Motion for Summary Adjudication on the Petitioners’ CEQA Claim in State  
4 Court.

5 CALTRANS filed its Motion for Summary Adjudication (MSA) on the CEQA claim on June  
6 26, 2024 in this Court. (Vaghini Decl. Ex. D CT000655-656) The hearing occurred on September 9,  
7 2024. On October 17, 2024, this Court granted the MSA in CALTRANS’ favor, dismissing the  
8 CEQA claims for being untimely. (Vaghini Decl. Ex. D CT002685-2697.) This Court explained that  
9 the undisputed facts showed the Petitioners were aware of the precarity surrounding the CEQA claim  
10 for months and yet delayed refile. (*Ibid.*) This Court also found the record showed CALTRANS  
11 had repeatedly made clear it would not toll the statute of limitations, so any reliance by the  
12 Petitioners that CALTRANS would toll the statute of limitations was also unreasonable. (*Ibid.*) The  
13 trial court concluded the Petitioners’ failure to act “promptly” was unreasonable, therefore equitable  
14 tolling did not toll the statute of limitations, and thus the Petitioner’s CEQA claim was time-barred.  
15 (*Ibid.*)

16 3. Fifth District Court of Appeals Alternative Writ and Following Events

17 On November 15, 2024, Petitioners filed a writ petition with the Fifth District Court of  
18 Appeals. On March 12, 2025, the Fifth Appellate District issued an Alternative Writ of Mandate  
19 finding “there is a genuine dispute on the question of reasonableness under the equitable tolling  
20 doctrine.” (Vaghini Decl. Ex. F CT002708-2710.) The Appellate Court’s writ directed this Court to  
21 “Vacate its October 17, 2024, order granting Caltrans’s motion for summary adjudication on  
22 petitioners’ first cause of action, and conduct further proceedings during which respondent court  
23 must consider whether there are undisputed facts supporting the conclusion petitioners’ CEQA  
24 claims alleged in the first cause of action should be barred by the applicable statute of limitations,  
25 because their delay in filing the state action was unreasonable” (*Id.* at CT002710.) On April 2, 2025,  
26 this Court vacated the October 17, 2025, order. On May 9, 2025, CALTRANS filed a Notice of  
27 Withdrawal of its Motion for Summary Adjudication against the Petitioner’s first cause of action,

1 requesting the Court to allow CALTRANS to withdraw the motion without prejudice and to proceed  
2 to a hearing on the merits to adjudicate any factual dispute. (Vaghini Decl. Ex. D CT002698-2701.).

### 3 **III. STANDARD OF REVIEW**

4 CEQA “does not mandate perfection, nor does it require analysis to be exhaustive.” It only  
5 requires the EIR “to reflect a good faith effort at full disclosure.” (*Bakersfield Citizens for Local*  
6 *Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.) Similarly, “CEQA does not  
7 require a lead agency to conduct every test or perform all research, study, and experimentation  
8 recommended or demanded by commentors.” (Cal. Code Regs., tit. 14, § 15204.) “The adequacy of  
9 an EIR is determined in terms of what is reasonably feasible, in light of factors such as the  
10 magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic  
11 scope of the project.” (*Ibid.*)

12 In reviewing an EIR, the court presumes an EIR’s correctness. (*Save our Peninsula*  
13 *Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117.) The burden is  
14 on the party challenging an EIR to show it is inadequate. (*California Native Plant Society v. City of*  
15 *Rancho Cordova* (2009) 172 Cal.App.4th 603, 614.) The standard of review in CEQA cases is abuse  
16 of discretion. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) “Abuse of discretion is  
17 shown if: (1) the agency has not proceeded in a manner required by law, or (2) the determination is  
18 not supported by substantial evidence.” (*Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359,  
19 1375.) “If the agency’s determination involves pure questions of law” it is reviewed de novo.  
20 (*Protecting Our Water & Env. Resources v County of Stanislaus* (2020) Cal.5th 479, 495.)

21 The substantial evidence standard applies to questions of fact such as conclusions, findings,  
22 and determinations and challenges to an EIR’s analysis of a topic, the methodology used for  
23 studying an impact, and the reliability or accuracy of the data upon which the EIR relied because  
24 these challenges involve factual questions. (*City of Maywood v. Los Angeles Unified School Dist.*  
25 (2012) 208 Cal.App.4th 362, 386.) “In applying the substantial evidence standard, ‘the reviewing  
26 court must resolve all reasonable doubts in favor of the administrative finding and decision.’”  
27 (*Laurel Heights Improvement Assn v. Regents of University of California* (1988) 47 Cal.3d 376,

1 393.) Substantial evidence is “enough relevant information and reasonable inferences from this  
2 information that a fair argument can be made to support a conclusion, even though other conclusions  
3 might also be reached.” (Guidelines, §15384, subd (a); *California Native Plant Society v. City of*  
4 *Santa Cruz* (2009) 177 Cal.App.4<sup>th</sup> 957, 985.) The Petitioner must lay out all evidence, including  
5 evidence favorable to the other side, and show why it is lacking. (*King & Gardiner Farms LLC, v.*  
6 *County of Kern* (2020) 45 Cal.App.5<sup>th</sup> 814, 850-851.) The Petitioner cannot carry out its burden if it  
7 fails to provide all evidence. (*Ibid.*)

#### 8 **IV. LEGAL ARGUMENT**

##### 9 **A. THIS ACTION IS TIME BARRED AND EQUITABLE TOLLING DOES NOT** 10 **APPLY.**

11 A party has 30 days to file a CEQA challenge after an agency files a Notice of Determination  
12 (NOD). (Pub. Res. Code §§ 21167, 21108; Cal. Code Regs., tit. 14, § 15112.) This “bright-line rule  
13 that the filing of an NOD triggers a 30-day statute of limitations promotes certainty.” It allows  
14 agencies to “proceed with projects without the threat of potential future litigation.” (*Committee for*  
15 *Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4<sup>th</sup> 32, 50.) CEQA’s  
16 statutory provisions indicate a “clear legislative determination that the public interest is not served  
17 unless challenges under CEQA are filed promptly.” (*Ibid.*) “While CEQA’s substantive provisions  
18 are interpreted broadly to implement the legislative intent of strong environmental protection, this  
19 does not mean that the same standard of liberality should necessarily be applied in interpreting the  
20 procedural requirements of [CEQA].” (*Van de Kamps Coalition v. Board of Trustees of Los Angeles*  
21 *Community College Dist.* (2012) 206 Cal.App.4<sup>th</sup> 1036, 1051; internal quotations omitted.)

22 The doctrine of equitable tolling “is a judicially created, nonstatutory [sic] doctrine” with its  
23 authority drawn “from [the court’s] inherent equitable powers.” (*Saint Francis Memorial Hospital v.*  
24 *State Dept. of Public Health* (2020) 9 Cal.5<sup>th</sup> 710, 719; internal quotations omitted.) The doctrine “is  
25 a narrow remedy that applies to toll statutes of limitations only occasionally and in special  
26 situations.” (*Id.* at 724; internal quotations omitted.) It is not a “cure-all for an entirely common state  
27 of affairs.” (*Ibid.*) The doctrine serves the purpose of motivating plaintiffs to pursue claims

1 diligently. (*Id.* at p. 730). Before a court can apply equitable tolling to extend a statute of limitations  
2 the party invoking the doctrine must “[establish] the doctrine’s three elements: timely notice to the  
3 defendant, lack of prejudice to the defendant, and reasonable and good faith conduct by the  
4 plaintiff.” (*Id.* at 726.)

5 This third element “may turn on whether a plaintiff delayed filing the second claim until the  
6 statute on that claim had nearly run.” (*Tarkington v. California Unemployment Ins. Appeals Bd.*  
7 (2009) 172 Cal.App.4th 1494, 1505; internal quotations omitted (*Tarkington*.) Courts have found  
8 good faith and reasonableness exist when a party promptly refiles their cause of action in the proper  
9 state court after learning the federal court proceeding is defective due to lack of jurisdiction. (*See*  
10 *Addison v. State of California* (1978) 21 Cal.3d 313 [Plaintiff who proactively refiled defective  
11 claims in state court before the federal court dismissed claims for lack of jurisdiction showed  
12 reasonable and good faith conduct.])

13 Caltrans will show, under the facts in this case, that the Petitioners did not act reasonably or  
14 in good faith and are, therefore, not entitled to equitable tolling. First, the allegation that CEQA and  
15 other state law claims must be filed in federal court to be heard concurrently with the NEPA lacks  
16 credibility. Second, equitable tolling, if available, only tolls the statute of limitations until a party  
17 learns their first action is defective or while the party is still actively pursuing the claim in the wrong  
18 forum. Third, the Petitioners failure to promptly refile the CEQA claim in state court once they  
19 learned the claim was defective was unreasonable. Finally, Caltrans will demonstrate the application  
20 of equitable tolling in these circumstances completely undermines the important public interest and  
21 policy expressed under the CEQA statutes and is prejudicial to state agencies.

22 1. Petitioners’ Failure to Raise NEPA During Comment Period Demonstrates Filing in  
23 Federal Court Lacks Good Faith.

24 A principal justification relied on by Petitioners for filing the initial Petition in federal court  
25 was for judicial efficiency. Believing it would be more efficient and less burdensome on the  
26 Petitioners to litigate the NEPA and CEQA claims together in one venue. (Pets. Petn. p. 36-37 ¶  
27 168.) However, the facts contradict this rationale. Petitioners never raised NEPA during the

1 administrative process. They cited CEQA over twenty times in their comments, but never once  
2 raised NEPA. (*See* Section II.A.3.iii.) Therefore, using NEPA as an excuse for filing the CEQA and  
3 government claims in federal court, lacks credibility when the facts show the Petitioners’ complete  
4 indifference to NEPA. Petitioners’ sole focus through the administrative process was on CEQA  
5 compliance. Still, instead of filing that claim in state court where CEQA receives “preference over  
6 all other civil actions,” they elected to file in an overburdened federal court. (Pub. Res. Code §  
7 21167.1; *see* footnote 3 under section II.B.1.).

8 Courts have shown some flexibility and generally require “less specificity ... to preserve an  
9 issue for appeal in an administrative proceeding than in a judicial proceeding” because in such  
10 proceedings “parties generally are not represented by counsel.” (*Citizens Assn. for Sensible*  
11 *Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163.) However, that  
12 does not mean a party can completely omit an issue from discussion. Further, the Petitioners were  
13 represented and advised by LCJA throughout the administrative process. LCJA is staffed with  
14 lawyers well versed in environmental litigation and LCJA’s attorney Ashley Warner was the primary  
15 point of contact for Petitioners with CALTRANS throughout the administrative process. (AR  
16 002508-2524; AR 004331-4346; *see* Section II.A.3.ii.) The Petitioners’ failure to raise NEPA during  
17 the administrative process shows a lack of good faith when justifying their filing of the initial  
18 petition in the federal court. Therefore, equitable tolling should not apply and the CEQA claim  
19 should be dismissed for being untimely.

20 2. If Available, Equitable Tolling of the CEQA Statute of Limitation Stopped When the  
21 Petitioners Became Aware that the CEQA and Government Code Claims Were  
22 Defective in the Federal Court.

23 If the Court determines equitable tolling applies, it should only apply until the Petitioners  
24 discovered the CEQA claim was defective in the federal court. The Petitioners seek an equitable  
25 tolling rule that would allow CEQA’s purposely short 30-day statute of limitations to be tolled  
26 indefinitely. Under the Petitioner’s standard, any time a party files a claim in a federal court against  
27 a state agency without subject matter jurisdiction, the statute of limitations would be tolled until the  
federal court formally dismissed the claim. This would be the rule even when a party, as the

1 Petitioners were here, is aware of the defect in their first action for months, does not oppose a motion  
2 to dismiss, and abandons that claim in the federal court. This cannot be the rule.

3 The Court should adopt a notice standard. This rule is fair and practical, particularly in those  
4 situations “where a first action, embarked upon in good faith, is found to be defective.” (*McDonald*  
5 *v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 100.) It protects the party seeking  
6 relief by tolling the statute of limitations until they discover the first action is defective, but also  
7 requires that party to act swiftly and refile to protect their interests once they become aware. It serves  
8 no public or equitable purpose to let a party file a claim in the wrong forum, and then once they learn  
9 they are in the wrong forum, sit on their hands and wait for an inevitable dismissal, particularly in  
10 this case, where nothing was stopping the Petitioners from refiling immediately in the proper forum.

11 This rule is consistent with the ruling in *Addison v. State of California* (*Addison*). In *Addison*,  
12 the plaintiff filed a lawsuit in federal court alleging federal civil rights violations and three state law  
13 causes of action. Initially, the defendants moved to dismiss the federal civil rights claim. Before the  
14 federal court issued its ruling, the plaintiff proactively refiled the state law claims in state court when  
15 they “[anticipated] an adverse ruling on the motion.” *Addison v. State of California* (1978) 21 Cal.3d  
16 313, 317. The federal court ultimately dismissed the federal civil rights claims because they “would  
17 not lie against public entities” and then declined to retain the state law claims under pendant  
18 (supplemental) jurisdiction. (*Id.*) The *Addison* court held the plaintiff satisfied the “reasonable and  
19 good faith” prong because upon learning the claim was defective, they promptly refiled in state court  
20 before the federal action was dismissed. (*Id.* at 319.)

21 In *Addison*, the plaintiff refiled in state court before they were even certain the federal court  
22 would dismiss the claims. They only “anticipated” an adverse ruling. (*Addison, supra* at 317.) Here,  
23 the Petitioners knew for certain that their claims would be dismissed but failed to act promptly. The  
24 facts show the Petitioners became aware of the existential threat to the state law claims, at the latest,  
25 on July 20, 2023, over 70 days before they chose to refile. (Pets. Petn. p. 36 ¶ 167.) Even if they  
26 wanted to argue that they thought Caltrans would still agree to waive sovereign immunity, they  
27 could not reasonably rely on that position after Caltrans filed its motion to dismiss on August 21,

1 2023, 42 days before they refiled. (Pets. Petn. p. 38 ¶ 174; Vaghini Decl. Ex. D CT001359-1360.)  
2 The Petitioners then openly conceded they were no longer pursuing the claim in federal court on  
3 August 31, 2023, 32 days before refiling. (Pets. Petn. p. 39 ¶ 176.) Finally, the Petitioners did not  
4 oppose Caltrans’s motion to dismiss the state law claims on September 8, 2023, 24 days before  
5 refiling. (Vaghini Decl. Ex. D CT001611-1641.)

6 These facts show the Petitioners knew the CEQA claim was defective in federal court well  
7 before they refiled in state court. A reasonable person would have promptly refiled in state court to  
8 protect their interests. That should have been the main priority for the Petitioners. Therefore, this  
9 Court should hold that the Petitioners’ failure to refile their claim promptly was unreasonable and  
10 dismiss the CEQA claim for being untimely.

11 3. Petitioner’s Failure to Refile the State Law Claim Immediately Once They Stopped  
12 Pursuing its CEQA Claim in Federal Court was Not Reasonable.

13 The California Supreme Court has analogized equitable tolling to a stopped clock. In  
14 *Prudential-LMI Com. v. Superior Court (Prudential)* the Supreme Court, while discussing equitable  
15 tolling in the context of the 12-month statute of limitations, explained “if an insured waits 11 months  
16 after discovering the loss to make his claim, he will have only 1 month to file his action after the  
17 claim is denied before it is time-barred.” (*Prudential-LMI Com. Insurance v. Superior Court* (1990)  
18 51 Cal.3d 674, 692.)<sup>6</sup> Under this standard the Petitioners, having waited until the 30th day to file the  
19 initial petition in federal court, only had one day to refile in state court once the tolling period ended.

20 Depending on the day that effectively ended the tolling period, the Petitioners waited  
21 between 24 and 73 days to refile in state court. Despite having ample time and opportunity to refile,  
22 the Petitioners unreasonably and inexplicably delayed refiling. The Petitioners may contend they

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24 <sup>6</sup> To the extent the Fifth District Court of Appeals questioned the applicability of the *Prudential*  
25 “stop/start” test in the light of the *Saint Francis* decision, *Prudential* remains good law. As this  
26 Court pointed out in its October 17, 2024 Order “When there are conflicting higher court decisions  
27 on point, lower courts may choose to follow either line of authority.” (Vaghini Decl. Ex. D at  
CT002696) (*citing Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [In situations  
where there are conflicting higher court decisions “the court exercising inferior jurisdiction can and  
must make a choice between the conflicting decisions.”])

1 could not refile in state court until the claims were dismissed from federal court. However, this is  
2 demonstrably untrue. First, the Petitioners, like the plaintiff in *Addison*, ultimately refiled in state  
3 court before the federal court dismissed the CEQA claim. So not only is it possible, but the  
4 Petitioners themselves did it. Relatedly, the Petitioners’ continual assertion that the state claims had  
5 to be dismissed by the federal court before they could refile them in state court lacks all credibility.  
6 The Petitioners have never provided any case law or authority establishing this requirement, and  
7 their actions clearly demonstrate the opposite.

8 Further, to the extent that Petitioners attempt to justify their inaction on the back-and-forth  
9 language in the proposed September 2023 stipulation is a red herring. Those discussions go to the  
10 question of *res judicata*. The Petitioners were never at risk of their state law claims being precluded  
11 from the state court. A core element for applying *res judicata* is “the decision in the prior proceeding  
12 is final and **on the merits**.” (*Association of Irrigated Residents v. Department of Conservation* (2017)  
13 11 Cal.App.5th 1202, 1219; emphasis added.) The Fifth District Court of Appeals has declared “[a]  
14 classic example of a judgment that is **not** on the merits is [...] a judgment based on lack of  
15 jurisdiction.” (*Ibid.*; emphasis added) *Res judicata* is unavailable when “the underlying claim was  
16 never tried or determined; instead, the outcome was reached on procedural or technical grounds that  
17 did not resolve or depend on the claim’s merits.” (*Ibid.*) Here, CALTRANS’ motion to dismiss the  
18 CEQA claim was brought under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter  
19 jurisdiction, not on the merits.

20 Lastly, to the extent Petitioner’s attempt to blame CALTRANS for their inaction is equally  
21 unfair. Caltrans did not wait “nearly five months ... to even hint at sovereign immunity.” (Vaghini  
22 Decl. Ex. D CT002666.) First, the stipulations signed by the Parties on April 20 and May 12, 2023,  
23 included language making it clear CALTRANS was not submitting to the federal court’s jurisdiction  
24 and thus putting the Petitioners on notice of the jurisdictional issue. (*see* Section II.B.1.) Second, the  
25 Petitioners’ decision to amend the federal petition meant there was no operable pleading until June  
26 22, 2023. Additionally, the FAP added two more state law claims without consulting CALTRANS  
27 on the jurisdictional question. On June 28, 2023, within a week of receiving the FAP, Caltrans told

1 the Petitioners it would be challenging the pleading. Then, on July 20 and July 21, 2023,  
2 CALTRANS informed the Petitioners they would seek to dismiss the state law claims on sovereign  
3 immunity grounds, and then CALTRANS filed that very motion to dismiss on August 21, 2023. (*see*  
4 Section II.B.1.)

5 CALTRANS repeatedly told Petitioners they would move for dismissal on sovereign  
6 immunity grounds and ultimately did. CALTRANS consistently refused to waive sovereign  
7 immunity or toll any statute of limitations. As discussed above, the state law claims did not need to  
8 be dismissed by the federal court before being refiled, and any argument over the stipulation was  
9 irrelevant to the Petitioner’s ability to refile in state court. The only party that stood in the way of the  
10 Petitioners refile in state court at any time was the Petitioners themselves. The Petitioners failure  
11 to act was unreasonable and the CEQA claim should be dismissed.

12 *i. Petitioners' failure to promptly to refile was unreasonable even under*  
13 *a more lenient standard.*

14 Even if the Court chooses not to apply a strict “start/stop” method of tolling the statute of  
15 limitations and adopts a more flexible standard, the Petitioners still failed to act reasonably. This  
16 argument relies mainly on the appellate court case *Tarkington*. (*Tarkington* (2009) 172 Cal.App.4th  
17 1494.) In *Tarkington*, the court refused to apply a strict start/stop approach. There, the plaintiffs only  
18 had “one day left on the statutory clock,” but waited 13 days to refile the petition. The court relying  
19 on the *Friends of Mammoth v. Board of Supervisors (Friends of Mammoth)* determined that under  
20 the unique circumstances filing the petition within 13 days was “prompt” in the court’s view. (*Id.* at  
21 1507-1508; *Friends of Mammoth* (1972) 8 Cal.3rd 247.) However, even under this standard the  
22 Petitioners failed to refile promptly.

23 In *Tarkington*, the plaintiffs refiled within two weeks of realizing the first claim could no  
24 longer proceed against the defendant. (*Tarkington* (2009) 172 Cal.App.4th at 1505.) *Tarkington*  
25 involved a six-month (~180 day) statute of limitations. The plaintiffs waited 13 days to refile,  
26 representing ~7% of the totality of the statute of limitations. In *Friends of Mammoth*, the plaintiffs  
27

1 waited just 4 days.<sup>7</sup> (*Friends of Mammoth* (1972) 8 Cal.3d 247, 268.) There, the statute of limitations  
2 at issue was thirty (30) days. Therefore, the plaintiff's 4-day delay in refiling represented ~13% of  
3 the totality of the statute of limitations period.

4 At best, the Petitioners unnecessarily delayed refiling for 24 days, representing ~80% of  
5 CEQA's 30-day statute of limitations period. At worst, the Petitioners unnecessarily delayed refiling  
6 for 73 days, representing ~243% of CEQA's 30-day statute of limitations. Even under this more  
7 lenient standard, the Petitioners failed to act reasonably. Further, in both *Tarkington* and *Friends of*  
8 *Mammoth* the parties were actively pursuing their claims in the first action until the very end. Here,  
9 the Petitioners conceded the CEQA claim was defective and no longer viable in federal court by at  
10 least August 31, 2023. Therefore, the Petitioners' delay in refiling the CEQA claim in state court  
11 was unreasonable and the CEQA claim is time barred.

12 4. Applying Equitable Tolling to these Facts Undermines the Important Public Interest  
13 and Policy Expressed Under CEQA's Entire Statutory Scheme and is Prejudicial to  
14 State Public Agencies.

15 When considering the application of equitable tolling, courts must balance "the injustice to  
16 the plaintiff occasioned by the bar of his claim against the effect upon the important public interest  
17 or policy expressed by the [operative] limitations statute." (*McDonald v. Antelope Valley Community*  
18 *College Dist.* (2008) 45 Cal.4th 88, 103.) It is settled law that CEQA's short limitations periods were  
19 enacted by the legislature to "place strict limits on the time during which projects may be challenged  
20 under CEQA." (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48  
21 Cal.4th 32, 50 (*Green Foothills*)). The purposely short statute of limitations period works to ensure a  
22 "key policy" of CEQA, "the prompt resolution of challenges to the decisions of public agencies," is  
23 realized. (*Ibid.*)

24 This clear policy purpose is reflected throughout CEQA's statutory scheme. The *Green*

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25  
26 <sup>7</sup> In *Friends of Mammoth* the appellate court denied the writ on Thursday July 15, 1971 and  
27 petitioners refiled on Monday July 19, 1971. (*Friends of Mammoth* (1972) 8 Cal.3d 247, 268.)  
Therefore, the delay was 4 calendar days, but only 1 court day since two of the days, July 17 and 18,  
were on the weekend.

1 *Foothills* Court recognized “CEQA contains a number of provisions evidencing the clear legislative  
2 determination that the public interest is not served unless challenges under CEQA are filed  
3 promptly.” (*Ibid.*) CEQA’s short statute of limitations viewed in context with other CEQA  
4 provisions<sup>8</sup> demonstrates the legislature’s clear intent to create a statutory scheme designed to “avoid  
5 delay and achieve prompt resolution of CEQA claims.” (*Green Foothills, supra* 48 Cal.4th at 51.)

6 Applying equitable tolling to these facts completely undermines the public interest and policy  
7 underlying CEQA’s statutory scheme. Petitioners’ interpretation of equitable tolling would allow  
8 any party seeking to delay a public works project to challenge CEQA in federal court. It would allow  
9 a party to file an action under the guise of efficiency to raise a concurrent NEPA challenge despite  
10 never once mentioning NEPA during public comments. It would then require a state agency to file a  
11 performative motion to dismiss and then require that state agency to wait until the federal court  
12 issues its inevitable ruling before a petitioner would be forced to refile in the proper venue. Thereby,  
13 extending the statute of limitations period by months, if not years. (*see* footnote 6 under section  
14 IV.A.2.) Equitable tolling should not be applied in such a manner. It undermines the public interest  
15 and policy behind CEQA’s entire procedural statutory scheme which is designed to ensure the  
16 prompt resolution of CEQA challenges in state courts, and it would be prejudicial to state agencies  
17 forcing them to waste time and public resources.

18 **B. PETITIONERS’ FAILURE TO RAISE THE INDUSTRIAL CAMPUS,  
19 CUMULATIVE IMPACTS, AIR QUALITY CONFORMITY OR AIR QUALITY  
20 SIGNIFICANCE, LEVEL OF SERVICE, AND GREENHOUSE GAS MITIGATION  
21 DURING PUBLIC COMMENTS WAIVED THEIR RIGHT TO CHALLENGE  
22 THOSE ISSUES.**

23 California Public Resource Code § 21177 prohibits any party from raising an alleged CEQA  
24 violation unless the “alleged grounds for noncompliance ... were presented to the public agency  
25 orally or in writing by any person during the public comment period.” (Pub. Res. Code, § 21177.)

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26 <sup>8</sup> The *Green Foothills* Court noted Pub. Res. Code § 21167.1 provides CEQA actions preferential  
27 treatment over other civil actions in state court; Pub. Res. Code § 21167.4 imposes an expedited  
briefing schedule; Pub. Res. Code § 21167.6 provided for the expedited preparation of the  
administrative record. (*Green Foothills* (2010) 48 Cal.4th at 50.)

1 The “[e]xhaustion of administrative remedies is a jurisdictional prerequisite” to maintain a CEQA  
2 action. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603,  
3 615.) “The purpose of CEQA’s exhaustion doctrine is to afford the public agency the opportunity to  
4 hear and respond to articulated factual issues and legal theories before its actions are subject to  
5 judicial review.” (*Arcadians for Environmental Preservation v. City of Arcadia* (2023) 88  
6 Cal.App.5th 418, 430–431.)

7 Courts demand more than “bland and general references to environmental matters” to satisfy  
8 the exhaustion requirement. (*Id.* at 431.) Rather “the exact issue must have been presented”  
9 otherwise it could “enable litigants to narrow, obscure, or even omit their arguments before the final  
10 administrative authority because they could possibly obtain a more favorable decision from a trial  
11 court.” (*Stop Syar Expansion v. County of Napa* (2021) 63 Cal.App.5th 444, 453.) Finally, “the  
12 petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were  
13 first raised at the administrative level.” (*Porterville Citizens for Responsible Hillside Development v.*  
14 *City of Porterville* (2007) 157 Cal.App.4th 885, 909.)

15 As explained above, the Petitioners are challenging issues that were not raised during the  
16 administrative process. (*see* Section II.A.3.iii) Thereby, depriving CALTRANS the opportunity to  
17 hear and respond to articulated factual issues and legal theories. CALTRANS received no comments  
18 regarding any “industrial campus” being proposed by the COUNTY, no specific comments  
19 questioning cumulative impacts analysis, no comments regarding air conformity or the air quality  
20 significance determination or thresholds, no comments about the level of service (LOS) impact  
21 determination, and no comments about greenhouse gas mitigation efforts. (*see* Section II.A.3.iii)

22 Though courts have held “less specificity is required to preserve an issue for appeal in an  
23 administrative proceeding than in a judicial proceeding.” (*California Native Plant Society v. City of*  
24 *Rancho Cordova* (2009) 172 Cal.App.4th 603, 616.) This rationale is based on the theory that parties  
25 to these administrative processes “generally are not represented by counsel” and holding those  
26 parties to “the technical rules of evidence and the penalty of waiver for failure to make a timely and  
27 specific objection would be unfair to them.” (*California Native Plant Society v. City of Rancho*

1 *Cordova* (2009) 172 Cal.App.4th 603, 616.) As discussed above, this concern does not apply here as  
2 Petitioners were advised by counsel throughout the administrative process. (*see* Sections II.A.3.ii  
3 and IV.A.1.) Therefore, the Petitioners have not met their burden establishing they raised these  
4 issues with enough specificity to satisfy the requirements under Pub. Res. Code § 21177 and have  
5 waived their right to raise them at this time. The Court should deny them accordingly.

6 **C. CALTRANS DID NOT ERASE COMMUNITIES FROM THE ENVIRONMENTAL**  
7 **SETTING. CALTRANS PROPERLY DEFINED THE BASELINE CONDITIONS**  
8 **AND THE ENVIRONMENTAL SETTING FOR THE PROJECT.**

9 “CEQA analysis is concerned with a project's impact on the environment, rather than with  
10 the environment's impact on a project.” (*California Building Industry Assn. v. Bay Area Air Quality*  
11 *Management Dist.* (2015) 62 Cal.4th 369, 378.) Under CEQA a “project” is defined as “an activity  
12 which may cause either a direct physical change in the environment, or a reasonably foreseeable  
13 indirect physical change in the environment.” (Pub. Res. Code, § 21065). CEQA Guidelines  
14 recommend lead agency describe the “physical environmental conditions as they exist at the time the  
15 notice of preparation is published.” (Cal. Code Regs., tit. 14, § 15125.) This is a factual  
16 determination “subject to review ... for support by substantial evidence.” (*Citizens for East Shore*  
17 *Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549.) “An agency enjoys the discretion to decide,  
18 in the first instance, exactly how the existing physical conditions without the project can most  
19 realistically be measured.” (*Ibid.*) A lead agency may define the existing conditions “by referencing  
20 historic conditions . . . that are supported with substantial evidence.” (Cal. Code Regs., tit. 14, §  
21 15125.)

22 That is precisely what CALTRANS did here. Looking at the historical and existing  
23 conditions CALTRANS accurately described the PROJECT area along SR 99 as largely “designated  
24 as an industrial and commercial zone by the County and City of Fresno where a consistent vision for  
25 land use in the corridor supports traditional and emerging industrial and commercial business  
26 activities in a designated industrial priority area.” (**AR 000016**.) Petitioners attempt to attribute these  
27 existing environmental conditions to the PROJECT is unfounded. Therefore, it was reasonable and  
logical for CALTRANS to focus more on how the PROJECT will directly impact the properties

1 “which are approximately a half-mile from the center of State Route 99 and each interchange.” (AR  
2 **000058**.) Similarly, under this context, it was reasonable for CALTRANS to conclude the project  
3 will not impact any sensitive receptors. (*see* section II.A.5.ii.)

4 CALTRANS never said the area was “devoid of residences” nor “an exclusively industrial  
5 and commercial zone” as the Petitioners allege. (Pets. Opening Brief p. 14; p. 16.) Contrary to these  
6 assertions, the EIR clearly states that in the PROJECT area “40 properties could potentially be  
7 affected . . . 15 properties are zoned for industrial uses, 8 for commercial use, 8 are owned by the  
8 State of California with no use specifically identified, 2 for transportation, 2 *for residential*. . .” (AR  
9 **000065**; emphasis added.) The EIR also notes that preliminary studies found residential  
10 neighborhoods “near, but not in, the project area” and “several low-income populations were  
11 identified outside the project area, but no populations were identified within the project area.” (AR  
12 **000058**; AR **000059**.) However, the presence of these residential properties and communities does  
13 not contradict the undisputed fact that the area is primarily zoned for industrial and commercial  
14 purposes.

15 CALTRANS used its legal discretion to accurately describe the environmental setting and  
16 baseline conditions based on substantial evidence. As explained above, this area has long been a  
17 major transportation corridor that has been prioritized for industrial and commercial development by  
18 the CITY and COUNTY. The Petitioners themselves admit this reality in their own comments. (*see*  
19 section II.A.2.i.) The Petitioners continual mischaracterization of the nature and scope of the  
20 PROJECT does not invalidate CALTRANS’ determination, nor should this Court.

21 **D. CALTRANS’ CUMULATIVE ANALYSIS COMPLIED WITH CEQA AND**  
22 **CONSIDERED THE PROJECT’S IMPACTS IN CONJUNCTION WITH THE**  
23 **THOUSANDS OF PROJECTS.**

24 Under CEQA the discussion of cumulative impacts “shall reflect the severity of the impacts  
25 and their likelihood of occurrence, but the discussion need not provide as great detail as is provided  
26 for the effects attributable to the project alone.” (*City of Maywood v. Los Angeles Unified School*  
27 *Dist.* (2012) 208 Cal.App.4th 362, 397.) Any discussion “should be guided by the standards of  
practicality and reasonableness.” (*Ibid.*) CEQA Guidelines permit an agency to use “[p]reviously

1 approved ... regional transportation plans ... in cumulative impact analysis.” (Cal. Code Regs., tit. 14,  
2 § 15130.) Finally, “[t]he mere existence of significant cumulative impacts caused by other projects  
3 alone shall not constitute substantial evidence that the proposed project's incremental effects are  
4 cumulatively considerable.” (Cal. Code Regs., tit. 14, § 15164, subd. (h)(4).)

5 As discussed above Petitioners never raised any specific issues with cumulative impact  
6 analysis and is therefore barred from raising it now. However, CALTRANS did consider cumulative  
7 impacts in the EIR and determined they were less than significant. (**AR 000161.**) CALTRANS  
8 included a number of projects in its cumulative impact analysis, including FCOG’s the 2018  
9 RTP/SCS. (**AR 000074.**) The scope of the PROJECT is relatively minor. As repeatedly explained in  
10 the EIR the PROJECT is updating existing facilities along an already urbanized transportation  
11 corridor. (*see* section II.A.2.) The magnitude of the PROJECT led CALTRANS to reasonably  
12 conclude it would not contribute to any cumulatively considerable impacts.

13 To the extent the Petitioners allege the analysis did not include enough projects is not  
14 supported by the evidence. As explained above, CALTRANS used the VMIP 2 model in its analysis.  
15 (*see* section II.A.4.i.) The VMIP 2 incorporates land use plans and other transportation projects into  
16 the model. As a result, it is impossible for CALTRANS not to incorporate the cumulative impacts  
17 from other projects programmed into VMIP 2. Further, the FCOG’s 2018 RTP/SCS incorporates  
18 thousands of projects throughout the region. As discussed above, a PEIR was prepared for the 2018  
19 RTP/SCS. (*see* Section II.A.4).

20 Therefore, Petitioners allegations that the cumulative impact was “fatally defective” and  
21 failed to incorporate other projects is not supported by the evidence. Between the VMIP 2 model and  
22 FCOG’s 2018 RTP/SCS the PROJECT incorporated thousands of projects into the analysis. Through  
23 that analysis CALTRANS concluded the cumulative impacts were less than significant and satisfied  
24 the requirements under CEQA.

25 **E. CALTRANS ADDRESSED INDUCED GROWTH IN THE EIR AND PROPERLY**  
26 **CONCLUDED THE PROJECT WILL NOT INDUCE UNPLANNED GROWTH.**

27 CEQA requires an EIR to include a statement on the “growth-inducing impact of the

1 proposed project.” (Pub. Resources Code, § 21100, subd. (b)(5); Cal. Code Regs., tit. 14, § 15126.2.)  
2 However, courts have explained “[n]othing in the Guidelines, or in the cases, requires more than a  
3 general analysis of projected growth. The detail required in any particular case necessarily depends  
4 on a multitude of factors, including, but not limited to, the nature of the project, the directness or  
5 indirectness of the contemplated impact and the ability to forecast the actual effects the project will  
6 have on the physical environment.” (*Napa Citizens for Honest Government v. Napa County Bd. of*  
7 *Supervisors* (2001) 91 Cal.App.4th 342, 369.) One relevant factor is whether “future effects will  
8 themselves require analysis under CEQA.” (*Ibid.*)

9         In *Clover Valley Foundation v. City of Rocklin*, the court upheld a lead agency’s scant  
10 analysis of the project’s growth-inducing impacts of installing a sewer. EIR acknowledged the sewer  
11 “removed an obstacle to development,” but did not analyze the issue any further. The court reasoned  
12 the EIR’s brief discussion of the growth in regards to a sewer pipe was sufficient because (1) the  
13 purpose and nature of the project was not to facilitate additional development after the project was  
14 completed, (2) the contemplated impact on growth was indirect and though the sewer line would  
15 “provide essential capacity for ... additional housing” it removed “only one of potentially numerous  
16 obstacles” to further development, and (3) any future impacts of additional development would  
17 undergo its own CEQA analysis. (*Clover Valley Foundation v. City of Rocklin* (2011) 197  
18 Cal.App.4th 200, 227-228.)

19         Here, unlike in *Clover Valley*, the PROJECT isn’t even removing an obstacle to  
20 development. The PROJECT is not providing new access to SR 99. The facilities in question already  
21 exist and are currently being used. The PROJECT is only rebuilding them to comply with modern  
22 design standards and not to facilitate additional development. Any future growth in the area is  
23 consistent with existing plans and any further development will have to undergo its own CEQA  
24 analysis. CALTRANS did its due diligence by reaching out to the CITY and COUNTY and was  
25 informed there were no plans to develop the area beyond the existing plans. (*see* Section II.A.2.ii.)  
26 Therefore, the magnitude and nature of the PROJECT do not require more analysis than provided.  
27 Accordingly, CALTRANS satisfied its obligations under CEQA.

1           **F. THE COUNTY’S NON-EXISTENT INDUSTRIAL CAMPUS IS NOT A “PROJECT”**  
2           **REQUIRING AN EIR UNDER CEQA, IS NOT REASONABLY FORSEEABLE AND**  
3           **WAS NOT PIECEMEAL FROM THE CALTRANS PROJECT.**

4           The CEQA Guidelines are clear projects “involving only feasibility or planning studies for  
5 possible future actions which the agency, board, or commission has not approved, adopted, or  
6 funded does *not* require the preparation of an EIR or negative declaration.” (Cal. Code Regs., tit. 14,  
7 § 15262; emphasis added.) This describes the COUNTY’s “industrial campus” to a tee. Even  
8 according to the Petitioners, the only action taken by the COUNTY, regarding this “industrial  
9 campus,” was approving a planning study. (Pets. Brief p. 22.)

10           Despite this, Petitioners claim CALTRANS piecemealed the non-existent industrial campus  
11 by not analyzing its impacts in the PROJECT’s EIR. To expand piecemealing to this factual situation  
12 would be an egregious expansion of CEQA and its procedural requirements. The non-existent  
13 industrial campus is not reasonably foreseeable as a matter of law. It is the epitome of what the  
14 California Supreme Court identified as “a gleam in a planner’s eye.” (*Laurel Heights Improvement*  
15 *Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398.) There, the Court was clear  
16 that CEQA does not “require discussion in the EIR of specific future action that is merely  
17 contemplated or a gleam in a planner’s eye. To do so *would be inconsistent with the rule that mere*  
18 *feasibility and planning studies do not require an EIR.*” (*Ibid.*; emphasis added [citing Cal. Code  
19 Regs., tit. 14, § 15262].)

20           CALTRANS is not the government entity that approved the feasibility study and has no  
21 statutory authority to facilitate its implementation.<sup>9</sup> This “industrial campus” would require zoning  
22 and land use changes and updates to FCOG’s modeling. None of which has occurred, and none of  
23 which is under CALTRANS’ authority. The law is clear CALTRANS did not have to consider the  
24 non-existent industrial campus in its analysis and any argument to the contrary lacks merit.

25           Similarly, CALTRANS was not obligated to discuss the non-existent industrial campus under  
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27 <sup>9</sup>Implementing the industrial campus would require land use and zoning changes. That authority  
resides with counties and cities not CALTRANS. (*see* Gov. Code § 65000 et seq.)

1 cumulative impacts. As the courts have explained “mere awareness of proposed expansion plans or  
2 other proposed development does not necessarily require the inclusion of those proposed projects in  
3 the EIR. Rather, these proposed projects must become probable future projects.” (*Gray v. County of*  
4 *Madera* (2008) 167 Cal.App.4th 1099, 1127; internal quotations omitted.) Courts have held “no  
5 purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental  
6 consequences.” (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362,  
7 397–398.)

8 In *Maywood*, the court found that the Los Angeles Unified School District (LAUSD) was not  
9 required to analyze the cumulative impacts of the I-710 corridor project in its EIR when studying the  
10 effects of the construction of a new high school. The Court reached this decision even though  
11 “Caltrans had issued a notice of preparation for [I-710 project] and held numerous public meetings  
12 on the matter.” (*Maywood, supra* at 396.) LAUSD justified its decision because “the I-710 Project is  
13 in the ‘scoping’ phase. The specific improvements ... are yet to be determined.” (*Ibid.*) LAUSD also  
14 noted “the technical data associated with the proposed I-710 project ... [was] not publicly available.  
15 Therefore, inclusion of the proposed I-710 Project in the analysis ... would be extremely  
16 speculative.” (*Ibid.*) The court agreed and held the City of Maywood had failed to provide evidence  
17 that the I-710 corridor project was a probable future project and the failed to provide evidence that  
18 “it would be reasonable and practical for the LAUSD to attempt to analyze the effects.” (*Id.* at 401.)

19 Here, the non-existent industrial campus is even more speculative. There has been no notice  
20 of preparation (NOP), no preliminary environmental analysis, and no known data has been collected  
21 by the COUNTY that would make it “reasonable or practical” for CALTRANS to analyze the effects  
22 of this non-existent industrial campus. All the COUNTY has done is to perform a planning study,  
23 which is exempt from EIRs under the CEQA Guidelines. The Petitioners’ arguments regarding the  
24 non-existent industrial campus lack all merit and should be rejected by this Court.

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1 **G. CALTRANS LEVEL OF SERVICE ANALYSIS WAS BASED ON SUBSTANTIAL**  
2 **EVIDENCE AND CONSISTENT WITH THE TRAFFIC OPERATIONS REPORT.**

3 As discussed above, Petitioners failed to raise this issue during the administrative process so  
4 are barred from doing so now. Regardless, CALTRANS conclusion the project “would not result in  
5 any significant impact on congestion” is supported by substantial evidence. The conclusions reached  
6 in the EIR are consistent and supported by the May 2020 Traffic Operations Report. (AR 000083-  
7 94; AR 014157-014174).

8 Caltrans uses level of service (LOS) to indicate how effectively a roadway or interchange  
9 transports vehicles. The LOS rating system uses letters “A” through “F” to describe and measure  
10 service quality. A designation of LOS “A” indicates excellent travel conditions, while LOS “F”  
11 indicates very poor, congested conditions. According to Caltrans standards, ratings of “A” through  
12 “D” are considered acceptable ratings, depending on other measures used to analyze the  
13 effectiveness of a facility.

14 Petitioners’ reliance of the Air Quality Report is misleading and flawed (1) it completely  
15 ignores the Traffic Operations Report on which CALTRANS conclusion is based and (2) it  
16 misinterprets the data in the Air Quality Report. The Air Quality Report was looking at the merge  
17 and diverge points between the interchanges and the SR 99 mainline. The LOS at these locations are  
18 expected an LOS of “F” in the horizon year of 2046 because “[w]ith or without the interchange  
19 improvements, the mainline where the interchange ramps meet State Route 99 is predicted to be at  
20 level of service “F” by 2046. This is because the mainline is predicted to experience a large increase  
21 in traffic volume, with no planned projects to add lanes to State Route 99 to carry the increased  
22 traffic.” (AR 000088.) Unlike in the Air Quality Report, CALTRANS’ Traffic Operations Report  
23 was not only looking at the diverge/merge points with SR 99 and supports the findings in the EIR.  
24 Therefore, CALTRANS’ conclusion that the PROJECT will not result in a significant impact on  
25 congestion is supported by substantial evidence and the Petitioners argument to the contrary lacks  
26 merit and should be rejected by the Court.

27 ///

1 **H. CALTRANS' AIR QUALITY SIGNIFICANCE DETERMINATION WAS PROPER.**

2 As discussed above Petitioners failed to raise the issue of air quality thresholds during the  
3 administrative process and are therefore barred from raising the issue now. (*see* sections IV.B.)  
4 However, CEQA only encourages but does not require agencies to establish thresholds of  
5 significance. (Cal. Code Regs., tit. 14, § 15064.7.) Further, if a project complies “with the  
6 requirements in a previously approved plan ... including ... air quality attainment or maintenance  
7 plan” a lead agency may determine its “incremental contribution to a cumulative effect” is not  
8 considerable. (Cal. Code Regs., tit. 14, § 15064, subd. (h)(3).)


9 As discussed above (*see* Section II.A.4), the PROJECT was contained in the 2018 RTP/SCS  
10 and FTIP. The PROJECT received regional and project-level conformity determinations. The 2018  
11 RTP/SCS’ PEIR found the 2018 RTP/SCS complied with SJVAPCD’s goals and concluded all  
12 criteria pollutants will be lower by 2042. (AR 0001512-1513.) The PROJECT also consistent with  
13 SJVAPCD’s CERP and incorporates some of its recommendations. (*see* Section II.A.3.i.) Therefore,  
14 CALTRANS air quality significance determination was rational and supported by substantial  
15 evidence.

16 **V. CONCLUSION**

17 For the foregoing reasons, CALTRANS respectfully requests this Court dismiss the CEQA  
18 claim for being untimely, or in the alternative deny the Petitioners’ peremptory writ, declare  
19 CALTRANS’ EIR consistent with CEQA, and uphold CALTRANS’ determination.

20  
21 DATED: October 17, 2025.

ERIN E. HOLBROOK, Chief Counsel  
ALAN M. STEINBERG, Deputy Chief Counsel  
PAUL R. BROWN, Assistant Chief Counsel  
ROBERT E. VAGHINI, Attorney

22  
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25 By:   
ROBERT E. VAGHINI  
26 Attorneys for Plaintiff  
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**PROOF OF SERVICE**

I, the undersigned, declare that I am over 18 years of age and not a party to this action. I am employed in the county of Sacramento, California, and my business address is 1120 N Street, Sacramento, California. My electronic service address is [Rashel.roque@dot.ca.gov](mailto:Rashel.roque@dot.ca.gov), and my business electronic service address is [caltransHQservice@dot.ca.gov](mailto:caltransHQservice@dot.ca.gov). On the date of signature below, I served the following documents:

**RESPONDENT CALIFORNIA DEPARTMENT OF TRANSPORTATION and TONY TAVARES, in his official capacity as Director of the California Department of Transportation's, OPPOSITION BRIEF TO PETITIONER'S OPENING BRIEF ON THE CEQA MERITS**

on the person or persons below, at the address provided, and served as indicated:

**SEE ATTACHED SERVICE LIST**

- By personal service.** I personally delivered the documents to the persons at the addresses listed. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.
- By United States mail.** I enclosed the documents in a sealed envelope or package addresses to the persons at the addresses listed and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the California Department of Transportation Legal Division's practice for collecting and processing correspondence for mailing. On the same day that 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 electronic service.** Pursuant to Code of Civil Procedure section 1010.6, I caused the said documents to be sent to the persons at the electronic service address(es) listed directly below their names.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California, on **October 17, 2025**.

  
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RASHEL ROQUE

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**SERVICE LIST**

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