

APPENDIX 1.0

Notice of Preparation and Comments on Notice of Preparation



SOUTHERN CALIFORNIA
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NOTICE OF PREPARATION

TO: Interested Agencies, Organizations and Individuals
SUBJECT: Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)
DATE: January 23, 2019
LEAD AGENCY: Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, California 90017

The Southern California Association of Governments (SCAG), as Lead Agency, is publishing this Notice of Preparation (NOP) to prepare a Program Environmental Impact Report (PEIR) in accordance with the California Environmental Quality Act (CEQA) for Connect SoCal (also referred to herein as “2020 Regional Transportation Plan and Sustainable Communities Strategy” or “2020 RTP/SCS” or “Plan”). SCAG is preparing Connect SoCal pursuant to federal and state metropolitan planning and air quality requirements including the federal surface transportation reauthorization, Fixing America’s Surface Transportation (FAST) Act, the Transportation Conformity in the Air Quality Attainment Plan per 40 CFR Part 51 and 40 CFR Part 93, and Section 65080 et seq., of Chapter 2.5 of the California Government Code, The Global Warming Solutions Act of 2006 (Senate Bill 32), The Sustainable Communities and Climate Protection Act of 2008 (Senate Bill 375), California Global Warming Solutions Act of 2006 (Assembly Bill 32), and corresponding regulations.

Two (2) Scoping meetings for the Plan, each providing the same information, will be held at SCAG’s Main office – Room Policy Committee A (see address above) on **Wednesday, February 13, 2019 from 3:00 PM to 5:00 PM and 6:30 PM to 8:30 PM**. Webcasting and videoconferencing will be available from SCAG’s regional offices (see last page for addresses).

To ensure full consideration of environmental issues with potential significant impacts in the Draft PEIR, **all comments must be received within thirty (30) days of the start of the 30-day public comment period, which begins January 23, 2019 and ends February 22, 2019**. If you wish to be placed on the mailing list to receive notices regarding the PEIR for the Plan, or have any questions or need additional information, please contact the person identified below.

Please send your response to Roland Ok, Senior Regional Planner, either electronically to: 2020PEIR@scag.ca.gov, via the web at: <https://connectsocial.org>; or at the mailing address shown above. Please include a return address and the name of a contact person in your agency/organization.

Introduction

CEQA and its implementing regulations (*State CEQA Guidelines*) require SCAG as the Lead Agency to prepare an EIR for any discretionary government action, including programs and plans that may cause significant environmental effects. Connect SoCal is a regional planning document updated every four years (see further discussion below) and will update the 2016 RTP/SCS. Given the regional level of analysis provided in a RTP/SCS, a Program EIR (PEIR) is the appropriate CEQA document. A PEIR is a “first-tier” CEQA document designed to consider “broad policy alternatives and program wide mitigation measures” (*State CEQA Guidelines* Sec. 15168). The programmatic environmental analysis for the Connect SoCal PEIR will evaluate potential environmental effects consisting of direct and indirect effects, growth-inducing impacts, and cumulative impacts resulting from the Plan, and will include mitigation measures to offset any identified potentially significant adverse environmental effects. As a first-tier document, the PEIR may serve as a foundation for subsequent, site-specific environmental review documents (including Addendums, Supplemental EIRs, Subsequent EIRs) for individual transportation and development projects in the region (*State CEQA Guidelines* Sec. 15385).

This NOP is intended to alert responsible agencies, interested agencies, organizations, and individuals of the preparation of the PEIR. Comments regarding the scope of the PEIR received during the 30-day NOP review period will be used to refine the scope and content of the PEIR, as appropriate.

PROJECT LOCATION AND BACKGROUND

Project Location

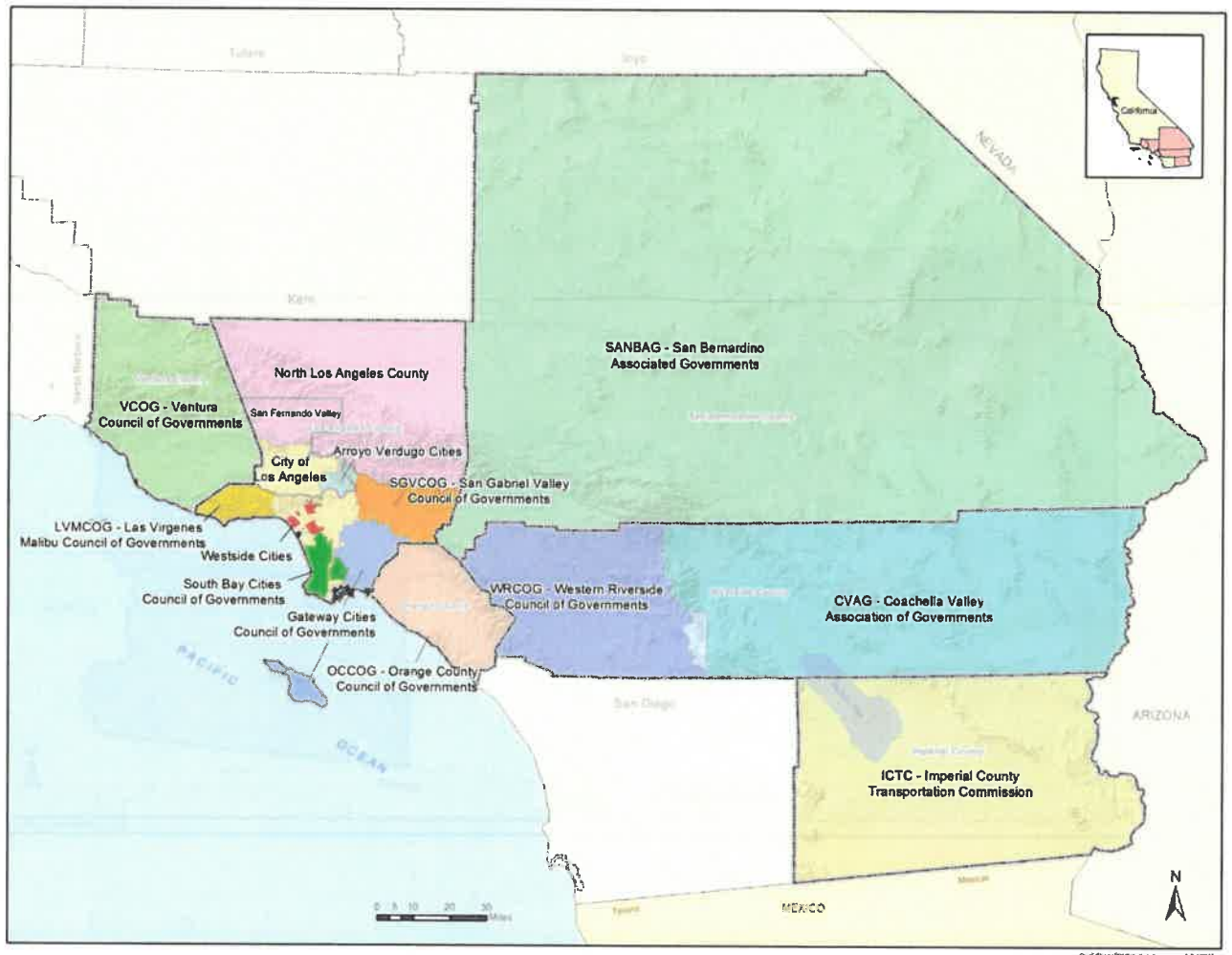
SCAG is the federally designated Metropolitan Planning Organization (“MPO”) under Title 23, United States Code (U.S.C.) 134(d)(1). The SCAG region consists of six counties (Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura), and 191 cities (Figure 1, *SCAG Region*). To the north of the SCAG region are the counties of Kern and Inyo; to the east is State of Nevada and State of Arizona; to the south is the county of San Diego; and to the northwest is the Pacific Ocean. The SCAG region also consists of 15 subregional entities that serve as partners in the regional planning process. (Figure 2, *SCAG Subregions*).

SCAG is one of 18 MPOs in the State of California. The total area of the SCAG region is approximately 38,000 square miles. The region includes the county with the largest land area in the nation, San Bernardino County, as well as the county with the highest population in the nation, Los Angeles County. The SCAG region is home to approximately 20 million people, or 49 percent of California’s population, representing the largest and most diverse region in the country.

Figure 1: SCAG Region



Figure 2: SCAG Subregions



SCAG Roles and Responsibilities

In addition to federal designation as a MPO, SCAG is designated under California state law as the Multicounty Designated Transportation Planning Agency and Council of Governments (COG) for the six-county region. Founded in 1965, SCAG is a Joint Powers Authority, established as a voluntary association of local governments and agencies.

SCAG serves as the regional forum for cooperative decision making by local government elected officials and its primary responsibilities in fulfillment of federal and state requirements include the development of the Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS); the Federal Transportation Improvement Program (FTIP); the annual Overall Work Program; and transportation-related portions of local air quality management plans. SCAG’s other major functions include determining the regional transportation plans and programs are in conformity with state air quality plans; preparation of a Regional Housing Needs Assessment (RHNA); and intergovernmental review of regionally significant projects.

PROJECT DESCRIPTION

2020 Regional Transportation Plan/Sustainable Communities Strategy

Pursuant to federal and state planning requirements, SCAG updates and adopts a long-range regional transportation plan every four years. SCAG's last Plan was adopted in 2016 and an updated Plan is required to be adopted by April 2020.

Connect SoCal will outline the region's goals and policies for meeting current and future mobility needs, provide a foundation for transportation decisions by local, regional and state officials that are ultimately aimed at achieving a coordinated and balanced transportation system. Connect SoCal will also identify the region's transportation needs and issues, recommended actions, programs, and a list of projects to address the needs consistent with adopted regional policies and goals, and documents the financial resources needed to implement Connect SoCal. It is important to note that SCAG does not implement individual projects in the RTP, as they will be implemented by local and state jurisdictions, and other agencies. SCAG has already initiated the development of Connect SoCal and is working closely with County Transportation Commissions (CTCs) to compile a regional project list that will build upon the list identified in the 2016 RTP.

In accordance with the Sustainable Communities and Climate Protection Act of 2008, or Senate Bill (SB) 375 (Steinberg) and codified in California Government Code §65080(b)(2)(B), the Plan will include a SCS which details land use, housing and transportation strategies to reduce greenhouse gas (GHG) emissions from passenger vehicles (automobiles and light-duty trucks).

Pursuant to SB 375, SCAG's SCS is required to meet reduction targets for greenhouse gas (GHG) emissions of 8 percent per capita by 2020 and 19 percent per capita by 2035 compared to 2005 emission levels, as set by the California Air Resources Board (ARB). According to Section 65080(b)(2)(B) of the California Government Code, the SCS must:

- Identify existing land use;
- Identify areas to accommodate long-term population growth;
- Identify areas to accommodate an eight-year projection of regional housing needs;
- Identify transportation needs and the planned transportation network,
- Consider resource areas and farmland;
- Consider state housing goals and objectives;
- Set forth a forecasted growth and development pattern; and
- Comply with federal law for developing an RTP.

Additionally, if the combination of measures in the SCS would not meet the regional targets, the MPO must prepare a separate "Alternative Planning Strategy" (APS) to meet the targets.

Scenario Planning Process

As part of the planning process, SCAG is developing several transportation and land use scenarios for public consideration. These scenarios focus on transportation and land use related inputs that are modified to vary across the scenarios. These scenarios will provide the analytical technique for policy choices to be considered as the Plan is being developed, while the Plan goals, guiding policies and performance measures will underpin scenario designs.

SCAG will use scenario planning tools to illustrate the impact of distinctive policy and investment choices that will then be compared to business as usual scenario (No Project) in order for the Regional Council and Policy Committees to evaluate the merits of regional decisions for the Plan.

SCAG will seek input for scenario development through stakeholder outreach. These scenarios would then be presented to the general public in late Spring/summer of 2019 in a series of public workshops.

Bottom-up Local Growth and Land Use Input Process

A critical component to developing a successful Plan is the participation and cooperation of SCAG's local government partners and stakeholders within the SCAG region. To this end, SCAG uses a bottom-up local input process by which all local governments are informed of the planning process for Connect SoCal and have clear and adequate opportunities to provide input. Growth forecasts and land use updates for development of the Plan will be developed through this bottom-up local input process.

SCAG's Public Participation Plan and Process

Another key aspect of Plan development is public participation. To provide early and meaningful public participation in the Plan's development and decision-making processes, SCAG has developed and adopted a Public Participation Plan ("PPP").¹ The adoption of the PPP demonstrates SCAG's commitment in increasing awareness and involvement of interested persons in SCAG's governmental processes and regional transportation and land use planning. SCAG will provide information and timely public notice, ensuring full public access to key decisions, and supporting early and continuing public involvement in the development of the Plan. To this end, SCAG will continue to engage a wide range of stakeholder groups, elected officials, special interest groups, the general public, and other interested parties through a series of workshops and public meetings, as well as SCAG's policy committees, task forces, and subcommittee structure during the development of the Plan and its associated PEIR.

SCOPE OF ENVIRONMENTAL ANALYSIS IN THE PEIR

Environmental Factors Considered

The PEIR is a programmatic document that will analyze potential effects of the Plan on the environment. Although Connect SoCal will include some individual transportation projects, the PEIR does not specifically analyze environmental effects of any individual transportation or development project. Project-level environmental analyses will be prepared by implementing agencies on a project-by-project basis as projects proceed through the design and decision-making process.

The potential scope of environmental effects that warrant analysis in the Connect SoCal PEIR are as follows:

- Aesthetics and Views
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources and Open Space
- Cultural Resources
- Energy
- Hazards and Hazardous Materials
- Hydrology and Water Resources
- Land Use and Planning
- Noise
- Population and Housing
- Recreation

¹ Southern California Association of Governments. Public Participation Plan. Adopted September 6, 2018. <http://www.scag.ca.gov/participate/Pages/PublicParticipationPlan.aspx>

- Geology, Soils and Mineral Resources
- Greenhouse Gas Emissions and Climate Change
- Tribal Cultural Resources
- Transportation/Traffic
- Public Services and Utilities
- Wildfire

CEQA Streamlining

SB 375 contains CEQA incentives, or streamlining provisions, to encourage coordinated land use and transportation planning. Certain types of development projects (i.e., transit priority projects or residential/mixed use residential projects, as defined by the statute) may qualify for CEQA streamlining as long as the requisite criteria are met. Consistency will be determined by the local jurisdiction that is the lead agency for each project to be streamlined. SCAG’s primary role is to include appropriate information in the SCS, such as land use information as required by SB 375 and/or guidance to aid in interpreting land use information that will allow a jurisdiction to make a consistency determination with respect to appropriate streamlining options on a project-by- project basis.

Additionally, the PEIR will support other CEQA streamlining options that do not fall into the categories under SB 375 (i.e., SB 743, SB 226 and the State CEQA Guidelines).

Preliminary 2020 RTP/SCS Alternatives

The development of alternatives in a PEIR is focused on avoiding or reducing potentially significant impacts of the Plan while achieving most of the project objectives. It is anticipated that the PEIR will evaluate at least three potential alternatives to Plan as follows:² (1) No Project; (2) 2020 Local Input Alternative; and (3) Intensified Land Use Alternative. Each Alternative, except the No Project Alternative, will vary in terms of policies and projects including, but not limited to, variations in land use development patterns or transportation network.

SCAG has the discretion to select more than one alternative as long as they are within the range of impacts identified.

No Project Alternative

The No Project Alternative is required by Section 15126.6(e)(2) of the CEQA Guidelines and assumes that the Plan would not be implemented. The No Project Alternative will consider continued implementation of the goals and polices of the adopted 2016 RTP/SCS and will be based on 2016 RTP/SCS regional population, housing, and employment. The No Project Alternative includes those transportation projects that are included in the first year of the previously conforming FTIP (i.e., 2018). The growth scenario included in the No Project Alternative, and all alternatives, will include the same regional totals for population, housing and employment.

2020 Local Input Alternative

This Alternative will incorporate jurisdictional general plans and land use information to reflect the most recent growth estimates and land use development patterns in the region. This alternative would include policies and strategies included in the 2016 RTP/SCS to the extent that they have been incorporated into local jurisdictional plans. This alternative does not include additional land use strategies described in the

² It is important to note that these are preliminary alternatives and may change during the planning process.

2020 Plan that go beyond current local policy and strategies described in the intensified land use alternative, that help meet additional objectives.

Intensified Land Use Alternative

An Intensified Land Use Alternative would be based on a transportation network for Connect SoCal with aggressive land use development patterns. Land use development patterns in this alternative would build on land use strategies as described in the Plan by maximizing growth around high quality transit areas (HQTAs). Potential growth patterns associated with this alternative would optimize urban areas and suburban town centers, transit oriented development patterns (TODs), livable corridors, and neighborhood mobility areas (NMAs).

SCAG is seeking input on these preliminary alternatives through the scoping process, changes to the alternatives as a result of the scoping process could result in modifications to the number, content and scope of alternatives analyzed in the PEIR. Furthermore, the PEIR will identify alternatives that were initially considered, but rejected for reasons including infeasibility or inability of a particular alternative to meet the project objectives or reduce environmental impacts beyond that of the project.

SCOPING MEETINGS

As mentioned previously, SCAG will host two (2) Scoping meetings for the Plan, each providing the same information, at SCAG's Main office – Policy Committee A Room (see address above) on **February 13, 2019 from 3:00 to 5:00 PM and 6:30 to 8:30 PM**. For each of the two scoping meetings videoconferencing will be available at SCAG's regional offices listed below.³

SCAG Imperial County Regional Office
1503 N. Imperial Avenue, Suite 104
Imperial, CA 92243
(760) 353-7800

SCAG Riverside County Regional Office
3403 10th Street, Suite 805
Riverside, CA 92501
(951) 784-1513

SCAG Orange County Regional Office
OCTA Building
600 South Main Street, Suite 906
Orange, CA 92868
(714) 542-3687

SCAG San Bernardino County Regional Office
1170 West 3rd Street, Suite 140
San Bernardino, CA 92410
(909) 806-3556

City of Palmdale (From 3:00 to 5:00 PM Only)
Planning Department
Development Services Conference Room
38250 Sierra Highway
Palmdale, CA 93550
(661)267-5337

Coachella Valley Association of Governments (From 3:00 to 5:00 PM Only)
73-710 Fred Waring Drive
Palm Desert, CA 92260
(760)346-1127

³ Please note that the Ventura County Regional Office is currently closed. Those from the Ventura County area are encouraged to participate via webcast.

Additionally, webcasting will be provided for those who are unable to attend the scoping meetings hosted at the main offices or teleconference options at the regional offices. Information for the webcast is provided below:

Webcast

<https://scag.zoom.us/j/553192165>

Dial: 1-669-900-6833

Meeting ID: 553-192-165

Signature: *Ping Chang*

Ping Chang, Manager of Compliance and Performance Monitoring

Southern California Association of Governments

Telephone: (213) 236-1839

Email: Chang@scag.ca.gov; or 2020PEIR@scag.ca.gov

Date: 1/23/19



Gavin Newsom
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Kate Gordon
Director

Notice of Preparation

January 28, 2019

To: Reviewing Agencies

Re: Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)
SCH# 2019011061

Attached for your review and comment is the Notice of Preparation (NOP) for the Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy) draft Environmental Impact Report (EIR).

Responsible agencies must transmit their comments on the scope and content of the NOP, focusing on specific information related to their own statutory responsibility, within 30 days of receipt of the NOP from the Lead Agency. This is a courtesy notice provided by the State Clearinghouse with a reminder for you to comment in a timely manner. We encourage other agencies to also respond to this notice and express their concerns early in the environmental review process.

Please direct your comments to:

Ping Chang
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, CA 90017

with a copy to the State Clearinghouse in the Office of Planning and Research. Please refer to the SCH number noted above in all correspondence concerning this project.

If you have any questions about the environmental document review process, please call the State Clearinghouse at (916) 445-0613.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Attachments
cc: Lead Agency



November 26, 2018

RE: CEQA Principles to Combat Lawsuit Abuses

On behalf of more than 180 business organizations that represent 400,000 employers with over 3.5 million employees in LA County we are commemorating our tenth anniversary with a mission to lift one million people out of poverty in the next decade. One of the many opportunities to lift and prevent poverty are providing solutions that end litigation abuse of the California Environmental Quality Act (CEQA).

These lawsuits drive up the costs of building new housing or transportation infrastructure exacerbating our housing crisis, where the production of new housing in the region has been significantly reduced. Coupling this reduction with the cost of litigation further drives up the cost of housing which prohibits public service and private sector occupations and professionals the ability to afford owning a home, which is essential for building generational wealth, incubating a stronger, vibrant and more resilient economy.

Since 2013, the Los Angeles region accounts for;

- 38% of all CEQA lawsuits statewide.
- 40% of these lawsuits dealt with residential development and transportation infrastructure.
- Over 70% these CEQA lawsuits are targeted at stopping infill, multi-family, transit-oriented housing the very housing needed according to CARB that we need to invest in to support our environmental goals
- Nearly 80% of these lawsuits are targeted in wealthier and healthier parts of the State,

BizFed solutions fall under four themes that create the necessary reforms needed to improve compliance with CEQA and streamline the process;

- (1) Prohibit anonymous CEQA lawsuits allowing petitioners to conceal their identities and economic interests;
- (2) Prohibit duplicative CEQA lawsuits allowing parties to repeatedly sue over the same plan, or projects implementing a plan, for which CEQA compliance has already been completed;
- (3) **Establish a "mend it, not end it" approach of directing corrections to any deficient** environmental study rather than vacating project approvals; and
- (4) Prohibit CEQA lawsuits against voter-approved infrastructure projects, and against projects receiving voter-approved approved funding (e.g., for homeless housing).

Abuse of CEQA for non-environmental purposes by business competitors, NIMBYs opposed to change, and certain construction trade unions, has been well documented, and includes both threatened and filed CEQA lawsuits. CEQA fundamentally is biased in favor of stopping changes to the status quo. **CEQA's** status quo preservation bias has a disparate effect on minority communities, as well as younger Californians such as millennials, who are most urgently in need of more housing and transportation, infrastructure.

These CEQA modifications are necessary to comply with law, and to address the housing and poverty crisis, and expedite completion of transportation and other critical infrastructure projects that have already had at least one completed round of CEQA compliance as well as voter and initial agency approvals. No state agency should hide within a silo of vague legalese to promote increased litigation risks and delays and do further harm to hard working minority and millennial families suffering from **California's housing, poverty** and transportation crises. In contrast, during the last session we witnessed bipartisan support for CEQA exemptions to construct new sports and entertainment facilities which are good projects to stimulating jobs creation by reducing lawsuit abuse, we believe such exemptions for development are consistent with the solutions we have provided in this letter.

Business is what makes our economy work and CEQA guidelines should reward instead of impede that progress to help our economy and our environment thrive. Litigation abuse is one of the unattended consequences that negatively affects our economy because it introduces uncertainty with CEQA instead of compliance.

Sincerely,

Tracy Hernandez, BizFed Los Angeles County,
Founding CEO
Hilary Norton, BizFed Chair Fixing Angelenos
Stuck in Traffic (FAST)
Lois Henry, Central Valley Business Federation
Associated Builders and Contractors, Central
California Chapter
Building Owners and Managers Association
Building Industry Association of Southern
California, LA/Ventrua Chapter
California Small Business Alliance
Construction Industry Air Quality Coalition
Construction Industry Coalition on Water Quality
Foreign Trade Association
Harbor Association of Industry and Commerce

Harbor Trucking Association
Hollywood Chamber of Commerce
NAIOP/Commercial Real Estate Association
National Association of Royalty Owners
Orange County Business Council
Redondo Beach Chamber of Commerce
South Bay Association of Chambers of Commerce
Torrance Area Chamber of Commerce

February 22, 2019

Roland Ok
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, CA 90017

SUBJECT: "Connect SoCal" Scoping Phase Comments

On behalf of BizFed, a grassroots alliance of more than 180 business organizations that represent 400,000 employers with over 3.5 million employees in LA County, we have strong concerns of CARB's statutory over reach by imposing flawed Vehicle Miles Travelled (VMT) reduction targets as a strategy for greenhouse gas (GHG) reduction. This would ignore the local input of many stakeholders in previous Regional Transportation Plan (RTP)/Sustainable Community Strategies (SCS) as we start the EIR for the 2020-2045 RTP/SCS.

CARB has no statutory authority to impose a VMT reduction target in an SCS and doing so violates the SB 375 requirement that an SCS must provide for a robust economy and **growing population**. In SCAG's two prior RTP/SCS in 2012 and 2016, SCAG met required GHG reduction targets based on local input for land use planning and full respect for voter-approved and funded transportation projects and transportation infrastructure required by longstanding laws requiring efficient transportation and goods movement.

These voter approved transportation projects are usually funded in the form of sales taxes which can be volatile to outside triggers such as an arbitrary GHG reduction target based on VMT reduction assumptions that cannot be delivered in the real world. If these assumptions are to be delivered, we may see a dramatic reduction in goods movement infrastructure **critical to the state's economy**. BizFed wants to ensure that sales tax revenues remain strong for the successful delivery of these voter supported and approved projects. This nexus is vital to the five of the six counties in the SCAG region who are delivering critical transportation infrastructure projects through sales taxes. Imposing GHG reductions through poor VMT metrics without prioritizing the value of certain trips to our economy could be devastating.

The most aggressive GHG reduction based on VMT reductions in the SCAG region called for a 10% decrease in overall regional VMT, which the region has not met and shows no indication of being able to meet. **While we support California's climate leadership**, the state emits less than 1% of global GHG. In contrast, California ranks top in the United States for poverty and homelessness – both of which are attributable directly to the housing supply shortage, high housing prices that are nearly three times above the national average and **longer commutes where working families are "driving until they qualify" for housing that they can rent or buy**.

Given the realities of the current economic conditions, we believe **CARB staff's** current target of reducing VMT by 19.5% is unattainable. SCAG should not continue to spend taxpayer dollars on infeasible plans, when there has been zero progress made in achieving key reforms that prior SCS plans identified as being necessary to even be able to achieve prior lower GHG reduction targets that the business community has been actively advocated for such as redevelopment funding and CEQA reforms against lawsuit abuses.

We very much respect and appreciate the major efforts of SCAG to assure that SB 375 can be implemented consistent with its statutory protections for a healthy economy and growing population.

We urge SCAG to reject CARB staff's decision to unilaterally reject its own Board vote, and the Legislature's repeated refusal to impose a VMT reduction target as part of its climate or air quality statutes or regulations.

Sincerely,



Steve Bullock
BizFed Chair
Cerrell Associates



David Fleming
BizFed Founding Chair



Tracy Hernandez
BizFed Founding CEO
IMPOWER, Inc.

BizFed Association Members

Action Apartment Association
AIA - Los Angeles
Alhambra Chamber
American Beverage Association
American Hotel & Lodging Association
Antelope Valley Board of Trade
Angeles Emeralds
Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
Arcadia Association of Realtors
AREAA North Los Angeles SFV SCV
Asian Business Association
Association of Independent Commercial Producers
Azusa Chamber
Beverly Hills Bar Association
Beverly Hills Chamber
Beverly Hills / Greater LA Association of Realtors
BNI 4SUCCESS
Burbank Association of Realtors
Building Industry Association, LA / Ventura Counties
Building Owners & Managers Association, Greater LA
Business & Industry Council for Emergency Planning & Preparedness
CalAsian Chamber
California Apartment Association, Los Angeles
California Asphalt Pavement Association
California Business Roundtable
California Cannabis Industry Association
California Construction Industry and Materials Association
California Contract Cities Association
California Fashion Association
California Gaming Association
California Grocers Association
California Hotel & Lodging Association
California Independent Oil Marketers
California Independent Petroleum Association
California Life Sciences Association
California Metals Coalition
California Restaurant Association
California Small Business Alliance
California Sportfishing League
California Trucking Association
CALInnovates
Carson Chamber of Commerce
Carson Dominguez Employers Alliance
CDC Small Business Finance
Central City Association
Century City Chamber of Commerce
Cerritos Chamber
Citrus Valley Association of Realtors
Commerce Industrial Council/Chamber of Commerce
Construction Industry Air and Water Quality Coalitions
Consumer Healthcare Products Association
Council on Trade and Investment for Filipino Americans
Covina Chamber of Commerce
Culver City Chamber of Commerce

Downey Association of Realtors
Downtown Long Beach Alliance
El Monte/South El Monte Chamber
Employers Group
Engineering Contractor's Association
F.A.S.T.-Fixing Angelenos Stuck in Traffic FilmLA
Foreign Trade Association
FuturePorts
Gardena Valley Chamber of Commerce
Gateway to LA
Glendale Association of Realtors
Glendale Chamber
Glendora Chamber
Greater Antelope Valley AOR
Greater Lakewood Chamber
Greater Los Angeles African American Chamber
Greater Los Angeles New Car Dealers Association
Harbor Trucking Association
Historic Core Bid
Hollywood Chamber
Hong Kong Trade Development Council
Hospital Association of Southern California
Hotel Association of Los Angeles
Independent Cities Association
Industry Manufacturers Council
International Warehouse Logistics Association
Investing in Place
Irwindale Chamber
Japan Business Association of Southern California
La Canada Flintridge Chamber
LAX Coastal Area Chamber
League of California Cities
Long Beach Area Chamber
Los Angeles Area Chamber
Los Angeles Cleantech Incubator
Los Angeles County Bicycle Coalition
Los Angeles County Medical Association
Los Angeles County Waste Management Association
Los Angeles Gateway Chamber of Commerce
Los Angeles Gay & Lesbian Chamber of Commerce
Los Angeles Latino Chamber
Los Angeles Parking Association
Maple Business Council
Motion Picture Association of America
MoveLA
NAIOP Southern California Chapter
National Association of Royalty Owners
National Association of Tobacco Outlets
National Association of Women Business Owners
National Association of Women Business Owners, LA
National Hispanic Medical Association
National Latina Business Women's Association
Netherlands-America Foundation
Orange County Business Council
Pacific Merchant Shipping Association
Pacific Palisades Chamber

Panorama City Chamber
Paramount Chamber of Commerce
Pasadena Chamber
Pasadena-Foothills Association of Realtors
PhRMA
Planned Parenthood Southern California Affiliates
Pomona Chamber
Rancho Southeast Association of Realtors
Recording Industry Association of America
Regional Black Chamber - San Fernando Valley
Regional San Gabriel Valley Chamber
Rosemead Chamber
San Gabriel Chamber
San Gabriel Valley Civic Alliance
San Gabriel Valley Economic Partnership
Santa Clarita Valley Chamber
Santa Clarita Valley Economic Development Corp.
San Pedro Peninsula Chamber
Santa Monica Chamber
Santa Monica Junior Chamber
Sherman Oaks Chamber of Commerce
South Bay Association of Chambers
South Bay Association of Realtors
Southern California Contractors Association
Southern California Golf Association
Southern California Grantmakers
Southern California Minority Supplier Development Council Inc.
Southern California Water Coalition
Southland Regional Association of Realtors
The Young Professionals at the Petroleum Club
Torrance Area Chamber
Town Hall Los Angeles
Tri-Counties Association of Realtors
United Chambers San Fernando Valley
United States-Mexico Chamber
Unmanned Autonomous Vehicle Systems Association
US Resiliency Council
Valley Economic Alliance
Valley Economic Development Corp.
Valley Industry & Commerce Association
Vernon Chamber
Vietnamese American Chamber
Warner Center Association
West Hollywood Chamber
West Los Angeles Chamber
West San Gabriel Valley Association of Realtors
West Valley/Warner Center Chamber
Western Manufactured Housing Association
Western States Petroleum Association
Westside Council of Chambers
Westwood Village Rotary Club
Wilmington Chamber
World Trade Center
Young Professionals in Energy - LA Chapter

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E. Ocean Blvd, Suite 300
Long Beach, CA, 90802
(562) 590-5071



February 21, 2019

Ping Chang
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

**RE: Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Community Strategy
Comments on Notice of Preparation of Environmental Impact Report (SCH # 2019011061)**

Dear Mr. Chang:

The above referenced Notice of Preparation of an Environmental Impact Report (EIR) for a four year update to the Regional Transportation Plan and Sustainable Communities Strategy (Plan) for the Southern California Association of Governments planning area was received by Coastal Commission staff on via the State Clearinghouse on January 30, 2019. We appreciate the opportunity to comment on the environmental review process for the Regional Plan update. One of the primary tenets of the Coastal Act is to protect and enhance coastal resources and public access to the coast, which requires well-planned residential, commercial, and public infrastructure and an interconnected public transportation system. Several of the policy objective categories of the Plan, including Biological Resources and Open Space Preservation, Hydrology and Water Resources, Recreation, and Population and Housing, create an opportunity to enhance Southern California's transportation system, provide housing and jobs within urban areas well served by the transportation system, and protect coastal resources in a manner that is supportive of the Coastal Act. This update provides an opportunity to enhance those sections of the Plan, considering current infrastructure, planned future infrastructure, and environmental conditions including sea level rise. Given the Coastal Commission's mandate to protect coastal resources through planning and regulation of the use of land and water within the Coastal Zone, staff are providing the following comments and topics that should be analyzed in the EIR.

1) Coastal Transportation Corridor Improvements. Major transportation corridors within the Coastal Zone are Interstate 5 from the southern Orange County line to San Clemente, Pacific Coast Highway (SR 1) from San Clemente to Oxnard, and US 101 through Ventura County. These coastal transportation corridors bisect or are located directly adjacent to sensitive marine resources including coastal lagoon systems, maritime chaparral and coastal sage scrub, and the Pacific Ocean. Impacts to these resources are restricted by Coastal Act policies. Except for specific instances, fill of a wetland or other coastal waters is prohibited (Section 30233), and marine resources (Section 30230), water quality (Section 30231), and environmentally sensitive habitat areas (Section 3024) often associated with the coastal environment are protected. Many of these coastal systems and habitat areas have already significantly deteriorated due to historical transportation infrastructure and residential development. Future transportation improvements in the Coastal Zone (e.g. the regional projects list in the Plan) should seek to upgrade existing infrastructure and reduce impacts to the natural environment. Strategies include development of new highways and bridges with less fill of coastal waters and less coverage of natural habitat than current infrastructure, relocation of highways and other public infrastructure that are threatened by erosion and storm damage, and habitat restoration in areas which have previously been degraded by transportation

infrastructure (e.g. lagoon systems adjacent to Pacific Coast Highway). Please analyze the Plan scenarios for their capacity to avoid adverse impacts to coastal resources and restore and enhance the natural environment.

2) Sea Level Rise. Coastal Act Section 30253 requires that new development minimize risks to life and property from hazards and to assure stability and structural integrity without the use of a shoreline protective device. Thus, understanding the potential impacts of climate change and sea level rise is of critical importance when beginning long-range planning efforts so as to ensure that land use decisions and development projects are not designed in a way that will put investments at risk from coastal hazards. Given the proximity of significant portions of the County's key regional infrastructure to the coast (e.g. highways, airports, power plants), it is imperative that transportation and land use plans carefully anticipate the effects of sea level rise and associated hazards. Ensuring that new coastal infrastructure is designed to adapt to the effects of sea level rise throughout the expected life of the infrastructure is a principal concern of the Coastal Commission. Please review the Commission's Sea Level Rise Policy Guidance (<https://www.coastal.ca.gov/climate/slrguidance.html>), which was based on two reports – the Ocean Protection Council's April 2017 *Rising Seas in California: An Update of Sea-Level Rise Science* and its 2018 *State Sea-Level Rise Guidance*. The 2016 RTP/SCS references climate change and sea level rise (e.g. the 2012 National Research Council Report, *Sea Level Rise for the Coasts of California, Oregon, and Washington*), but 2016 RTP/SCS does not make clear that sea level rise conditions must be modeled for the entirety of the expected life of new infrastructure projects, which in the case of rail and highway bridges is considered to be 100 years. The updated Plan should include policies requiring regional sea level rise planning and coordination. The Plan should also include regional maps showing various sea level rise scenarios (including a severe scenario) and policies requiring new projects in the Coastal Zone undergo specific sea level rise analysis of tidal and fluvial hydraulics as applied to the local area and in the context of storm surge, wave run-up, erosion, and other variables.

If the Plan references key pieces of existing and planned infrastructure that may be temporarily flooded or perpetually inundated by water in the next 75 to 100 years, then the EIR should analyze potential adaptation measures that minimize adverse impacts to coastal resources and enhance public access to the coast. The EIR should analyze whether existing and planned infrastructure will need to be protected from coastal hazards, such as flooding and erosion. Such protection often includes seawalls and revetments, which adversely affect public access because they block access to the beach, accelerate erosion, and result in the loss of public recreational areas. The Plan should anticipate such impacts and prioritize projects which avoid the impacts (e.g. relocation or elevation of vulnerable segments of highways and rail). Additionally, the EIR should analyze options for relocation of vulnerable infrastructure away from hazardous conditions.

3) Public Access and Recreation. A fundamental pillar of the Coastal Act is the protection and provision of public access to and along the coast. Coastal Act sections 30210 and 30212 require that maximum opportunities for public access and recreation be provided in new development projects, consistent with public safety, private property rights, and natural resource protection. Additionally, Section 30252 dictates that new development should maintain and enhance public access through such actions as facilitating transit service, providing non-automobile options, and providing adequate parking.

Accordingly, the EIR should evaluate the Plan scenarios for consistency with the above-mentioned policies. In particular, there should be an analysis of how the Plan would maximize access to the coast (including beaches, parks, and open spaces), including options for public transit, non-motorized vehicles, and pedestrian routes throughout the region. This analysis should identify options to facilitate access to beaches and coastal areas from the inland portions of the region, as well as options for enhancing connections to public transit, the California Coastal Trail, and other visitor-serving recreational opportunities. Improvements to coastal access routes may be planned as coordinated projects which enhance vehicle flow and safety, increase bicycle capacity, increase pedestrian capacity, and restore the natural environment. One area where such a coordinated approach should be analyzed is along Pacific Coast Highway in Orange County and Los Angeles County – this corridor is already heavily utilized by coastal visitors and portions of the corridor are likely to be part of the California Coastal Trail. Bicycle and pedestrian facilities are particularly lacking along Pacific Coast Highway in Northern Los Angeles County, Malibu, and Southern Ventura County.

Importantly, the EIR should also analyze the potential negative impacts to public access and recreation that could arise from the various transportation and land use scenarios identified in the Plan. Scenarios that would lead to additional traffic along critical coastal highways should be analyzed for their potential impacts to public access and recreation, and potential impacts to the natural environment. A transportation capacity analysis of existing and planned transportation infrastructure should be performed for not only peak commuter periods (e.g. morning rush hour) but for peak recreational periods (e.g. a summer weekend with high demand by beach users). Transportation projects which increase capacity to reach the coast by modes other than private automobiles should be prioritized.

4) Concentration of Development. Coastal Act Section 30250 generally requires that new development within the Coastal Zone be located within, contiguous with, or in close proximity to existing developed areas. Coastal Act Section 30253 requires new development to be sited in a manner that will minimize energy consumption and vehicle miles travelled. In this way, the Coastal Act encourages smart growth patterns that recognize a strong urban-rural boundary to ensure protection of coastal resources. Accordingly, the EIR should analyze the extent to which various Plan scenarios, as well as the broader goals of the Sustainable Communities Strategy, would be consistent with Coastal Act goal to concentrate development and reduce vehicle miles travelled. Based on the summary in the scoping notice, the Intensified Land Use Alternative appears to be consistent with Coastal Act policies, to the extent that it prioritizes development in urban areas and around high quality transit corridors, rather than in rural and exurban areas which tends to adversely impact natural habitat and increase vehicle miles travelled.

Finally, the Plan's greenhouse gas emissions targets must be consistent with the Executive Order B-30-15 goal of reducing California's GHG emissions to 40 percent below 1990 levels by 2030 and the Executive Order S-3-05 goal of reducing California's GHG emissions to 80 percent below 1990 levels by 2050. While the 2016 RTP/SCS prioritized investment in transit and active transportation more than any previous RTP, it does not appear to have reduced vehicle miles traveled consistent with Coastal Act Section 30253. The EIR for the Plan update should include additional analysis of transportation and land use scenarios which are most protective of sensitive coastal and environmental resources while at the same time achieving the Plan objectives of improving the transportation system, increasing housing and allowing people to live closer to where they work and play. While there may be existing constraints that

Connect SoCal 2020-2045 RTP/SCS
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make the Intensified Land Use scenario difficult to implement today, the RTP/SCS is a long-range planning document and there will likely be changes in policy and funding for transit and housing within its planning horizon – especially if SCAG advocates for such changes. As such, SCAG should place a greater emphasis on the prioritization of public transit and active transportation projects, with increased housing density around such high quality transit areas, and include analysis of such projects in the EIR.

Thank you for the opportunity to comment on the environmental review for the update to the Regional Transportation Plan and Sustainable Communities Strategy. We look forward to future collaboration on improvements to the transportation system and land use synchronization within Southern California, and appreciate the commitment within the current (2016) RTP/SCS to preserve and enhance coastal resources. Coastal Commission staff request notification of any future activity associated with this project or related projects. Please contact me at (562) 590-5071 with any questions.

Sincerely,



Zach Rehm

Senior Transportation Program Analysts

Cc: Tami Grove, Statewide Development and Transportation Program Manager
Steve Hudson, South Central Coast (Ventura County) and South Coast (LA County) District Director
Karl Schwing, South Coast (Orange County) District Director

DEPARTMENT OF TRANSPORTATION**DISTRICT 12**

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a California Way of Life.*

February 22, 2019

Mr. Rowland Ok
Southern California Association of Governments
900 Wilshire Boulevard Suite 1700
Los Angeles, CA 90017

File: IGR/CEQA
SCH#: N/A
DOC#: 12-MULTIPLE-2019-00099

Dear Mr. Ok,

Thank you for including the California Department of Transportation (Caltrans) in the review of the Regional Transportation Plan (RTP) for the proposed Connect SoCal 2020 Regional Transportation Plan/Sustainable Communities Strategy (SCS) Update. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

Connect SoCal is Southern California's Association of Government's (SCAG) 2020 update to their long-range visioning plan. This long-range plan is a collective vision for the region's future needs with input from multiple stakeholders. This plan balances future mobility and housing needs with economic, environmental and equity goals. The long-range plan spans the Southern California region, including Ventura, Los Angeles, Orange, San Bernardino, Riverside, and Imperial Counties. Caltrans is a responsible agency and has the following comments:

Transportation Planning:

1. The RTP/SCS should draw from the [California Transportation Plan](#) (CTP) 2040 and be consistent with the goals set in the CTP as it provides safety, economic, accessibility, and environmental objectives for the California Transportation System. The CTP integrates a number of long-range transportation plans including the California Freight Mobility Plan, State Rail Plan, Transit Strategic Plan, etc. The CTP would be an important resource and framework for the RTP/SCS.
2. The criteria for project selection into the RTP/SCS should be consistent for all projects and agencies independent of funding status, in order to address the region's transportation needs and issues.
3. Climate change possesses an immediate concern and threat to the State's transportation network. California Senate Bill 379 requires all cities and counties to include climate adaptation and resiliency strategies to be included into their general plans. Multiple local and regional agencies have adopted Climate Action Plans (CAP) to address SB 379. Caltrans has conducted a Statewide Vulnerability Assessment in order to identify areas and communities of immediate concern. The RTP/SCS should review local and regional

CAPs and the [Vulnerability Assessment](#) for Orange County and coordinate with Caltrans to implement improvements against climate change.

4. Caltrans recognizes the drawbacks of an auto-centric transportation system and has pushed to support multimodal transportation. As such, Caltrans has implemented [Complete Streets](#) aspects in all appropriate Caltrans projects. Complete Streets incorporate design features that provide safe mobility for all users of the road including: pedestrians, bicyclists, transit users, freight, and motorists. Implementation of Complete Streets throughout the region would improve safety, air quality, and congestion reduction.
5. In commitment to a multimodal transportation system, Caltrans provides support to local agencies in their active transportation program from the early project planning and development phase through construction and maintenance. The RTP/SCS should include policies that coordinate with Caltrans and other partners to foster growth of bicycle networks and improvement of safety of pedestrians and bicyclists, such as [Vision Zero](#).
6. Transportation needs are closely integrated to land use. Caltrans, in coordination with the US Environmental Protection Agency, the Governor's Office of Planning and Research (OPR), and the California Department of Housing and Community Development developed the [Smart Mobility Framework](#) in order to bridge transportation and land use. The framework provides guidance on how well plans, programs, and projects meet a definition of "smart mobility". It can be used by both Caltrans and partner agencies to transform transportation decisions.
7. The RTP should prioritize system and service improvements that serve places with good regional accessibility, higher densities of population and jobs, and mixed land uses, or improvements that support evolution of these characteristics. The RTP/SCS should advocate for the creation of secure funding sources for both transit capital improvements and operations in these areas, considering the extremely significant role of transit in the future, to increase the number of High-Quality Transportation Areas. This would coincide with the goals set by SB 743, which focuses on the creation of transit-oriented infill projects.
8. The California Air Resources Board's (ARB) [SB 150 Report](#) indicates that the RTP/SCS housing goals, particularly those for low income housing, are not being achieved. Developing and utilizing policies favorable to housing construction and coordination with local land-use authorities would work towards fixing the State's housing needs. The RTP/SCS should focus on a supply of housing and provide economic development in areas that allows people of all incomes and abilities to live within a reasonable distance of jobs, schools, shopping, and other important destinations, in order to reduce vehicle miles traveled (VMT).

9. California Natural Resources Agency recently adopted new CEQA Guidelines, which include SB 743. Caltrans will work with OPR, ARB, regional and local transportation entities and other interested parties to develop and implement the Department's method for implementing SB 743 in CEQA review of projects on the State Highway System. Under the directive of SB 743 Caltrans is moving forward to utilizing VMT as the primary metric to analyze traffic impacts, replacing LOS. The RTP/SCS should provide policies that include VMT reduction strategies. This would aid in meeting many of the State's air quality improvement and GHG reduction goals set by policies such as AB 32.
10. Caltrans District 12 have conducted multiple Managed Lanes studies as an option to mitigate future congestion and satisfy transportation needs. Please review and incorporate the [Managed Lanes Feasibility Study](#) and the [Managed Lanes Network Study](#) to the RTP/SCS update.
11. The RTP/SCS should also address how the SCAG region works to achieve an inter-regional network for longer-distance travel and freight movement. Connecting towns, cities, and regions to each other, business centers to major intermodal freight transfer points, and commuters to national and international destinations outside of the SCAG region in a sustainable and efficient manner, should be an important objective.
12. The RTP should discuss ease of access and possible improvements to municipal and regional airports as they are an integral part to the transportation network.

Please continue to keep us informed of this project and any future developments that could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to contact Scott Shelley at (657) 328-6164 or Scott.Shelley@dot.ca.gov.

Sincerely,



SCOTT SHELLEY
Branch Chief, Regional-IGR-Transit Planning
District 12



February 22, 2019

Sent via email and FedEx

Roland Ok
Senior Regional Planner
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
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2020PEIR@scag.ca.gov

Re: Notice of Preparation of a Program Environmental Impact Report for Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (State Clearing House Number 2019011061)

Dear Mr. Ok:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the Notice of Preparation (“NOP”) of a Program Environmental Impact Report (“PEIR”) for Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”). The Center has reviewed the NOP closely and provides these comments for consideration by SCAG as it prepares the PEIR for the RTP/SCS.

As the NOP acknowledges, SCAG covers a large portion of the state and will impact approximately 49 percent of California’s population. The RTP/SCS is intended to serve as a foundational document for land use planning across six counties (Imperial, Los Angeles, Orange, San Bernardino and Ventura) and impact approximately 20 million people. Additionally, Southern California is a biodiversity hotspot with many endemic species and unique habitats, and it is home to the most impacted mountain lion populations in California. The health of these populations and ecosystems are intertwined with human well-being. To truly “connect” SoCal and promote “sustainable” communities, land use policy needs to facilitate a more holistic approach that addresses human transportation and development needs, the needs of wildlife and habitats that are fragmented by transportation infrastructure and development, and how we can make human and natural communities more resilient to climate change. Because of the broad scope and significant, long-range impact of the RTP/SCS, the Center urges SCAG to carefully and thoroughly consider the potential environmental impacts on the community and wildlife, including those raised in these comments, when preparing the PEIR and RTP/SCS.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.4 million members and online activists throughout California and the

United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Southern California.

I. SCAG Must Adopt an Ambitious, Aggressive RTP/SCS to Meet SB 375 GHG Emission Reduction Mandates and Reverse the Trend of Increasing Vehicle Travel

Over 10 years ago, the California Legislature adopted the Sustainable Communities and Climate Protection Action of 2008, known as SB 375, to integrate transportation, land use and housing decision-making to reduce overall greenhouse gas (“GHG”) emissions. The California Air Resources Board (CARB) has repeatedly noted the important role SB 375 GHG emission reduction targets are to the state’s overall strategy to meet its climate change targets. (See California Air Resources Board. November 2017. California’s 2017 Climate Change Scoping Plan: The Strategy for Achieving California’s 2030 Greenhouse Gas Target at 101 [“CARB 2017 Scoping Plan”].) While Metropolitan Planning Organizations (“MPO”) like SCAG have adopted RTP/SCS in the subsequent decade, it is clear that previous RTP/SCS have not gone far enough to adequately address California’s GHG emission reduction targets.

In a November 2018 report, CARB completed an in-depth analysis showing California is not on track to meet the greenhouse gas reductions under SB 375. (CARB, 2018 Progress Report: California’s Sustainable Communities and Climate Protection Act [November 2018] [“CARB 2018 Progress Report”].) This is largely because emissions from passenger vehicle travel per capita are *increasing* under the state’s regional SCSs and RTPs, rather than decreasing as SB 375 intended. (*Id.* at 4, 22-28.) Therefore, greater reductions in the transportation sector are essential to meet California’s climate goals. ***The key takeaway from CARB’s report is that more needs to be done and the Center hopes SCAG follows that message when preparing its PEIR and RTP/SCS.*** (*Id.* at 3-5.)

A. Climate Change is a Catastrophic and Pressing Threat to California

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and climate change threats are becoming increasingly dangerous. In a 2018 *Special Report on Global Warming of 1.5°C* from the Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change describes the devastating harms that would occur at 2°C warming, highlighting the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth (IPCC 2018). The report provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

The impacts of climate change will be felt by humans and wildlife. In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers around the world have documented

changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor (USGCRP 2017). In California, climate change will transform our climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability.

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement and compliance with these steps is essential to help stabilize the climate and avoid catastrophic impacts to our environment. California has a mandate under AB 32 to reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code § 38550.) Based on the warning of the Intergovernmental panel on Climate Change and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emission reduction 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) That Executive Order's goal has now been incorporated into California's 2017 Scoping Plan update—its plan to achieve greenhouse gas emissions reductions. Thus, the 2017 Scoping Plan update set out strategies for putting the State on a path to toward the 2050 climate goal to reduce GHG emissions by 80 percent below 1990 levels. (See CARB 2017 Scoping Plan.) More recently, Governor Brown signed a new executive order to put California on the track to go carbon neutral by 2045. (Executive Order B-55-18 (2018).) The Legislature also passed S.B. 100 which requires renewables to account for 60 percent of electricity sales in 2030.

B. CARB's 2018 Progress Report Lays Out Clear Deficiencies in Previous RTP/SCS and Provides a Path Forward

As the NOP acknowledges, SCAG's RTP/SCS will provide detailed land use, housing and transportation strategies for the region. Those strategies can significant impacts on the community, as CARB noted in its 2018 Progress Report:

growth patterns have a profound impact on both the health of individuals and the environment. Where jobs are located and homes are built, and what roads, bike lanes, and transit connect them, create the fabric of life. How regions grow impacts where people can afford to live, how long it takes to get to work, how people travel, who has easy access to well-paying jobs and educational opportunities, the air people breathe, whether it is easy to spend time outdoors and with friends, social cohesion and civic engagement, and ultimately, how long people live.

(CARB Progress Report 2018 at 6.) In the report, CARB goes on to note that “to meet the potential of SB 375 will require state, regional, and local agency staff and elected officials to make more significant changes across multiple systems that address the interconnected

relationship of land use, housing, economic and workforce development, transportation investments, and travel choices.” (*Id.*) While SCAG, like other MPOs, has failed to meet this potential previous RTP/SCS, it has the opportunity to do so now. The Center urges SCAG to do all it can to review and adopt the best practices suggested by CARB when drafting its PEIR and RTP/SCS. This includes the following general principles:

- Providing viable travel alternatives to individual passenger vehicles
- Providing housing choices for all income levels in neighborhoods with access to sustainable transportation choices and economic opportunities
- Building self-sustaining neighborhood that are accessible to and near daily needs

C. SCAG Should Mandate A Robust Range of Mitigation Measures to Meet SB 375 GHG Emissions Reduction Targets

SCAG has made clear that it intends to use the PEIR as a first-tier CEQA document and provide “program wide mitigation measures” that adequately address and reduce GHG emissions from passenger vehicles resulting from land use, housing and transportation planning in the region. (NOP at 2, 7 [*citing* CEQA Guidelines Sec. 15168; SB 375 (2008)].) Therefore the PEIR and associated RTP/SCS must fully comply with CEQA’s strict mandates for mitigation.

Mitigation of a project’s environmental impacts is one of the “most important” functions of CEQA and it is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.” (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; Pub. Res. Code § 21002.) As the California Attorney General has noted, programmatic plans to reduce GHG emissions pursuant to CEQA Guidelines section 15183.5 must “[i]dentify a set of specific, enforceable measures that, collectively, will achieve the emissions targets....” (California Attorney General’s Office). Therefore, SCAG must include a robust range of mitigation measures that are concrete and fully enforceable as required by CEQA to address the likely significant GHG emissions that will result from the RTP/SCS. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445 [“A ‘mitigation measure’ is a suggestion or change that would reduce or minimize significant adverse impacts on the environment caused by the project as proposed.”]); *Preserve Wild Santee v. City of Santee* (2012) 210 CA 4th 260, 281 [mitigation measures that are so undefined that their effectiveness is impossible to determine are legally inadequate].)

When feasible, SCAG should mandate adoption of on-site mitigation measures or avoid GHG emissions through changes in project design, as suggested by (Office of Planning and Research, Discussion Draft: CEQA and Climate Change (2018) at 16.) Only if on-site mitigation measures are infeasible, should SCAG consider local and regional mitigation measures. (*Id.* at 17.) Potential mitigation measures for SCAG to consider include but are not limited to:

- Electric vehicle charging facilities;
- Projects to facilitate and increase use of carpooling, vanpooling and ridesharing;

- Measures to increase use of public transit, increase public transit route and times of operation;
- Use of energy efficient lighting technology;
- Funding for purchase of alternative fuel buses;
- Use of less GHG-intensive construction materials than cement and asphalt;
- Measures to reduce idling time;
- Use of alternative fuel vehicles;
- Road dust reduction strategies;
- Availability for transit vouchers;
- Investment in bike path construction, improvement and storage facilities;

The Center hopes SCAG will, at a minimum, adopt these and other mitigation measures to meet its GHG emission reduction targets. However, just encouraging more zero-emission vehicles or taking small measures to encourage more public transit will not be enough. “CARB’s 2030 Scoping Plan Update identifies additional VMT reduction beyond that included in the SB 375 targets as necessary to achieve a statewide target of 40 percent below 1990 level emissions by 2030. Even greater reductions will be needed to achieve the new carbon neutrality goal by 2045.” (CARB 2018 Progress Report at 27, citing CARB 2017 Scoping Plan and Executive Order B-55-18. September 2018.) What is more, CARB points out that “[e]ven if the share of new car sales that are ZEVs grows nearly 10-fold from today, California would still need to reduce VMT per capita 25 percent to achieve the necessary reductions for 2030.” (*Id.* at 28.)

Put simply, California will not achieve the necessary greenhouse gas emissions reductions to meet mandates for 2030 and beyond without significant changes to how communities and transportation systems are planned, funded and built. (CARB Progress Report 2018 at 27.) Instead fundamental changes in land use planning by local and regional land use agencies must occur. RTP/SCS by MPO’s like SCAG have the potential to guide these fundamental changes in land use and transportation planning. Specifically, CARB discouraged the approval of large, exurban developments with limited public transit, jobs and commercial centers. As noted above, ***SCAG’s RTP/SCS must prioritize infill, transit-oriented development while discouraging sprawl or greenfield development far from existing population and employment centers.*** The Center hopes will seize this opportunity when drafting its RTP/SCS to take one of the largest regions of California on a different, more sustainable path that truly addresses the climate crisis facing our state.

II. The Goals of the RTP/SCS Should Include Maintaining and Enhancing Wildlife Movement and Habitat Connectivity

In planning SCAG’s long-range vision to balance future mobility and housing needs with economic, environmental, and public health goals, it is essential to consider the impacts of transportation infrastructure and development on the region’s natural landscapes. While Southern California is a popular area for people to live and work, it is also a biodiversity hotspot with many endemic species and unique habitats, and it is home to the most impacted mountain lion populations in California. To truly forge sustainable communities resilient to climate change,

wildlife movement and habitat connectivity should be an integral factor in land use planning and policy. Impacts to these resources should be adequately assessed in the PEIR.

A. Avoidance and Minimization of Impacts to Wildlife Movement and Habitat Connectivity Must be Prioritized.

The PEIR should prioritize avoiding and minimizing impacts of the RTP/SCS on wildlife movement and habitat connectivity. Roads and traffic create barriers that lead to habitat loss and fragmentation, which harms wildlife and people. As barriers to wildlife movement and the cause of injuries and mortalities due to wildlife vehicle collisions, roads and traffic can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, and landscapes (Mitsch and Wilson 1996; Trombulak and Frissell 2000; van der Ree et al. 2011; Haddad et al. 2015; Marsh and Jaeger 2015; Ceia-Hasse et al. 2018). For example, habitat fragmentation from roads and traffic has been shown to cause mortalities and harmful genetic isolation in mountain lions in southern California (Riley et al. 2006, 2014, Vickers et al. 2015), increase local extinction risk in amphibians and reptiles (Cushman 2006; Brehme et al. 2018), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al. 2010; Loss et al. 2014; Kantola et al. 2019), and alter pollinator behavior and degrade habitats (Trombulak and Frissell 2000; Goverde et al. 2002; Aguilar et al. 2008). In addition, wildlife vehicle collisions pose a major public safety and economic threat. Over the last three years (2015-2017) it is estimated that 7,000 to 23,000 wildlife vehicle collisions (with large mammals) have occurred annually on California roads (Shilling et al. 2017; Shilling et al. 2018, State Farm Insurance Company 2016, 2018). These crashes result in human loss of life, injuries, emotional trauma, and property damages that can add up to \$300-600 million per year. Thus, avoiding and minimizing impacts of transportation projects and development on wildlife movement and habitat connectivity would help preserve biodiversity and ecosystem health while protecting human health and safety.

B. The PEIR Should Adequately Assess the Impacts of the RTP/SCS on Functional Connectivity.

The PEIR should ensure that effective, functional wildlife corridors that support multiple species movement are preserved. These should include continuous, intact habitats (not fragmented by roads or other anthropogenic features) that are wide enough to overcome edge effects, dominated by native vegetation, and have equal or higher habitat quality than core habitat patches (Bennett et al. 1994; Brooker et al. 1999; Forman 1995; Tilman et al 1997; Hilty et al 2006). Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency have been found to be biologically significant up to 300 meters (~1000 feet) away from development in terrestrial systems (Environmental Law Institute 2003).

C. The RTP/SCS Should Consider the Impacts of Climate Change and Should Incorporate Climate Adaptation Strategies for Wildlife Movement and Habitat Connectivity

The PEIR should consider the impacts of climate change on wildlife movement and habitat connectivity in the design and implementation of projects and any mitigation. Climate change is increasing stress on species and ecosystems, causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes, and increasing species extinction risk (Warren et al. 2011). A 2016 analysis found that climate-related local extinctions are already widespread and have occurred in hundreds of species, including almost half of the 976 species surveyed (Wiens 2016). A separate study estimated that nearly half of terrestrial non-flying threatened mammals and nearly one-quarter of threatened birds may have already been negatively impacted by climate change in at least part of their distribution (Pacifi et al. 2017). A 2016 meta-analysis reported that climate change is already impacting 82 percent of key ecological processes that form the foundation of healthy ecosystems and on which humans depend for basic needs (Scheffers et al. 2016). Genes are changing, species' physiology and physical features such as body size are changing, species are moving to try to keep pace with suitable climate space, species are shifting their timing of breeding and migration, and entire ecosystems are under stress (Parmesan and Yohe 2003; Root et al. 2003; Parmesan 2006; Chen et al. 2011; Maclean and Wilson 2011; Warren et al. 2011; Cahill et al. 2012).

As SCAG is aware, state agencies must take climate change into account in their planning and investment decisions, see Public Resources Code §§ 71150-55 (Climate Change and Climate Adaptation). The law specifically mandates that all state agencies “take into account the current and future impacts of climate change when planning, designing, building, operating, maintaining and investing in state infrastructure.” Public Res. Code § 71155. Thus, the RTP/SCS must also climate change and adaptation into account. There are many tools available for incorporating climate adaptation in planning. In 2018, the California Natural Resources Agency updated the Climate Adaptation Strategy¹ which recognizes the critical role infrastructure and mitigation planning have in meeting climate adaptation goals. Indeed, several of the key principles relate directly to infrastructure planning and emphasize the need for coordination (California Natural Resources Agency 2018):

- Principle 5: Prioritize natural infrastructure solutions build climate preparedness, reduce greenhouse gas emissions, and produce other multiple benefits.
- Principle 6: Promote collaborative adaptation processes with federal, local and regional government partners.
- Principle 7: Increase investment in climate change vulnerability assessments of critical built infrastructure systems.

¹Information available at <http://resources.ca.gov/climate/safeguarding/> and <http://cal-adapt.org/>

D. The PEIR Should Ensure the RTP/SCS Promotes Wildlife Corridor Redundancy to Improve Functional and Resilient Connectivity.

To minimize project impacts to wildlife connectivity, the RTP/SCS should incorporate wildlife corridor redundancy (*i.e.* the availability of alternative pathways for movement) in project plans and mitigation. Corridor redundancy is important in regional connectivity plans because it allows for improved functional connectivity and resilience. Compared to a single pathway, multiple connections between habitat patches increase the probability of movement across landscapes by a wider variety of species, and they provide more habitat for low-mobility species while still allowing for their dispersal (Olson and Burnett 2008; Pinto and Keitt 2008; Mcrae et al. 2012). In addition, corridor redundancy provides resilience to uncertainty, impacts of climate change, and extreme events, like flooding or wildfires, by providing alternate escape routes or refugia for animals seeking safety (Mcrae et al. 2008; Olson and Burnett 2008; Pinto and Keitt 2008; Mcrae et al. 2012; Cushman et al. 2013).

E. The PEIR Should Ensure Adequate Mitigation Measures for Impacts to Wildlife Movement and Habitat Connectivity.

If impacts to wildlife movement and habitat connectivity are unavoidable, the PEIR should ensure that impacts are mitigated using the best available science to maintain and/or enhance wildlife connectivity. When appropriately implemented, wildlife crossing infrastructure has been shown to improve wildlife permeability and reduce wildlife vehicle collisions (Dodd Jr et al. 2004; Bissonette and Rosa 2012; Dodd et al. 2012; Sawyer et al. 2012; Sawaya et al. 2014; Kintsch et al. 2018). Wildlife crossing infrastructure design and implementation should be prepared and conducted in consultation with the California Department of Fish and Wildlife (CDFW) and other stakeholders, including federal and state agencies, academic institutions, non-governmental agencies, local experts and the public. Local and regional wildlife movement, habitat connectivity, and wildlife vehicle collision data should be collected and analyzed in the project area before projects are approved and budgets are set (Lesbarrères and Fahrig 2012; Shilling et al. 2018). New and renovated roads and developments should be designed with wildlife connectivity in mind – it is easier to plan a new road to avoid or minimize impacts to wildlife connectivity than it is to retroactively build wildlife crossings.

To provide appropriate mitigation for habitat connectivity and wildlife movement, the effectiveness of wildlife crossing infrastructure planning, design, and strategies should be thoroughly and systematically evaluated to determine which strategies work better than others and how they can be improved. Any mitigation involving crossing infrastructure should include the long-term monitoring and maintenance of crossing infrastructure as well as the use of appropriate metrics that adequately reflect effectiveness, such as species passage rates and counts of wildlife vehicle collision occurrences. The data and evaluations should inform future mitigation strategies and be made available to the public.

Mitigation via conservation easements should be in-kind within the project area or as close as possible within an ecologically meaningful unit, such as a watershed. Easements should be established and appropriately funded in perpetuity.

III. The PEIR Should Adequately Assess the Impacts of the RTP/SCS on Public Health and the Economy

The PEIR should adequately assess how the RTP/SCS impacts public health and safety and the economy. According to Caltrans, Californians seek more opportunities for walking, biking, or using public transit (Caltrans 2016), yet most transportation infrastructure efforts are focused on building and expanding more roads to accommodate (and facilitate) more cars. According to a 2017 analysis by INRIX, Los Angeles is the most congested city in the US; residents spend over 100 hours a year stuck in traffic, which is estimated to cost the city's economy over \$19 billion (Mccarthy 2018). Long commutes cause increased stress levels and leave little to no time to exercise or spend time with families or communities, which can lead to mental and physical health impacts, reduced quality of life, and shorter life spans (Ewing et al. 2003; Leyden 2003; Frumkin et al. 2004). In addition, emissions from road transportation contribute to poor air quality that can lead to serious health effects, including respiratory and cardiovascular disease, compromised birth outcomes, and premature death (Lin et al. 2002; Andersen et al. 2011; Caiazzo et al. 2013; Chen et al. 2017). A recent study found that emissions from road transportation cause 53,000 premature deaths annually in the US, and California has about 12,000 early deaths every year due to air pollution from road transportation and commercial/residential sources (Caiazzo et al. 2013). Thus, roads and other transportation infrastructure should be made safer for drivers and communities where there are roads. Major cities around the world are acknowledging the detrimental effects of roads and traffic on people, and they are shifting their land use design focus from cars to human health and well-being (Conniff 2018). By reducing the amount of new roads and promoting design oriented towards pedestrians, cyclists, and transit instead of cars, SCAG has the opportunity to facilitate the implementation of transportation infrastructure that improves public health and safety and preserves wildlife connectivity.

IV. The PEIR Should Use the Best Available Science to Identify Wildfire Risk and Impacts of More Frequent Fires Due to Human Activities and Land Use

The Center is encouraged to see that SCAG has added wildfire as an environmental factor within the scope of the environmental analysis to be considered in the PEIR. The PEIR should adequately assess the risk and impacts of increased wildfire ignitions on public health and safety as well as on biological resources. Wildfire is a natural and necessary part of California's ecosystems. Forests, shrublands, and grasslands are adapted to fire and need fire to rejuvenate, although different habitats rely on different fire frequencies. In addition, climate change is leading to hotter, drier conditions that make fires more likely to burn, and people are starting more fires in more places throughout the year. In Southern California, sprawl developments with low/intermediate densities extending into chaparral and sage scrub habitats that are prone to fire have led to more frequent wildfires caused by human ignitions, like arson, improperly disposed cigarette butts, debris burning, fireworks, campfires, or sparks from cars or equipment (Keeley et al. 1999; Keeley and Fotheringham 2003; Syphard et al. 2007; Syphard et al. 2012; Bistinas et al. 2013; Balch et al. 2017; Radeloff et al. 2018). Human-caused fires account for 97% of all fires in Mediterranean California, which includes the SCAG region (Balch et al. 2017), and homes filled with petroleum-based products, such as wood interiors, paint, and furniture, provide additional fuel for the fires to burn longer and spread farther.

Much of the SCAG region is dominated by chaparral and sage scrub, native California habitats that rely on wildfires to persist. These habitats are adapted to infrequent (every 30 to 150 years), large, high-intensity crown fire regimes (Keeley and Fotheringham 2001), and if these regimes are disrupted, the habitats become degraded (Keeley 2005; Keeley 2006; Syphard et al. 2018). When fires occur too frequently, type conversion occurs and the native shrublands are replaced by non-native grasses and forbs that burn more frequently and more easily, ultimately eliminating native habitats and biodiversity while increasing fire threat over time (Keeley 2005; Keeley 2006; Syphard et al. 2009; Safford and Van de Water 2014; Syphard et al. 2018). We can no longer dismiss California's natural fire regime and the direct relationship between urban sprawl, roads, and deadly wildfires. The devastating environmental, health, social, and economic costs of poorly-planned, leapfrog developments in high fire-prone areas cannot be sustained (see Yap 2018).

The Center urges SCAG to protect human lives, property, and native biodiversity, by reforming growth strategies to focus on avoiding the placement of developments and roads in high fire threat areas. After the deadly and destructive Camp and Woolsey Fires in 2018, retired Cal Fire Director Ken Pimlott recommended that home construction in high fire-prone areas should be banned, stating that "we owe it" to homeowners, firefighters, and communities to make better local land use planning decisions to keep people safe and make communities more resilient (Thompson 2018). Urban planning and design should focus on infill development in urban core areas, where wildfire threat is lower and people have access to jobs, public transit, and community.

Existing communities in fire-risk areas should be incentivized to complete retrofits with features that have been shown to reduce the risk of destruction due to wildfires, such as ember-resistant vents, fire-resistant roofs, 100 feet of surrounding defensible space, rain gutter guards, and external sprinklers with an independent water source (Quarles et al. 2010; Syphard et al. 2014; California Chaparral Institute 2018). However, although these fire-resistant structural features are important, fire safety education and enforcement for home and property owners are vital for these safety measures to be effective. Proper maintenance and upkeep of the structural fire-resistant features and the immediate surroundings (*e.g.*, removing leaf litter from gutters and roofing; removing flammable materials like wood fences, overhanging tree branches, or trash cans away from the home) are required to reduce the chances of the structures burning. In addition, education about how to prevent fire ignitions in existing communities in high fire-prone areas would further reduce fire risk.

V. Conclusion

Thank you for the opportunity to submit comments on the Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy). Please add the Center to your notice list for all future updates to the PEIR and RTP/SCS. We look forward to working with SCAG to foster land use policy and growth patterns that promote wildlife movement and habitat connectivity and move towards the State's climate change goals. Please do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "Aruna Prabhala". The signature is fluid and cursive, with the first name "Aruna" written in a larger, more prominent script than the last name "Prabhala".

Aruna Prabhala
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February 22, 2019

Mr. Ping Chang
Southern California Association of Governments
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900 Wilshire Blvd., Suite 1700
Los Angeles, CA 90017
2020PEIR@scag.ca.gov

Subject: Comments on the Notice of Preparation of a Draft Programmatic Environmental Impact Report for the Connect SoCal Project; SCH# 2019011061; Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties

Dear Mr. Chang:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) for the Connect SoCal Draft Programmatic Environmental Impact Report (DPEIR) prepared by the Southern California Association of Governments (SCAG) pursuant to the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW's Role

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including Lake and Streambed Alteration (LSA) regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" (see Fish & Game Code, § 2050) of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & Game Code,

§1900 et seq.), CDFW recommends the project proponent obtain appropriate authorization under the Fish and Game Code.

Project Location: The Project will cover a six-county region including the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

Project Description/Objective: The Connect SoCal Project is also known as the 2020 Regional Transportation Plan and Sustainable Communities Strategy (Plan). This Plan is a regional planning document that is updated every four years pursuant to federal and state planning requirements (2016 version is now being updated). A DPEIR will be prepared and focus on the region's goals and policies for meeting current and future mobility needs, that will allow a coordinated transportation system. The DPEIR will identify needs and issues, recommended actions, and a list of projects needed to implement Connect SoCal.

There are three alternatives being looked at under the DPEIR:

- 1) A no project alternative;
- 2) 2020 Local Input Alternative. This alternative incorporates general plans to produce growth estimates and only uses policies and strategies incorporated into local jurisdictional plans; and,
- 3) Intensified Land Use Alternative. This alternative would use aggressive land use development patterns to maximize growth around high quality transit areas.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist SCAG (Lead Agency) in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW also recommends that SCAG include in the DPEIR measures or revisions below in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

General Comments

- 1) Project Description and Alternatives: To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DPEIR:
 - a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
 - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.

- 2) LSA: As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a LSA Agreement (Agreement) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of an Agreement for a project that is subject to CEQA will require related environmental compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document prepared by the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the DPEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.¹
- a) The Project area supports aquatic, riparian, and wetland habitats; therefore, a preliminary jurisdictional delineation of the streams and their associated riparian habitats should be included in the DPEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service (USFWS) wetland definition adopted by the CDFW.² Some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' section 404 permit and Regional Water Quality Control Board section 401 Certification.
 - b) In areas of the Project site which may support ephemeral streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of ephemeral channels and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately-sized vegetated buffer areas adjoining ephemeral drainages.
 - c) Project-related changes in drainage patterns, runoff, and sedimentation should be included and evaluated in the DPEIR.
- 3) Wetlands Resources: CDFW, as described in Fish & Game Code section 703(a), is guided by the Fish and Game Commission's policies. The Wetlands Resources policy (<http://www.fgc.ca.gov/policy/>) of the Fish and Game Commission "...seek[s] to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California. Further, it is the policy of the Fish and Game Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."
- a) The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources

¹ A notification package for a LSA may be obtained by accessing the CDFW's web site at www.wildlife.ca.gov/habcon/1600.

² Cowardin, Lewis M., et al. 1970. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, the Project must include mitigation measures to assure a "no net loss" of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks, which preserve the riparian and aquatic values and functions for the benefit to on-site and off-site wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DPEIR and these measures should compensate for the loss of function and value.

- b) The Fish and Game Commission's Water policy guides CDFW on the quantity and quality of the waters of this state that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage and support programs to maintain or restore a high quality of the waters of this state; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish and G. Code, § 5650).
- 4) CESA: CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or State-listed rare plant species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish and G. Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.
- 5) Biological Baseline Assessment: To provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species, and sensitive habitats, the DPEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)];
 - b) A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <http://www.dfg.ca.gov/habcon/plant/>);
 - c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment³. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
 - d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the project. CDFW's California Natural Diversity Data Base (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp;
 - e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California SSC and California Fully Protected Species (Fish and Game Code §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare or threatened species (see CEQA Guidelines § 15380). Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the USFWS; and,
 - f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.
- 6) Biological Direct, Indirect, and Cumulative Impacts: To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DPEIR:

³Sawyer, J. O., Keeler-Wolf, T., and Evens J.M. 2008. A manual of California Vegetation, 2nd ed. ISBN 978-0-943460-49-9.

- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the project site. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
 - b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish and G .Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DPEIR;
 - c) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DPEIR; and,
 - d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 7) Avoidance, Minimization, and Mitigation for Sensitive Plants: The DPEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. CDFW considers these communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3 and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation*.
- 8) Compensatory Mitigation: The DPEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

- 9) Long-term Management of Mitigation Lands: For proposed preservation and/or restoration, the DPEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands.
- 10) Nesting Birds: CDFW recommends that measures be taken to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.
- 11) Translocation/Salvage of Plants and Animal Species: Translocation and transplantation is the process of moving an individual from the Project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 12) Moving out of Harm's Way: The proposed Project is anticipated to result in clearing of natural habitats that support many species of indigenous wildlife. To avoid direct mortality, we recommend that a qualified biological monitor approved by CDFW be on-site prior to and during ground and habitat disturbing activities to move out of harm's way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss. If the project requires species to be removed, disturbed, or otherwise handled, we recommend that the DPEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.
- 13) Wildlife Movement and Connectivity: The project area supports significant biological resources and is located adjacent to a regional wildlife movement corridor. The project area contains habitat connections and supports movement across the broader landscape, sustaining both transitory and permanent wildlife populations. On-site features that

contribute to habitat connectivity should be evaluated and maintained. Aspects of the Project that could create physical barriers to wildlife movement, including direct or indirect project-related activities, should be identified and addressed in the DPEIR. Indirect impacts from lighting, noise, dust, and increased human activity may displace wildlife in the general Project area.

- 14) Revegetation/Restoration Plan: Plans for restoration and re-vegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.
- a) CDFW recommends that local on-site propagules from the Project area and nearby vicinity be collected and used for restoration purposes. On-site seed collection should be initiated in the near future to accumulate sufficient propagule material for subsequent use in future years. On-site vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate.
 - b) Restoration objectives should include providing special habitat elements where feasible to benefit key wildlife species. These physical and biological features can include (for example) retention of woody material, logs, snags, rocks and brush piles (see Mayer and Laudenslayer, 1988⁴).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP for the Connect SoCal DPEIR. If you have any questions or comments regarding this letter, please contact Kelly Schmoker-Stanphill, Senior Environmental Scientist (Specialist), at (626) 335-9092 or by email at Kelly.schmoker@wildlife.ca.gov.

Sincerely,



FOR
Erinn Wilson
Environmental Program Manager I

⁴Mayer, K. E. and W. F. Laudenslayer, Jr. 1988. Editors: A guide to wildlife habitats of California. State California, The Resources Agency, Department of Forestry and Fire Protection, Sacramento, CA.

cc: CDFW
Victoria Tang – Los Alamitos
Andrew Valand – Los Alamitos
Kelly Schmoker – Glendora
Jeffrey Humble- Los Alamitos

Scott Morgan (State Clearinghouse)

Ping Chang, Southern California Association of Governments (chang@scag.ca.gov)



CALIFORNIA
NATIVE PLANT SOCIETY

February 22, 2019

Southern California Association of Governments

Attn: Roland Ok

900 Wilshire Blvd., Ste. 1700

Los Angeles, CA 90017

Submitted via email to: 2020PEIR@scag.ca.gov

RE: Response to the Notice of Preparation for Connect SoCal, the Southern California Association of Government's 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy

Dear Mr. Ok,

Thank you very much for the opportunity to provide scoping comments on the Southern California Association of Government's (SCAG) Programmatic Environmental Impact Report (PEIR) for Connect SoCal: the region's 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy.

The California Native Plant Society ("CNPS") is a non-profit environmental organization with 10,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

SCAG continues to play an important role in planning how and where development occurs in Southern California. SCAG is mandated by federal and state laws to produce an RTP/SCS, which dictates how the "region will address its transportation and land use challenges and opportunities in order to achieve its regional emissions standards and Greenhouse Gas (GHG) reduction targets."

At the scoping meetings on February 13, 2019, SCAG staff stated multiple times that the organization has no authority over the permitting/evaluation of individual projects, as this is under the purview of cities and counties. In this context, SCAG essentially claims to play no role in the implementation of a whole host of projects that are both damaging to the environment and local communities. We challenge

SCAG to be a little more creative, and not to downplay its role in guiding where future housing is built in Southern California. The multi-agency body that advises SCAG is intended to inform, advise, and otherwise assist in regional land use. The collective voice of these entities does in fact and by default empower SCAG in decision making. Local decision makers do ultimately have the final authority over projects under their jurisdiction. Nonetheless, many large development projects would not be possible without the building of new roads or the expansion of existing infrastructure. New highway construction, for example, often requires federal funding, and projects cannot receive this funding unless they appear on the project list in an RTP.

Likewise, as detailed in a recent report by the Air Resources Board¹, it will be challenging for California to meet its ambitious greenhouse gas (GHG) emission goals going forward. This is mostly because all of the low hanging fruit for GHG reduction has already been picked. In the coming decades, the state will fail to meet its goals if it does not curb the emissions that result from personal vehicle travel. Organizations like SCAG must exercise their authority and leadership to guide future growth in ways that do not obscure goals that are mandated by state laws including SB-32, AB-32, and SB-375.

As an organization, CNPS is not opposed to the construction of new housing. We favor policies and decisions that support the construction of new, affordable housing that is located close to mass transportation infrastructure, is respectful of existing communities, close to jobs, and that does not endanger precious and irreplaceable ecosystems.

With these thoughts in mind, we provide the following scoping comments to the forthcoming Connect SoCal PEIR:

1. The analysis of the Connect SoCal's impacts to biological resources should include all current data on sensitive biological resources. These data include, but are not limited to, the California Natural Diversity Database², CNPS Inventory of Rare, Threatened, or Endangered Plants³, and the California Department of Fish and Wildlife's Sensitive Natural Communities List⁴.
2. There are many areas that have been set aside for the conservation of plants, animals and habitats in Southern California. In many cases, these areas represent a significant investment public of the public's limited resources. In most cases, the conserved lands are intended to preserve and improve Southern California's natural heritage in perpetuity. These protected areas, and the public investment they represent, are not available as sites for transportation corridors, transportation infrastructure, and new development. The avoidance of impacts to these conservation lands should underlie all growth forecasts

¹ CARB, 2018 Status Report, November 2018

² CNDDB

³ CNPS Inventory

⁴ CDFW Natural Communities

and projects that are highlighted in Connect SoCal. Among other critical ecosystem services, they provide the watersheds and carbon sequestration lands that southern California requires to meet the challenges of the 21st Century.

All set aside lands must be subject to perpetual covenant of conservation easements that have funded monitoring and land management requirements. The holder of each easement must be an organization or agency, in long standing with the conservation community and capacity to effectively manage the property over decades.

3. Connect SoCal should be consistent with existing and ongoing plans that endeavor to balance development with conservation. These plans include, but are not limited to:

- Natural Community Conservation Plans⁵
- Habitat Conservation Plans⁶
- Region Conservation Investment Strategies⁷ (e.g. Antelope Valley, San Bernardino County)
- Regional Conservation Assessments

4. CNPS is creating a statewide map of Important Plant Areas (IPAs)⁸. This data-driven effort identifies areas in California that should be prioritized for conservation actions. In Southern California, we have held workshops in the Mojave/Sonoran Desert and will be holding workshops covering the remainder of the region in the coming year. The data collected in these workshops will be incorporated into a model that will be used to delineate IPAs. Given that Connect SoCal will be produced in the same timeframe as our IPA map for the region we encourage SCAG to incorporate IPAs into the PEIR.

5. SCAG should reevaluate the assumptions underlying the growth models used in Connect SoCal, and confirm that these assumptions are reasonable. Based on this assessment changes should be incorporated into the growth models. Not doing this risks SCAG ending up a situation similar to conundrum that is being faced currently by the San Diego Association of Governments (SANDAG). SANDAG's director⁹ recently had to admit that the organization cannot meet state GHG reduction goals given its current transportation plans. Consequently, SANDAG will have to scrap its current RTP/SCS and start over from scratch. This will delay the release of their RTP/SCS until 2022 or possibly later.

6. The baseline GHG reduction analysis should include a detailed accounting of carbon sequestration in natural habitats. The SCAG region both emits and sequesters greenhouse gases. The sequestration of carbon by existing vegetation is critical to the region's GHG reduction goals. Most of this carbon is

⁵ [NCCP](#)

⁶ [CDFW Habitat Conservation Planning](#)

⁷ [CDFW Regional Conservation Planning](#)

⁸ [CNPS IPA Program](#)

⁹ [Voice of San Diego, Climate Change and Transportation, February 14, 2019](#)

sequestered in woody vegetation, particularly in montane forests. However, a not insignificant amount of carbon is also sequestered by other habitats including chaparral, desert scrub, grasslands, coastal sage scrub, riparian and wetland ecosystems, naturally-occurring water bodies, and soils. At the same time, carbon sequestration in these habitats may be eliminated by conversion to development and when vegetation is burned during wildfires. Much of the vegetation in the region has been mapped and quantified using Lidar. The PEIR should analyze how much carbon is currently stored in standing vegetation in the plan area. Additionally, the amount of carbon that is sequestered annually should be analyzed alongside the amount that will be lost to development under Connect SoCal's growth models.

All projects should incorporate green building standards, with associated environmental review analyzing GHG emissions potential for proposed construction, buildings, impervious surfaces prior to approval. Climate science indicates that 47-49% of carbon emissions is generated by the built environment and associated heating or cooling functions.

7. The PEIR should analyze assumptions about the water that will be available for future development to ensure that growth projections are in sync with water supplies. We are especially concerned about the potential impacts of the anticipated rationing of water from the Colorado River¹⁰. It is becoming increasingly likely that a drought emergency will be declared on this water supply in 2019 or 2020. The pending water rationing in Nevada and Arizona will undoubtedly affect the water supply in Southern California due to ongoing negotiations. This tenuous water supply will likely be relied upon by future development projects. Growth forecasts such as the ones used in SCAG models generally assume ample water will be available, as is often the case with "business as usual" models. The above example from the Colorado River illustrates that population growth forecasts should also prepare for a future in which water supplies are scarce.

8. The projects' mitigation funds should be pooled and used to purchase privately owned lands that have good natural values, and/or to help restore already-preserved lands. An example is Orange County's Measure M2. This Freeway Environmental Mitigation Program allocates funds to acquire land and fund habitat restoration projects in exchange for streamlined project approvals for 13 freeway improvement projects. Acquired properties are purchased and permanently preserved as open space. Funded restoration projects restore preserved open space lands to their native habitat and include the removal of invasive plant species¹¹.

9. Transportation corridors and similar infrastructure should be landscaped with plants native to Southern California. . Use of these commercially available materials host long-term benefits of water savings, lowered maintenance costs, no need for chemical inputs of fertilization and pest control, serve

¹⁰ Voice of San Diego, Colorado River, January 14, 2019

¹¹ M2 Mitigation Program

as best source pollinators, and provide biotic continuity in the Wildland-Urban Interface. Since native plants are adapted to Southern California's climate, they need irrigation only during an initial 2-year establishment period. Little irrigation beyond natural rainfall is required once most native plants are established. Also, native plant landscaping often results in considerable cost savings over time, as a result of decreased water demands and lower maintenance costs. For more information on the benefits of native plant landscaping please see the ample information available from the CNPS Gardening Program¹².

10. We question some of the very fundamental assumptions about how growth should/will occur in Southern California, both location and type. While some strides have been made to locate new housing within urban boundaries, much of the housing growth in recent years has occurred on the periphery of existing urban areas. Some of these development projects threaten intact ecosystems. Still, other development projects (e.g. the Centennial¹³ and Paradise Valley¹⁴ Specific Plans) are located far from existing jobs and mass transportation infrastructure. In type, we question whether there is a single housing market. Rather, there appear to be multiple housing markets for luxury, median income, and affordable housing. While the development industry can readily produce profitable, high-end, single-family homes in subdivisions, these homes are so far out of the reach of most Californians and they do nothing to satisfy the demand for cheaper housing.¹⁵

In Connect SoCal, SCAG should study the true complexity of the housing markets in Southern California, exercise its leadership to encourage production of affordable housing and discourage leapfrog development and the production of surplus high end homes. Connect SoCal should find ways to incentivize builders to fulfill the demand for lower cost housing. One idea would be to exclude transportation projects from the PEIR if they fail to promote affordable housing and GHG reduction goals.

We could also like to point out that new home sales have decreased drastically in many Southern California markets¹⁶. We need to question the logic of lead agencies permitting construction of new cities when new homes are not even selling on the heels of ten years of economic growth. Is our current approach to building new housing consistent with the needs of the average Southern California resident? It is one thing to build a large number of new housing units, and an entirely different challenge to build housing where it is needed and at prices that average people can afford. In many ways, this will be the greatest challenge faced by Southern California counties and cities in the coming decades. We see Connect SoCal as an integral part of this solution.

¹² [CNPS Gardening Program](#)

¹³ [CNPS Website on Centennial](#)

¹⁴ [Article on Paradise Valley](#)

¹⁵ [Shelterforce Housing Article, February 19, 2019](#)

¹⁶ [LA Times Housing Article, January 29, 2019](#)

Lastly, we are concerned about the role that SCAG continues to play in promoting poorly-planned and often destructive development projects in Southern California. A most striking example of this was a quote from SCAG's then-director, Hasan Ikharta, about Los Angeles County's Centennial Specific Plan that appeared the Los Angeles Times in August 2018. In this article¹⁷, Ikharta essentially condones the construction of a new city 65 miles away from downtown Los Angeles with no planned mass transportation. He said "there will not be enough land and not enough cities around ... to accommodate more than half of the growth within transit-quality areas." Ikharta even emphasized that "it's not only physically impossible, it's also politically impossible." With that statement coming from SCAG it is no wonder that Southern California continues to destroy native habitats while at the same time failing to meet GHG reduction goals. If the leadership necessary to effect change is not going to come from SCAG, where will it come from?

Thank you once again for the opportunity to provide scoping comments on Connect SoCal. Please feel free to contact me with any questions.

Sincerely,



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California Native Plant Society
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Sacramento, CA 95816
njensen@cnps.org

¹⁷ [LA Times, Centennial, August 26, 2018](#)



February 21, 2019

Sent via email to: 2020PEIR@scaq.ca.gov

Southern California Association of Governments (SCAG)
900 Wilshire Blvd, Suite 1700
Los Angeles, California 90017

RE: Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear SCAG:

Friends of Harbors, Beaches, and Parks (FHBP) is a regional non-profit organization that works to protect the natural lands, waterways, and beaches of Orange County. We received the Southern California Association of Governments' (SCAG) Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for the next Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).

FHBP has been engaged with land use, transportation, and housing issues and the associated impacts to natural lands (protected and unprotected) for last two RTP/SCS cycles. We appreciate the work done to date to advance conservation policies and look forward to continuing our role in this effort with this current iteration.

As it relates to biology and transportation and the impacts of the RTP/SCS, **we encourage a focus on advanced mitigation as a standard practice** or measure. The successes of the Orange County Transportation Authority (OCTA) and its comprehensive mitigation program show the extensive benefits that landscape-level mitigation programs could bring across the six-county-wide region. Notably, CalTrans has begun its own advanced mitigation effort on a statewide level to streamline permitting, reduce project costs, create better conservation outcomes, and reduce delays. We believe mitigation measures should focus on comprehensive programs with a net environmental benefit and improved project outcomes.

Additionally, as it relates to the land use analysis, FHBP participates regularly in the Natural and Farmlands Conservation Working Group under SCAG and **we encourage policies and mitigation measures that cover a wide spectrum of topics**. Too often a specific solution is offered in a geography that doesn't fit that model. For example, urban infill works in urban infill areas—not as easily or at all in suburban or rural areas. And, similarly, rural solutions may not work in suburban or urban areas. Ensuring a wide range of mitigation measures and policies that fit the spectrum of land uses and land areas is important.

Finally, to comply with AB 32 (Global Warming Solutions Act of 2006) and SB 375 (Sustainable Communities Act of 2008), **we encourage a focus of city-centered, transit-oriented, sustainable mixed-use development.** With the rise of wildland fire occurrences and losses of both life and property locally and throughout the state, more thoughtful land use and public safety planning needs to be a priority to ensure safe communities. As a co-benefit, city-centered development increases the opportunities for transit, pedestrian/bike-friendly streets, and access to basic amenities (groceries, banks, day care, etc.). Increased access to amenities reduces vehicle miles travelled and greenhouse gas emissions, which helps meet the greenhouse gas reduction goals established by the California Air Resources Board. Meeting the goals of AB 32 and SB 375 with more sustainable planning in the land use, housing, and circulation analyses should be a primary focus of the environmental document.

We look forward to reviewing the RTP/SCS in detail and providing additional comments at that time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Wellborn". The signature is fluid and cursive, with a large initial "M" and "W".

Michael Wellborn
President

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Jennifer L. Hernandez
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February 22, 2019

Via electronic mail to: 2020PEIR@scag.ca.gov

Southern California Association of Governments
Attn: Roland Ok, Senior Regional Planner

Re: **Scoping Comments of the Draft Program Environmental Impact Report (PEIR) For Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (“SCS”)**

Dear Members of the Board, Executive Officers, and Staff:

We represent The 200, an accomplished group of civil rights leaders from all regions of California. The 200 believes minority home ownership is the cornerstone for creating multi-generational economic security, helping students to go to college and seniors to remain independent. The 200 believes that solving the housing crisis, and the housing-induced homelessness and poverty crisis, requires a Marshall Plan for building enough homes available for purchase by California’s hard working minority families. The 200 supports public health and the environment, including protecting people from pollution and housing the poor, but these goals may only be equitably achieved if the all civil rights of minority communities are honored, including achieving the American (and California) dream that working families can own their own home.

Unfortunately, government agencies have for decades adopted and implemented racially discriminatory government policies and practices that harm minority home ownership. Four anti-housing measures in the California Air Resource Board’s 2017 Scoping Plan are the latest additions to this Hall of Shame, and The 200 has filed a civil rights lawsuit against CARB challenging these discriminatory measures – including CARB’s mandated reduction in Vehicles Miles Travelled (“VMT”). A copy of The 200 lawsuit petition is included as Attachment 1, and all arguments made therein against CARB’s Scoping Plan mandate that VMT must be reduced even for an increasingly electric and efficient fleet, are hereby restated and submitted as comments on the required scope of the environmental and economic analysis that must be completed by SCAG for the SCS. As described in detail in the lawsuit, and in a followup letter recently submitted on behalf of The 200 to CARB and the California Transportation Commission

(Attachment 2), minority families are disproportionately harmed by the housing crisis, and are forced to “drive until they qualify” for housing they can afford to rent or buy. Poverty and homelessness rates also disproportionately plague minority communities.

We urge SCAG to fully and completely address, in its Program EIR (“PEIR”) and accompanying economic analysis, both the feasibility and substantial and discriminatory adverse impacts caused by CARB’s ever-more strident and infeasible VMT reduction demands. These are described in greater detail in Attachment 1, and include but are not limited to:

Notwithstanding billions of dollars in transit system expansions, traditional transit services such as fixed bus routes have continued to lose ridership – and fixed rail options that take 20 years to complete include stations proximate to only a small fraction of the homes and residences in the SCAG region. Emerging transit solutions that are growing in popularity and available for today’s Californians, such as ride sharing and other app-based point-to-point public and private transit providers, do not reduce VMT. VMT is also a poor metric for greenhouse gas reductions, given California’s past achievements and future legal mandates and policy commitments to electric vehicles, and low emission fleets. SCAG’s air quality is far better now than it was with the far fewer cars, people, and VMT present in the region in the 1960’s – and President Obama’s EPA administration confirmed that today’s cars are more than 98% cleaner than the pre-Clean Air Act fleet of the 1960’s.

Unlike the Clean Air Act, however, which requires the systematic and transparent ranking of emission reduction measures by effectiveness and cost to consumers, CARB has at all times refused to engage in the same level of transparency and consumer accountability for its GHG reductions – and instead leaped to a VMT mandate that profoundly affects the health and welfare of the majority of Californians who now live in the SCAG region.

Again as cited in the lawsuit, poverty scholars from non-partisan organizations like the Brookings Institute have long affirmed that poor families with a car are better able to hold a job, keep their kids in school, and attain greater economic security than families forced to ride the bus. The 200 was supportive of efforts by SCAG staff and other regional transit agencies to dissuade CARB from mandating discriminatory VMT reductions in this next round of SCS targets, and instead establishing greenhouse gas (“GHG”) reduction targets.

The 200 does not oppose California’s commitment to be a climate leader. However, the entirety of the California economy – the fifth largest in the world – is responsible for less than 1% of global greenhouse gas emissions. As explained in the letter The 200 submitted to CARB and the California Transportation Commission (Attachment 2), this basic mathematical reality is critical to understand the level of increased housing, poverty and homelessness burdens that CARB is willing to inflict on Californians under the banner of addressing of global climate change:

- The only study, completed by a team at UC Berkeley, to quantify the expected benefits of confining all required new housing to existing urbanized areas acknowledged that it

would result in the demolition of “tens if not hundreds of thousands” of single family homes. The study assumed we needed only about two-thirds of the Governor’s housing target of 3.5 million new homes, which under the study’s methodology would result in the need to demolish hundreds of thousands of existing single family homes. The study also equates 2000 square foot homes with 800 square foot apartments, and assumes that new housing must be downsized from even traditional starter small homes into multi-family small units. SCAG’s environmental and economic analysis must identify with specificity, and evaluate all economic and environmental impacts of, this radical demolition agenda – which if past is prologue, will follow the path of destruction by some redevelopment agencies in targeting minority neighborhoods for demolition.

- The displacement of minority communities in high density transit neighborhoods that are upzoned to high densities such as towers has been well-documented in both the SCAG and Bay Area regions. Only the wealthy (or foreign and institutional investors) can afford to buy these high rise condos costing more than \$1 million, or rent high rise apartments costing more than \$4000 per month. Units in mid- and high rise buildings cost 3-6 times more to construct than small starter homes and town homes: the building type itself is simply unaffordable for average working families. Even more perversely, people wealthy enough to move into these units are certainly wealthy enough to own – and drive – a car. Lower income working families displaced by this development typology are forced to move to more distant locations, where transit solutions are nonexistent and car ownership and use is absolutely required to timely get to jobs and other destinations. This displacement is not color blind: numerous studies now confirm that minority residents are far more likely to be displaced, and forced to more distant suburbs and even out of the region entirely, when high density housing for the wealthy overruns their neighborhood. Nor can this displacement be addressed by directing taxpayer funding to the “missing middle” of workforce housing: with the cost of producing even affordable low income units now surpassing \$500,000 per unit in many SCAG markets, numerous experts from the public sector (e.g., the non-partisan Legislative Analyst’s Office and academics have shown that we cannot even make public dollars stretch far enough to address the housing needs of the homeless and very low income families, let alone build housing for the pre-school teachers, first responders, and scores of other occupations forced into 2+ hour commutes each day. The PEIR and accompanying economic analysis must match the affordability of housing to SCAG’s growing population, and update the SCS to take into account the real prices, real costs, and real incomes of today.
- Poverty scholars have long confirmed that access to and use of a car is critical for low income families. It is entirely fanciful, if it wasn’t so tragic and discriminatory, to accept CARB’s doctrinal view that global climate change requires that parents take a two-bus ride with a fevered child to a doctor, or struggle with mid-day bus service gaps to pick up an injured child from school, or pay more than \$3000 per month in rent for a tenth story new transit village apartment instead of spending the same amount on a mortgage for a

starter home that enhances family wealth, health and welfare. It is equally uncontested that homeowner households accrue family wealth between 37-45 times higher than rental households. Also uncontested: far less than 10% of jobs are accessible by SCAG commuters in less than 60 minutes on public transit, so even those who do live near an express bus stop are unlikely to be able to get to their job or school – let alone their doctor or grocer – on some later bus stop, which is why fixed bus routes in particular have shown collapsing ridership in the SCAG region and nationally. In the midst of a revolution in transportation services and technology, CARB is demanding that the non-wealthy among us spend hours extra each day away from our families reliant on 19th century transit technology.

- CARB's fixation on discriminatory VMT mandates is unmoored from both global climate change or GHG reductions. CARB has itself acknowledged that the entire California economy contributes less than 1% of global greenhouse gas emissions ("GHG"). CARB's VMT reduction mandate, as quantified by the same UCB study given CARB's refusal to show its own math, will result in less than 1% of CARB's unlegislated goal of reducing GHG in California 80% by 2050. This VMT reduction mandate is absolutely not required, as the CARB Scoping Plan itself shows, to achieve California's legislated target of reducing GHG 40% by 2030. CARB's discriminatory fixation on VMT deprives minority Californians of home ownership and vehicular access that wealthy Californians have long taken for granted is not just bad policy, it is illegal discrimination. We urge SCAG to not collude with CARB in this illegal discrimination. There are scores of alternative measures that can easily result in greater GHG reductions in California that do not discriminate against California's minority communities, from reducing forest fires and increasing renewable energy produced from dead and dying trees, to regulating GHG emissions from imported luxury goods. SB 375 did not give CARB legal authority to mandate reductions in VMT, and all legislative proposals to mandate VMT reductions have been derailed by the Legislature. Given the proven infeasibility of VMT reductions in a growing population and economy, the CARB Board decided in March of 2017 (with support from The 200) to not mandate VMT reductions in the upcoming round of SCS updates. In a breathtaking and arrogant rejection of its own Board decision, CARB staff in December 2018 decreed that staff would solely credit SCAG and other transit authorities with GHG reductions caused by VMT reductions, and not count any other form of GHG reduction achieved in the region. This staff decree is the equivalent of the VMT reduction mandate that the CARB Board rejected, and is simply and completely unlawful.

In addition to the foregoing comments, and the many more detailed comments about the adverse and discriminatory environmental and economic impacts of CARB's VMT and other anti-housing Scoping Plan measures described in the two Attachments, we offer the following comments that are specific to the SCS PEIR and accompanying economic impact analysis:

- The California Environmental Quality Act (“CEQA”) Guidelines define “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account **economic**, environmental, **legal, social, and** technical factors.” (emphasis added). Neither the original or current SCS have resulted in adequate housing supplies that are affordable to hard working minority families, nor has it resulted in adequate transportation solutions for the SCAG population. In fact, the trajectory of VMT remains upward, in alignment with population and economic growth. Under CEQA, the PEIR must identify a reasonable range of “feasible” alternatives. Even the existing SCS, let alone an alternative that relies even more on unaffordable high density housing types that have already failed to make a dent in the region’s housing crisis, fails as a CEQA alternative because substantial evidence shows that it is in fact not “feasible.”
- Similarly, the SCS has been added to – and is linked for CEQA purposes to – the Regional Transportation Plan (“RTP”). SCAG has independent legal obligations under numerous other federal and state transportation and air quality laws to deliver transportation solutions for the region that actually work in practice. After 10 years of SB 375 implementation, and billions of dollars invested in conventional transit modes (bus and rail), ridership on these transit modes continues to decline in the midst of a revolution in transit modes and services. Greenhouse gas emission reductions – the legislated environmental objective of SB 375 – are not dependent on VMT reductions, especially as vehicular fleets are electrified and improved. Again, even the existing SCS, yet alone any higher density and anti-car alternative CARB would like to mandate pursuant to its December 2018 decree, have not in fact produced the level of transportation functionality demanded by SCAG’s other legal compliance obligations and are thus legally infeasible.
- Apart from the current list of alternatives failing to meet the CEQA criteria for feasibility, it is critical that the impacts analysis for all topics required to be addressed by CEQA – not just GHG – be given equal and full consideration in the PEIR. CEQA further requires that mitigation measures proposed to lessen or avoid significant adverse impacts, such as the scores of significant unavoidable adverse impacts that even the prior SCS PEIR acknowledged would result from SCS implementation, be “feasible” and meet legal criteria for effectiveness and enforceability. Illusory mitigation through reliance on unenforceable policies, unfunded aspirations, or legally unauthorized future commitments, are not lawful. For example, in some of the more recent discussions of imposing new CEQA mitigation mandates on project-level VMT impacts, it was suggested that new housing units be required to annually fund, in perpetuity, bus passes in perpetuity to offset VMT impacts. Examples provided, such as paying for LAUSD student bus passes, were estimated to cost in excess of \$6000 per unit of new housing per year – to be assessed for both rental and homeownership products. Given the overwhelming housing shortage and affordability crisis, as well as worst-in-nation poverty and homeless populations, ANY new mitigation obligations that even indirectly get passed along as new cost burdens to SCAG residents must be honestly described,

quantified, and assessed for feasibility given that more than 40% of today's California households cannot even afford to meet existing expense burdens.

In conclusion, we know that SCAG staff and Board members have been committed to a thorough and honest SCS process, and we commend SCAG for its leadership in attempting to work with CARB and, for example, dissuading the CARB Board from imposing VMT reduction mandates on the SCS. CARB staff, however, has not gotten the message – and while the rest of state and local governments are mobilized to solve the housing crisis and restore equity and economic mobility to all residents, CARB staff pursue the single silo goal of reducing GHG produced in California (and counting Californians who move to higher per capita GHG states like Texas and Nevada as a GHG “reduction” for California GHG accounting purposes) to extremes such as the 80% reduction by 2050 and VMT reduction mandates that have been expressly rejected by the Legislature.

The lawful foundation of this PEIR must begin with “feasible” alternatives, including the “no action” alternative – and be informed by the region's growing population, diverse and robust economy, and “feasible” housing and transportation options that can “feasibly” be implemented based on economic, legal and technical constraints. We are confident that adherence to these core legal mandates of CEQA (and NEPA) will require substantial revisions to the two “No Project” alternatives currently under consideration, and re-scoping of the PEIR with revised alternatives.

Please do not hesitate to contact us if you would like any further clarification on these issues. Also, please include us in stakeholder meetings and notices for the duration of this process.

Thank you for your time and consideration, and for your excellent work on behalf of the region.

Very truly yours,

HOLLAND & KNIGHT LLP



Jennifer L. Hernandez

cc: The 200 Leadership Council

JLH:gmr
Attachments

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**
10 **UNLIMITED CIVIL JURISDICTION**

12 THE TWO HUNDRED, an unincorporated
13 association of civil rights leaders, including
LETICIA RODRIGUEZ, TERESA MURILLO,
14 and EUGENIA PEREZ,

15 Plaintiffs/Petitioners,

16 v.

17 CALIFORNIA AIR RESOURCES BOARD,
18 RICHARD COREY, in his Official Capacity, and
DOES 1-50,

19 Respondents/Defendants.
20
21
22
23
24

Case No. 18CECG01494

**FIRST AMENDED¹ VERIFIED
PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Code Civ. Proc. §§ 1085, 1094.5, 1060,
526; Gov. Code § 12955 *et seq.* (FEHA);
42 U.S.C. § 3601 *et seq.* (FHA); Cal.
Const. Art. I, § 7; Art. IV, § 16; U.S.
Const. Amd. 14, § 1; 42 U.S.C. § 1983;
Pub. Res. Code § 12000 *et seq.* (CEQA);
Gov. Code § 11346 *et seq.* (APA); H&S
Code § 38500 *et seq.* (GWSA); H&S
Code § 39000 *et seq.* (CCAA); Gov.
Code § 65088 *et seq.* (Congestion
Management Plan)]

25
26
27 ¹ Principal added and revised allegations are at ¶¶ 262-351 and 379 (pages 79-108, 112) below.
28 A full comparison between this First Amended Petition/Complaint and the original Petition/
Complaint, generated using Adobe Acrobat® Compare software, is attached as Exhibit 3.

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1 **I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

2 **A. California’s Greenhouse Gas Policies and Housing-Induced Poverty Crisis**

3 1. California’s reputation as a global climate leader is built on the state’s dual claims
4 of substantially reducing greenhouse gas (“GHG”) emissions while simultaneously enjoying a
5 thriving economy. Neither claim is true.

6 2. California has made far less progress in reducing GHG emissions than other states.
7 Since the effective date of California’s landmark GHG reduction law, the Global Warming
8 Solutions Act,² 41 states have reduced per capita GHG emissions by more than California

9 3. California’s lead climate agency, the California Air Resources Board (“CARB”),
10 has ignored California’s modest scale of GHG reductions, as well as the highly regressive costs
11 imposed on current state residents by CARB’s climate programs.

12 4. Others have been more forthcoming. Governor Jerry Brown acknowledged in 2017
13 that the state’s lauded cap-and-trade program, which the non-partisan state Legislative Analyst’s
14 Office (“LAO”) concluded would cost consumers between 24 cents and 73 cents more per gallon
15 of gasoline by 2031,³ actually “is not that important [for greenhouse gas reduction]. I know that.
16 I’m Mr. ‘It Ain’t That Much.’ It isn’t that much. Everybody here [in a European climate change
17 conference] is hype, hype to the skies.”⁴

18 5. Governor Brown’s acknowledgement was prompted by a report from Mother
19 Jones—not CARB—that high rainfall had resulted in more hydroelectric power generation from
20
21

22 _____
23 ² The Global Warming Solutions Act of 2006 (“GWSA”) is codified at Health and Safety Code
24 (“H&S Code”) § 38500 *et seq.* and became effective in 2007. The Act is often referred to as “AB
25 32”, the assembly bill number assigned to the legislation. AB 32 required California to reduce
26 GHG emissions from a “business as usual” scenario in 2020 to the state’s 1990 GHG emission
27 level. AB 32 was amended in 2017 by Senate Bill 32 by the same author. SB 32 established a
28 new GHG reduction mandate of 40% below California’s 1990 GHG levels by 2030.

³ LAO, Letter to Assembly Member Fong (Mar. 29, 2017), www.lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

⁴ Julie Cart, *Weather Helped California’s Greenhouse Gas Emissions Drop 5% Last Year*, CALMatters (Dec. 2, 2017), <https://timesofsandiego.com/tech/2017/12/02/weather-helped-californias-greenhouse-gas-emissions-drop-5-last-year/>.

1 existing dams than had occurred during the drought, and that this weather pattern resulted in a 5%
2 decrease in California’s GHG emissions.⁵

3 6. GHG emissions data from California’s wildfires are also telling. As reported by
4 the *San Francisco Chronicle* (again not CARB), GHG emissions from all California regulatory
5 efforts “inched down” statewide by 1.5 million metric tons (from total estimated emissions of 440
6 million metric tons),⁶ while just one wildfire near Fresno County (the Rough Fire) produced 6.8
7 million metric tons of GHGs, and other fires on just federally managed forest lands in California
8 emitted 16 million metric tons of GHGs.⁷

9 7. Reliance on statewide economic data for the false idea that California’s economy
10 is thriving conflates the remarkable stock market profits of San Francisco Bay Area technology
11 companies with disparate economic harms and losses suffered by Latino and African American
12 Californians statewide, and by white and Asian American Californians outside the Bay Area.

13 8. Since 2007, which included both the global recession and current sustained period
14 of economic recovery, California has had the highest poverty rate in the country—over 8 million
15 people living below the U.S. Census Bureau poverty line when housing costs are taken into
16 account.⁸ By another authoritative poverty methodology developed by the United Way of
17 California, which counts housing as well as other basic necessities like transportation and medical
18 costs (and then offsets these with state welfare and related poverty assistance programs), about
19 40% of Californians “do not have sufficient income to meet their basic cost of living.”⁹ The
20

21 ⁵ *Ibid.*

22 ⁶ California Air Resources Board, 2017 Edition California Greenhouse Gas Inventory for 2000-
2015 (June 2017), <https://www.arb.ca.gov/cc/inventory/data/data.htm>.

23 ⁷ David R Baker, *Huge wildfires can wipe out California’s greenhouse gas gains*, SF Chronicle,
24 (Nov. 21, 2017), <https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php>.

25 ⁸ Liana Fox, *The Supplemental Poverty Measure: 2016*, U.S. Census Bureau Report Number:
26 P60-261, Table A-5 (Sept. 21, 2017),
<https://www.census.gov/library/publications/2017/demo/p60-261.html>; Dan Walters, *Why does*
27 *California have the nation’s highest poverty level?*, CALMatters (Aug. 13, 2017),
<https://calmatters.org/articles/california-nations-highest-poverty-level/>.

28 ⁹ Betsy Block et al., *Struggling to Get By: The Real Cost Measure in California 2015*, United
Ways of California (2016), <https://www.unitedwaysca.org/realcost>.

1 Public Policy Institute of California used a methodology that also accounts for the cost of living
2 and independently concluded that about 40% of Californians live in poverty.¹⁰

3 9. Poverty is just one of several indicators of the deep economic distress affecting
4 California. California also has the highest homeless population, and the highest homelessness
5 rate, in the nation. According to the U.S. Department of Housing and Urban Development, about
6 25% of the nation's homeless, or about 135,000 individuals, are in California.¹¹

7 10. National homeownership rates have been recovering since the recession levels, but
8 California's rate has plunged to the second lowest in the country—with homeownership losses
9 steepest and most sustained for California's Latinos and African Americans.¹²

10 11. As shown in Figure 1, with the exception of white and Asian populations in the
11 five-county Bay Area, elsewhere in California—and for Latino and African American residents
12 statewide—incomes are comparable to national averages.

13 **Figure 1**

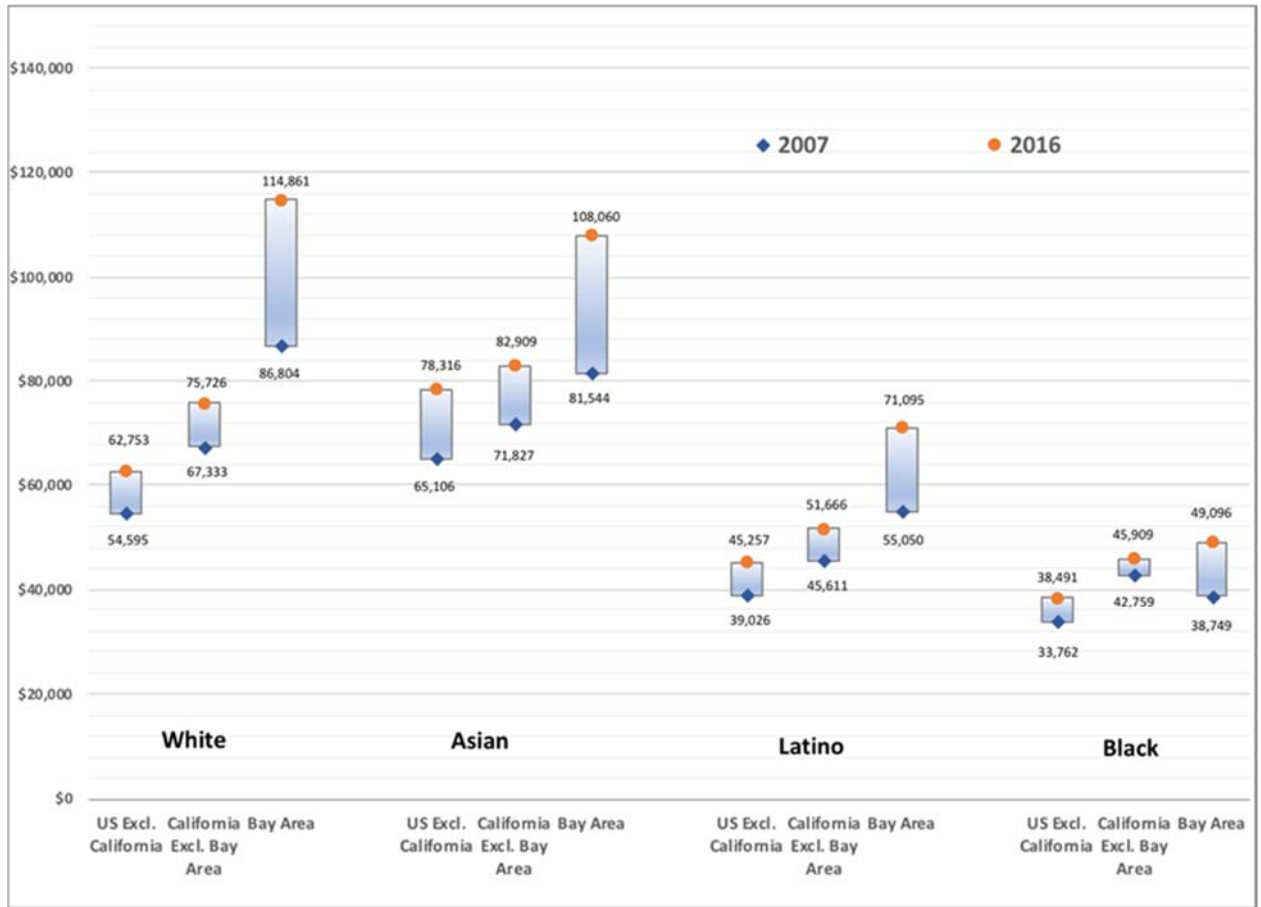
14 **Median Income in 2007 and 2017, White, Asian, Latino and Black Populations**
15 **Bay Area, California excluding the Bay Area, and U.S. excluding California**
16 **(nominal current dollars)¹³**

17
18
19 ¹⁰ Public Policy Institute of California, Poverty in California (Oct. 2017),
20 <http://www.ppic.org/publication/poverty-in-california/>.

21 ¹¹ U.S. Department of Housing and Urban Development, 2017 Annual Homeless Assessment
22 Report to Congress, <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>;
23 Kevin Fagan et al., *California's homelessness crisis expands to country*, SF Chronicle (Sept. 8,
24 2017), <https://www.sfchronicle.com/news/article/California-s-homelessness-crisis-moves-to-the-12182026.php>.

25 ¹² U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS), Table 16.
26 Homeownership Rates for the 75 Largest Metropolitan Statistical Areas: 2015 to 2017,
27 <https://www.census.gov/housing/hvs/data/ann17ind.html>. See also 2007 and 2016 American
28 Community Survey 1-Year Estimates, Table B25003 series (Tenure in Occupied housing units),
California, <https://factfinder.census.gov/>.

29 ¹³ Median income estimated from household income distributions for 2007 and 2016 American
30 Community Survey 1-Year Estimates, Table B19001 series, <https://factfinder.census.gov/> (using
31 the estimation methodology described by the California Department of Finance at
32 http://www.dof.ca.gov/Forecasting/Demographics/Census_Data_Center_Network/documents/How_to_Recalculate_a_Median.pdf).



12. However, Californians pay far higher costs for basic necessities. A national survey of housing, food, medical and other costs conducted by the Council for Community & Economic Research showed that in 2017, California was the second most expensive state in the nation (after Hawaii), and had a cost of living index that was 41% higher than the national average.¹⁴ The LAO reported that “California’s home prices and rents are higher than just about anywhere else,” with average home prices 2.5 times more than the national average and rents 50% higher than the national average.¹⁵ Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)¹⁶ and about \$0.80 cents more per gallon of gas than the national average.¹⁷

¹⁴ The 2017 survey by the Council for Community & Economic Research was published by the Missouri Economic Research and Information Center, https://www.missourieconomy.org/indicators/cost_of_living/index.stm.

¹⁵ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015), <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

¹⁶ U.S. Energy Information Agency, Electric Power Annual, Table 2.10 (Dec. 2, 2017), <https://www.eia.gov/electricity/annual/> (showing average annual 2016 prices).

¹⁷ American Automobile Association, Regular Gas Prices, <http://gasprices.aaa.com/state-gas-price-averages/>, last visited April 25, 2018.

1 13. These high costs for two basic living expenses—electricity and transportation—are
2 highest for those who live in the state’s inland areas (and need more heating and cooling than the
3 temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded
4 is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.¹⁸

5 14. An estimated 138,000 commuters enter and exit the nine-county Bay Area
6 megaregion each day.¹⁹ These are workers who are forced to “drive until they qualify” for
7 housing they can afford to buy or rent.

8 15. San Joaquin County housing prices in cities nearest the Bay Area, such as
9 Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each
10 direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles
11 and 3 hour daily commutes).²⁰ The median housing price in Stockton is about \$286,000—still
12 double the national average of \$140,000—while the median housing price in San Jose is over
13 \$1,076,000 and in San Francisco is over \$1,341,000.²¹

14 16. California’s poverty, housing, transportation and homeless crisis have created a
15 perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat,
16 resulted in the “resegregation” of the Bay Area.²² Between 2000 and 2014, substantial African
17 American and Latino populations shifted from central cities on and near the Bay, like San
18 Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central
19 Valley communities like Stockton and Suisun City.²³ As reported:

20 _____
21 ¹⁸ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015),
22 <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

23 ¹⁹ Bay Area Council, Another Inconvenient Truth (Aug. 16, 2016),
24 www.bayareaeconomy.org/report/another-inconvenient-truth/.

25 ²⁰ Commute times from Google navigation, calculated April 25, 2018.

26 ²¹ Zillow, Stockton CA Home Prices & Home Values, <https://www.zillow.com/stockton-ca/home-values/>;
27 San Jose CA Home Prices and Home Values, <https://www.zillow.com/san-jose-ca/home-values/>;
28 San Francisco CA Home Prices and Home Values, <https://www.zillow.com/san-francisco-ca/home-values/>.

²² Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016),
<http://urbanhabitat.org/new-report-urban-habitat-reveals-growing-inequality-and-resegregation-bay-area-reflecting-divided>; see also LAO, Lower Income Households Moving to Inland California from Coast (Sept. 2015), <http://www.lao.ca.gov/LAOEconTax/Article/Detail/133>.

²³ *Id.* p. 10-11, Maps 5 and 6.

1 Low income communities of color are increasingly living at the
2 expanding edges of our region. . . . Those who do live closer to the
3 regional core find themselves unable to afford skyrocketing rents
4 and other necessities; many families are doubling or tripling up in
5 homes, or facing housing instability and homelessness.²⁴

6 17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation
7 for traffic congestion, flanking Washington DC (#2).²⁵ Yet California’s climate leaders have
8 decided to intentionally increase traffic congestion—to lengthen commute times and encourage
9 gridlock—to try to get more people to ride buses or take other form of public transit.²⁶ This
10 climate strategy has already failed, with public transit ridership—particularly by bus—continuing
11 to fall even as California has invested billions in public transit systems.²⁷

12 18. Vehicle miles travelled (“VMT”) by Californians forced to drive ever-greater
13 distances to homes they can afford have also increased by 15% between 2000 and 2015.²⁸ Serious

14 ²⁴ *Id.* p. 2.

15 ²⁵ INRIX Global Traffic Scorecard (2017), <http://inrix.com/scorecard/>.

16 ²⁶ Governor’s Office of Planning and Research (“OPR”), Updating Transportation Analysis in the
17 CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014),
18 http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf, p. 9 (stating that “research indicates that adding new traffic lanes in areas
19 subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet,
20 “DRAFT Policy Brief on Highway Capacity and Induced Travel,” (April 2014).) This is because
21 the new roadway capacity may allow increased speeds on the roadway, which then allows people
22 to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may
23 cause people to make trips that they would otherwise avoid because of congestion, or may make
24 driving a more attractive mode of travel”). In subsequent CEQA regulatory proposals, and in
25 pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the
26 substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature
27 in 2017 was structured to limit money for addressing congestion to \$250 million (less than 1% of
28 the \$2.88 billion anticipated to be generated by the new taxes). See Jim Miller, *California’s gas
tax increase is now law. What it costs you and what it fixes*. Sacramento Bee (April 28, 2017),
<http://www.sacbee.com/news/politics-government/capitol-alert/article147437054.html>.

²⁷ See, e.g., Bay Area Metropolitan Planning Commission, Transit Ridership Report (Sept. 2017),
<http://www.vitalsigns.mtc.ca.gov/transit-ridership> (showing transit ridership decline on a per
capita basis by 11% since 1990 with per capita bus boardings declining by 33%); see also
University of California Institute for Transportation Studies, Falling Transit Ridership: California
and Southern California (Jan. 2018),
https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf (showing Los Angeles
regional public transit decline).

²⁸ TRIP, California Transportation by the Numbers (Aug. 2016),
[https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p
df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf).

1 adverse health impacts to individual commuters,²⁹ as well as adverse economic impacts to drivers
2 and the California economy,³⁰ from excessive commutes have also worsened.

3 19. In 2016 and 2017, the combination of increased congestion and more VMT
4 reversed decades of air quality improvements in California, and caused increased emissions of
5 both GHG and other traditional air pollutants that cause smog and other adverse health effects,³¹
6 for which reductions have long been mandated under federal and state clean air laws.

7 20. In short, in the vast majority of California, and for the whole of its Latino and
8 African American populations, the story of California's "thriving" economy is built on CARB's
9 reliance on misleading statewide averages, which are distorted by the unprecedented
10 concentration of stock market wealth created by the Bay Area technology industry.

11 21. For most Californians, especially those who lost their home in the Great Recession
12 (with foreclosures disproportionately affecting minority homeowners),³² or who never owned a
13 home and are struggling with college loans or struggling to find a steady job that pays enough to
14 cover California's extraordinary living costs, CARB's assertion that California is a booming,
15 "clean and green" economy is a distant fiction.

16 **B. California's Historical Use of Environmental and Zoning Laws and**
17 **Regulations to Oppress and Marginalize Minority Communities**

18 22. The current plight of minority communities in California is the product of many
19 decades of institutional racism, perpetuated by school bureaucrats of the 1940's who defended the
20 "separate but equal" system, highway bureaucrats of the 1950's who targeted minority
21 neighborhoods for demolition to make way for freeway routes, urban planning bureaucrats in the
22

23 ²⁹ Carolyn Kylstra, *10 Things Your Commute Does to Your Body*, Time Magazine (Feb. 2014),
24 <http://time.com/9912/10-things-your-commute-does-to-your-body/>.

25 ³⁰ TRIP, California Transportation by the Numbers (Aug. 2016),
26 [https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf)
27 [df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf) (stating that traffic congestion is estimated to cost California \$28 billion, including lost time
28 for drivers and businesses, and wasted fuels).

29 ³¹ Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017),
30 <http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf>.

31 ³² Gillian White, *The Recession's Racial Slant*, Atlantic Magazine (June 24, 2015),
32 <https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>.

1 1960's who destroyed minority communities in pursuit of redevelopment, and those who enabled
2 decades of "redlining" practices by insurance and banking bureaucrats aimed at denying
3 minorities equal access to mortgages and home insurance.³³

4 23. Environmental regulators are no less susceptible to racism and bias than other
5 regulators. Members of The Two Hundred had to intervene when environmental regulators
6 threatened to block construction of the UC Merced campus, which is the only UC campus in the
7 Central Valley and serves the highest percentage of Latino students of any UC campus.³⁴

8 24. Members of The Two Hundred also had to intervene to require environmental
9 regulators to establish clear standards for the cleanup of contaminated property that blighted
10 many minority neighborhoods, where cleanup and redevelopment could not be financed without
11 the standards that virtually all other states had already adopted.³⁵

12 25. Racial bias in environmental advocacy organizations, including those that heavily
13 lobbied CARB in 2017 Scoping Plan proceedings, was also confirmed in an influential study
14 funded by major foundations that contribute to such organizations.³⁶

20 ³³ See Richard Rothstein, *Color of Law: A Forgotten History of How Our Government*
21 *Segregated America* (2017).

22 ³⁴ UC Merced's Latino undergraduates comprise 53% of the student population, compared to the
23 21% rate of Latino undergraduate enrollment for the UC system as a whole. University of
24 California System Enrollment (2017), [https://www.universityofcalifornia.edu/infocenter/fall-](https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance)
25 [enrollment-glance](https://www.ucmerced.edu/fast-facts); UC Merced Fast Facts 2017-2018, <https://www.ucmerced.edu/fast-facts>; see
26 also John Gamboa, Greenlining Institute, *Brownfields, UC Merced, and Fighting for*
27 *Environmental Equity* (March 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/)
28 [fighting-environmental-equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

³⁵ John Gamboa, Greenlining Institute, *Brownfields, UC Merced, and Fighting for Environmental*
26 *Equity* (Mar. 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/)
27 [environmental-equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

³⁶ Dorceta E. Taylor, Ph.D., *The State of Diversity in Environmental Organizations: Mainstream*
27 *NOGs, Foundations & Government Agencies* (July 2014), [http://vaipl.org/wp-](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf)
28 [content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf).

1 26. Additional studies have confirmed racial bias in environmental organizations, and
2 in media reports on environmental issues.³⁷ As the newest President of the Sierra Club Board of
3 Directors, African American Aaron Mair recently confirmed: “White privilege and racism within
4 the broader environmental movement is existent and pervasive.”³⁸

5 27. The simple fact is that vast areas of California, and disproportionately high
6 numbers of Latino and African American Californians, have fallen into poverty or out of
7 homeownership, and California’s climate policies guarantee that housing, transportation and
8 electricity prices will continue to rise while “gateway” jobs to the middle class for those without
9 college degrees, such as manufacturing and logistics, will continue to locate in other states.

10 **C. Four New GHG Housing Measures in CARB’s 2017 Scoping Plan Are**
11 **Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced**
12 **Poverty Crisis**

13 28. Defendant/Respondent CARB is the state agency directed by the Legislature to
14 implement SB 32, which requires the State to set a target to reduce its GHG emissions to forty
15 percent below 1990 levels by 2030 (“2030 Target”).

16 29. CARB adopts a “Scoping Plan” every five years, as described in the GWSA. The
17 most recent Scoping Plan sets out the GHG reduction measures that CARB finds will be required
18 to achieve the 2030 Target (“2017 Scoping Plan”). The 2017 Scoping Plan was approved in
19 December 2017.

20 30. The most staggering, unlawful, and racist components of the 2017 Scoping Plan
21 target new housing. The Plan includes four measures, challenged in this action, that increase the
22 cost and litigation risks of building housing, intentionally worsen congestion (including commute
23

24 ³⁷ See, e.g., Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company
25 (June 30, 2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>; Jedidiah Purdy,
26 *Environmentalism’s Racist History*, *The New Yorker* (Aug. 13, 2015),
27 <https://www.newyorker.com/news/news-desk/environmentalisms-racist-history>; Brentin Mock,
28 *The Green Movement Is Talking About Racism? It’s About Time*, *Outside Magazine* (Feb. 27,
2017), <https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins>.

³⁸ Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30,
2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>

1 times and vehicular emissions) for workers who already spend more than two hours on the road
2 instead of with their families, and further increase the cost of transportation fuels and electricity.

3 31. These newly-adopted measures (herein the “GHG Housing Measures”) are: (A)
4 The new VMT mandate; (B) The new “net zero” CEQA threshold; (C) The new CO2 per capita
5 targets for local climate action plans for 2030 and 2050; and (D) The “Vibrant Communities”
6 policies in Appendix C to the 2017 Scoping Plan, to the extent they incorporate the VMT, net
7 zero and new CO2 per capita targets.³⁹

8 32. The presumptive “net zero” GHG threshold requires offsetting GHG emissions for
9 all new projects including housing under CEQA, the “Vibrant Communities” measures include
10 limiting new housing to the boundaries of existing developed communities, and a mandate to
11 substantially reduce VMT even for electric vehicles by (among other means) intentionally
12 increasing congestion to induce greater reliance on buses and other transit modes.

13 33. The development of, and the measures included in, the 2017 Scoping Plan was
14 required to be informed by an environmental analysis (“EA”) pursuant to the California
15 Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) (“CEQA”), and an economic fiscal
16 analysis (“FA”) as mandated by both the GWSA and the Administrative Procedure Act, Gov.
17 Code § 11346 *et seq.* (“APA”).

18 34. However, in one of many examples of the lack of analysis in the 2017 Scoping
19 Plan and related documents, CARB does not disclose the GHG emission reductions it expects
20 from the GHG Housing Measures. The Scoping Plan also omits any economic analysis that
21 accounts for the cost of these measures on today’s Californians, and omits any environmental
22 analysis of the Plan’s effects on existing California communities and infrastructure.

23 35. CARB concluded that in 2017 California’s entire economy will emit 440 million
24 metric tons of GHGs per year, and that California will need to reduce emissions by 181.8 million
25

26 ³⁹ While CARB styled the GHG Housing Measures as “guidelines”, they are self-implementing
27 and unlawful underground regulations. All other components of the 2017 Scoping Plan will be
28 implemented as regulations, such as the Cap and Trade program and low carbon fuel standard,
and thus will undergo a formal rulemaking process. However, CARB refused to undertake the
same legislatively-mandated public process for the four GHG Housing Measures.

1 metric tons to meet the 2030 Target. Notwithstanding widespread reports, and public and agency
2 concern about the housing crisis, the homelessness crisis, the housing-induced poverty crisis, and
3 the transportation crisis (collectively referred to herein as the “housing crisis”), neither the 2017
4 Scoping Plan, nor the environmental or economic analyses, disclose how much of this 181.8
5 million metric ton GHG reduction must or even may be achieved by constructing the at least three
6 million new homes that experts,⁴⁰ and all candidates for Governor,⁴¹ agree California must
7 produce to resolve the current housing shortfall.

8 36. The core elements of the Scoping Plan related to housing call for new housing in
9 California’s existing communities (which comprise 4% of California’s lands), with smaller multi-
10 family units instead of single family homes located near public transit to reduce VMT. The 2017
11 Scoping Plan does not contemplate the need for any new regulations to implement this housing
12 regime. Instead, it includes expert agency conclusions about how CEQA, a 1970 environmental
13 law, must be implemented to achieve California’s statutory climate change mandates as well as
14 the unlegislated 2050 GHG reduction goal (80% reduction from 1990 GHG emissions by 2050)
15 included in various Executive Orders from California Governors.

16 37. The best available data on the actual GHG reductions that will be achieved by the
17 Scoping Plan’s GHG Housing Measures is the “Right Type, Right Place” report, prepared by a
18 multi-disciplinary team of housing and environmental law experts at the University of California,
19 Berkeley, that examined some of the consequences from the housing crisis solution embedded in
20 the 2017 Scoping Plan’s GHG Housing Measures (“UCB Study”).⁴²
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22

23 ⁴⁰ Jonathan Woetzel et al., Closing California’s Housing Gap, McKinsey Global Institute (Oct.
24 2016), <https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap>.

25 ⁴¹ Liam Dillon, *We asked the candidates how they planned to meet housing production goals. Here’s how they responded*, LA Times (March 6, 2018),
26 <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-asked-the-candidates-how-they-planned-1520382029-htlstory.html>.

27 ⁴² Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic
28 Impacts of Infill Residential Development through 2030, U.C. Berkeley Turner Center for
Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017),
<https://turnercenter.berkeley.edu/right-type-right-place>.

1 38. The UCB Study anticipates constructing only 1.9 million new homes, less than
2 two-thirds of California’s 3.5 million shortfall identified by other experts. The Study examines
3 the continuation of existing housing production, which is dominated by single family homes with
4 fewer than 1% of Californians living in high rise structures, and compares this with a changed
5 housing pattern that would confine new housing to the boundaries of existing cities and towns and
6 replace traditional single family homes with smaller apartments or condos (thereby equating
7 2,000 square foot homes with 800 square foot apartments).

8 39. The UCB Study concludes that high rise and even mid-rise (e.g., six story)
9 buildings are far more costly to build on a per unit basis than single family homes—three to five
10 time higher—and are thus infeasible in most markets for most Californians. The Study thus
11 recommends focusing on less costly housing units such as quadplexes (four units in two-story
12 buildings) and stacked flats (one or two units per floor, generally limited to four stories)—which
13 are still approximately 30% more costly than single family homes on a per unit basis.

14 40. The UCB Study then concludes that it would be possible for California to build all
15 1.9 million new homes in existing communities with these small multi-family structures, but to
16 confine all new units to the 4% of California that is already urbanized would require the
17 demolition of “tens, if not hundreds of thousands, of single family homes.” The Study does not
18 quantify the GHG emissions from such massive demolition activities, nor does it identify any
19 funding source or assess any non-GHG environmental, public service, infrastructure, historic
20 structure, school, traffic, or other impact associated with this new housing vision.

21 41. Unlike CARB’s 2017 Scoping Plan, the UCB Study does quantify the GHG
22 reductions to be achieved by remaking California’s existing communities and housing all
23 Californians harmed by the current housing crisis in small apartments. With this new housing
24 future, California will reduce annual GHG emissions by 1.79 million metric tons per year, less
25 than 1% of the 181.8 million metric tons required to meet the 2030 Target in SB 32.

26 42. The Scoping Plan’s new CEQA provisions, which have already been cited as
27 CEQA legal mandates by opponents to a Los Angeles County housing project called
28

1 “Northlake,”⁴³ would increase still further the cost of new housing (and thereby make it even less
2 affordable to California’s minority and other families). Since new housing—especially infill
3 housing—is already the top target of CEQA lawsuits statewide,⁴⁴ the GHG Housing Measures
4 will encourage even more anti-housing lawsuits, with attendant increases in project litigation
5 costs and construction delays, as well as vehement opposition from existing residents.

6 43. CEQA lawsuits also disproportionately target multi-family housing such as
7 apartments in existing urbanized “infill” locations. In a recent 3-year study of all CEQA lawsuits
8 filed statewide, the approximately 14,000 housing units challenged in the six county region
9 comprising the Southern California Association of Governments (“SCAG”), which includes Los
10 Angeles, Orange, San Bernadino, Ventura, Imperial, and Riverside counties and all cities within
11 those counties, SCAG determined that 98% of the challenged housing units were located in
12 existing urbanized areas, 70% were within areas designated for transit-oriented high density
13 development, and 78% were located in the whiter, wealthier and healthier areas of the region
14 (outside the portions of the regions with higher minority populations, poverty rates, pollution, and
15 health problems associated with adverse environmental conditions such as asthma).⁴⁵

16 44. CEQA lawsuit petitioners also have an unusually high success rate against the
17 cities and other government agencies responsible for CEQA compliance. A metastudy of
18 administrative agency challenges nationally showed that agencies win approximately 70% of such
19 cases. In contrast, three different law firm studies of CEQA reported appellate court opinions
20 showed that CEQA petitioners prevailed in almost 50% of such cases.⁴⁶

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22 ⁴³ Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

23 ⁴⁴ Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
24 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
[https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p
df](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf).

25 ⁴⁵ Jennifer Hernandez, David Friedman, Stephanie DeHerrera, In the Name of the Environment
26 Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), p. 31-34,
[https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws
uits.pdf](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf).

27 ⁴⁶ Jennifer Hernandez, Spencer Potter, Dan Golub, Joanna Meldrum, CEQA Judicial Outcomes:
28 Fifteen Years of Reported California Appellate and Supreme Court Decisions (2015), p. 3-4, 10,
<https://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf>.

1 45. As noted by senior CEQA practitioner William Fulton, “CEQA provides a way for
2 anybody who wants anything out of a public agency to get some leverage over the situation –
3 whether that's unions, environmentalists, businesses, developers, and even local governments
4 themselves.”⁴⁷

5 46. As the founder of California’s first law firm focused on filing CEQA lawsuit
6 petitions, E. Clement Shute, recently reported when accepting a lifetime environmental law firm
7 award from the California State Bar Environmental Section:

8 Moving to the bad and ugly side of CEQA, projects with merit that
9 serve valid public purposes and not be harmful to the environment
10 can be killed just by the passage of the time it takes to litigate a
CEQA case.

11 In the same vein, often just filing a CEQA lawsuit is the equivalent
12 of an injunction because lenders will not provide funding where
13 there is pending litigation. This is fundamentally unfair. There is no
14 need to show a high probability of success to secure an injunction
and no application of a bond requirement to offset damage to the
15 developer should he or she prevail.

16 CEQA has also been misused by people whose move is not
17 environmental protection but using the law as leverage for other
18 purposes. I have seen this happen where a party argues directly to
19 argue lack of CEQA compliance or where a party funds an unrelated
20 group to carry the fight. These, in my opinion, go to the bad or ugly
21 side of CEQA’s impact.⁴⁸

22 47. African American radio host and MBA, Eric L. Frazier, called this climate-based
23 CEQA housing regime “environmental apartheid” since whiter, wealthier and older homeowners
24 were less likely to be affected, while aspiring minority homeowners were likely to be denied
25 housing even longer based on community opposition to widespread density increases and
26 destruction of single family homes, bear even higher housing costs given the absence of funding

27 ⁴⁷ William Fulton, Insight: Everyone wants to keep leverage under CEQA, California Planning &
Development Report (Sept. 30, 2014), <http://www.cp-dr.com/node/3585>.

28 ⁴⁸ E. Clement Shute, Jr., Reprise of Fireside Chat, Yosemite Environmental Law Conference, 25
Envtl Law News, 3 (2016).

1 sources to expand and replace undersized infrastructure and public services, and never be within
2 reach of purchasing a family home.⁴⁹

3 48. CARB’s 2017 Scoping Plan, and its required CEQA analysis, also provide no
4 assessment of alternatives for achieving the only 1% reduction in GHG emissions that the new
5 housing future will accomplish from other sectors or sources, which could avoid adverse impacts
6 to California’s minority communities, avoid increased housing costs and CEQA litigation risks,
7 and avoid impacting existing California communities by—for example—allowing urbanization of
8 even 1% more of California’s land.

9 49. CARB also ignores a history of success in reducing traditional pollutants from
10 cars, as required by the federal and state Clean Air Acts, while preserving the transportation
11 mobility of people and goods. U.S. Environmental Protection Agency (“EPA”) reported in 2016
12 that most auto tailpipe pollutants had declined by 98-99% in comparison to 1960’s cars, gasoline
13 got cleaner with the elimination of lead and reduction in sulfur, and even though it had not been
14 directly regulated, the primary GHG from cars (carbon dioxide) has risen nationally by less than
15 20% even as VMT nationally more than doubled as a co-benefit of mandatory reductions of
16 traditional pollutants.⁵⁰

17 50. In contrast to this success, CARB’s VMT reduction scheme and its ongoing efforts
18 to intentionally increase congestion are an assault on the transportation mobility of people, which
19 disparately harm minority workers who have been forced by the housing crisis to drive ever
20 greater distances to work.

21 51. CARB staff’s response to The Two Hundred’s December 2017 comment letter on
22 the 2017 Scoping Plan is plain evidence of the intentional concealment and willful omission of
23 the true impacts of the 2017 Scoping Plan and the GHG Housing Measures on California. CARB
24
25

26 _____
27 ⁴⁹ Eric L. Frazier, The Power is Now, Facebook Live Broadcast (Feb. 28, 2018),
<https://thepowerisnow.com/events/event/jennifer-hernandez/>.

28 ⁵⁰ U.S. EPA, Historic Success of the Clean Air Act (2016), <https://www.epa.gov/air-pollution-transportation/accomplishments-and-success-air-pollution-transportation>.

1 staff said that GHG Housing Measures were in a separate chapter and thus not part of the 2017
2 Scoping Plan after all.⁵¹

3 52. California’s climate change policies, and specifically those policies that increase
4 the cost and delay or reduce the availability of housing, that increase the cost of transportation
5 fuels and intentionally worsen highway congestion to lengthen commute times, and further
6 increase electricity costs, have caused and will cause unconstitutional and unlawful disparate
7 impacts to California’s minority populations, which now comprise a plurality of the state’s
8 population. These impacts also disproportionately affect younger Californians including
9 millennials (the majority of whom are minorities), as well as workers without college degrees.

10 53. In short, in the midst of California’s unprecedented housing, homeless, poverty
11 and transportation crisis, CARB adopted a 2017 Scoping Plan which imposes still higher housing,
12 transportation and electricity costs on Californians. CARB did so without disclosing or assessing
13 the economic consequences or the significant adverse environmental consequences of its GHG
14 Housing Measures on California residents.

15 54. In doing so, CARB again affirmed its now-wanton and flagrant pattern of violating
16 CEQA—a pattern consistent with what an appellate court termed “ARB’s lack of good faith” in
17 correcting earlier CEQA violations as ordered by the courts.

18 55. The GHG Housing Measures have a demonstrably disproportionate adverse
19 impact on already-marginalized minority communities and individuals, including but not limited
20 to Petitioners LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, who are
21 Latina residents of Fresno County that are personally, directly and disproportionately adversely
22 affected by the affordable housing shortage and the future exacerbation of that shortage if the
23 GHG Housing Measures are allowed to remain in effect.

24 56. The Legislature has recognized the equal right to access to housing, *inter alia*, in
25 the California Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*) (“FEHA”). FEHA
26

27 ⁵¹ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
28 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

1 § 12921(b) provides that: “The opportunity to seek, obtain, and hold housing without
2 discrimination because of race, color, . . . source of income . . . or any other basis prohibited by
3 Section 51 of the Civil Code is hereby recognized and declared to be a civil right.”

4 57. California’s housing crisis is particularly acute, and has long-lasting adverse
5 impacts. As the Director of the California Department of Housing and Community Development,
6 Ben Metcalf, recently reported: “Research has been unequivocal in supporting two undeniable
7 conclusions: Low-income households paying more than half their income in rent have profoundly
8 reduced expenditures on food, retirement, health care, and education compared with non-rent-
9 burdened households. And children growing up in neighborhoods of concentrated poverty are
10 more likely to have psychological distress and health problems.”⁵²

11 58. The 2017 Scoping Plan is also violative of the due process and equal protection
12 clauses of the California and U.S. Constitutions (Cal. Const. Art. I, § 7, U.S. Const., Amd. 14, §
13 1). Accordingly, Petitioners in this action seek declaratory and injunctive relief from these
14 violations pursuant to 42 U.S.C. § 1983. The GHG Housing Measures are thus unconstitutional
15 on their face and as applied to Petitioners.

16 59. While the unlawful and unconstitutional disparate impact of the GHG Housing
17 Measures on minority communities, including Petitioners, is the most egregious feature of the
18 regulations, there are numerous other flaws, *each* of which is fatal to the 2017 Scoping Plan and
19 the GHG Housing Measures. As detailed herein, these include violations of CEQA, the APA, the
20 GWSA, the California Health and Safety Code, including the California Clean Air Act (H&S
21 Code § 39607 *et seq.*) (“CCAA”), and the California Congestion Management Act (Gov. Code §
22 65088 *et seq.*). Moreover, CARB has acted in excess of its statutory authority (*ultra vires*).

23 60. The GHG Housing Measures are unlawful both procedurally (because they were
24 adopted in violation of numerous statutory requirements, including but not limited to CEQA) and
25 substantively (because they frustrate and violate a wide range of state and federal laws and
26 regulations prohibiting housing regulations that have an unjustified discriminatory effect).

27 _____
28 ⁵² Donna Kimura, Pop Quiz with Ben Metcalf, Affordable Housing Finance (July 8, 2016),
http://www.housingfinance.com/news/pop-quiz-with-ben-metcalf_o.

1 **III. PARTIES**

2 65. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based
3 unincorporated association of community leaders, opinion makers and advocates working in
4 California (including in Fresno County) and elsewhere on behalf of low income minorities who
5 are, and have been, affected by California’s housing crisis and increasing wealth gap.⁵³

6 66. The Two Hundred is committed to increasing the supply of housing, to reducing
7 the cost of housing to levels that are affordable to California’s hard working families, and to
8 restoring and enhancing home ownership by minorities so that minority communities can also
9 benefit from the family stability, enhanced educational attainment over multiple generations, and
10 improved family and individual health outcomes, that white homeowners have long taken for
11 granted. The Two Hundred includes civil rights advocates who each have four or more decades of
12 experience in protecting the civil rights of our communities against unlawful conduct by
13 government agencies as well as businesses.

14 67. The Two Hundred supports the quality of the California environment, and the need
15 to protect and improve public health in our communities.

16 68. The Two Hundred have for many decades watched with dismay decisions by
17 government bureaucrats that discriminate against and disproportionately harm minority
18 communities. The Two Hundred have battled against this discrimination for entire careers, which
19 for some members means working to combat discrimination for more than 50 years. In litigation
20 and political action, The Two Hundred have worked to force two government bureaucrats to
21 reform policies and programs that included blatant racial discrimination—by for example denying
22 minority veterans college and home loans and benefits that were available to white veterans, and
23 promoting housing segregation as well as preferentially demolishing homes in minority
24 communities.

25 69. The Two Hundred sued and lobbied and legislated to force federal and state
26 agencies to end redlining practices that denied loans and insurance to aspiring minority home
27

28 ⁵³ See www.the200leaders.org.

1 buyers and small businesses. The Two Hundred sued and lobbied to force regulators and private
2 companies to recognize their own civil rights violations, and end discriminatory services and
3 practices, in the banking, telecommunication, electricity, and insurance industries.

4 70. The Two Hundred have learned, the hard way, that California's purportedly
5 liberal, progressive environmental regulators and environmental advocacy group lobbyists are as
6 oblivious to the needs of minority communities, and are as supportive of ongoing racial
7 discrimination in their policies and practices, as many of their banking, utility and insurance
8 bureaucratic peers.

9 71. Several years ago, The Two Hundred waged a three year battle in Sacramento to
10 successfully overcome state environmental agency and environmental advocacy group opposition
11 to establishing clear rules for the cleanup of the polluted properties in communities of The Two
12 Hundred, and experienced first-hand the harm caused to those communities by the relationships
13 between regulators and environmentalists who financially benefited from cleanup delays and
14 disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules
15 for the cleanup and redevelopment of the polluted properties that blighted these communities.

16 72. THE TWO HUNDRED's members include, but are not limited to, members of and
17 advocates for minority communities in California, including the following:

- 18 • Joe Coto- Joe Coto is Chair of THE TWO HUNDRED. Mr. Coto is an American
19 educator, city council member, and Democratic politician. From 2004-2010, he
20 was a member of the California State Assembly, representing the 23rd Assembly
21 District. He served as Chair of the Assembly's Insurance committee, and held
22 positions on the Elections and Redistricting, Governmental Organization, and
23 Revenue and Taxation committees. He also served on the Special committee on
24 Urban Education. Coto served as Chair of the 26 member Latino Legislative
25 Caucus for a 2-year term, and as Vice Chair for a 2-year term..
- 26 • John Gamboa – John Gamboa is Vice-Chair of THE TWO HUNDRED. Mr.
27 Gamboa is the former Executive Director of the Greenlining Institute and has
28 experience in academia, the private sector and the non-profit sector. Prior to the

1 Greenlining Institute, he was Executive Director of Latino Issues Forum,
2 Communications Manager at U.C. Berkeley, Executive Director of Project
3 Participar, a citizenship program, and Marketing and Advertising Manager at
4 Pacific Bell. At the Greenlining Institute, Mr. Gamboa focuses on public policy
5 issues that promote economic development in urban and low-income areas, and in
6 developing future leaders within the country’s minority youth. He has been active
7 in combating redlining and in providing a voice for the poor and underserved in
8 insurance, philanthropy, banking, housing, energy, higher education and
9 telecommunications. He has served on numerous boards and commissions.

- 10 • Cruz Reynoso – Cruz Reynoso, now retired, formerly served as Legal Counsel for
11 THE TWO HUNDRED. Mr. Reynoso has dedicated his life to public service
12 championing civil rights, immigration and refugee policy, government reform, and
13 legal services for the poor. Mr. Reynoso began his career in private practice then
14 moved to public service as the assistant director of the California Fair
15 Employment Practices Commission, the associate general counsel of the Equal
16 Employment Opportunity Commission, and head of the California Rural Legal
17 Assistance (CRLA). Mr. Reynoso was a faculty member at the University of New
18 Mexico School of Law and in 1976, he was appointed associate justice of the
19 California Courts of Appeal. In 1982, he became the first Latino to be appointed
20 an associate justice of the California Supreme Court. Mr. Reynoso later returned to
21 private practice, and resumed his teaching career by joining the UCLA School of
22 Law and then the UC Davis School of Law. Mr. Reynoso has served as Vice Chair
23 of the U.S. Commission on Civil Rights, was a member of the Select Commission
24 on Immigration and Human Rights, and received the Presidential Medal of
25 Freedom.

- 26 • José Antonio Ramirez – José Antonio Ramirez is a Council Member of THE TWO
27 HUNDRED. He has dedicated his life to public service, especially for the residents
28

1 of the Central Valley, seeking to improve economic vitality, strengthen community
2 life, and increase educational opportunities and housing affordability for all
3 Californians, including disadvantaged members of the Latino community. He
4 currently serves as President of Community Development Inc. and as City
5 Manager for the City of Livingston. He was previously Program Manager,
6 International Affairs Coordinator and Security Engineer and Emergency
7 Management Coordinator for the U.S. Bureau of Reclamation. He served on the
8 San Joaquin River Resource Management board, the Valley Water Alliance Board
9 and as Chairman of the Technical Review Boards for Merced and Fresno County.

- 10 • Herman Gallegos – Herman Gallegos is a Council Member of THE TWO
11 HUNDRED. He has provided active leadership in a wide variety of community,
12 corporate and philanthropic affairs spanning local, national and international
13 interests. As a pioneer civil rights activist in the early 1950s, Gallegos was a leader
14 in the formation of the Community Service Organization, a civil rights-advocacy
15 group organized to promote the empowerment and well-being of Latinos in
16 California. In 1965, while serving as a Consultant to the Ford Foundation’s
17 National Affairs Program, Gallegos, with Dr. Julian Samora and Dr. Ernesto
18 Galarza, made an assessment with recommendations on how the foundation might
19 initiate support to address the critical needs of the rapidly growing Latino
20 population in the U.S.. As a result, he was asked to organize a new conduit for
21 such funds—the Southwest Council of La Raza, now the National Council of La
22 Raza. Gallegos went on to become the council’s founding executive director.
23 Gallegos also served as CEO of several business firms, including the U. S. Human
24 Resources Corporation and Gallegos Institutional Investors Corporation. He
25 became one of the first Latinos elected to the boards of publicly traded
26 corporations and the boards of preeminent private and publicly supported
27 philanthropic organizations, such as the Rockefeller Foundation, The San
28 Francisco Foundation, The Poverello Fund and the California Endowment.

1 • Hyepin Im – Hyepin Im is a Council Member of THE TWO HUNDRED. She
2 currently serves as the Founder and President of Korean Churches for Community
3 Development (KCCD) whose mission is to help churches build capacity to do
4 economic development work. Under Ms. Im’s leadership, KCCD has implemented
5 a historic homeownership fair in the Korean community, a Home Buyer Center
6 Initiative with Freddie Mac, a national database and research study on Korean
7 American churches, and ongoing training programs. Previously, Ms. Im was a
8 venture capitalist for Renaissance Capital Partners, Sponsorship and Community
9 Gifts Manager for California Science Center, a Vice President with GTA
10 Consulting Company, and a Consultant and Auditor with Ernst & Young LLP. Ms.
11 Im serves on the Steering Committee of Churches United for Economic
12 Development, as Chair for the Asian Faith Commission for Assemblymember
13 Herb Wesson, and has served as the President of the Korean American Coalition,
14 is a member of the Pacific Council, was selected to be a German Marshall Fund
15 American Memorial Marshall Fellow, and most recently, was selected to take part
16 in the Harvard Divinity School Summer Leadership Institute.

17 • Don Perata – Don Perata is a Council Member of THE TWO HUNDRED. Mr.
18 Perata began his career in public service as a schoolteacher. He went on to serve
19 on the Alameda County Board of Supervisors (1986-1994) and the California State
20 Assembly (1996-1998). In 1998, he was elected to the California State Senate and
21 served as president pro tem of the Senate from 2004-2008. As president pro tem,
22 Mr. Perata oversaw the passage of AB 32, California’s cap and trade regulatory
23 scheme to reduce greenhouse gases. Mr. Perata has guided major legislation in
24 health care, in-home services, water development and conservation and cancer,
25 biomedical and renewable energy. Mr. Perata has broad experience in water,
26 infrastructure, energy, and environmental policies, both as an elected official and a
27 consultant. He is versed in the State Water Project, Bay Delta restoration,
28

1 renewable energy, imported water and water transfers, recycling, conservation,
2 groundwater regulation, local initiative, storage and desalination.

- 3 • Steven Figueroa – Steven Figueroa is a Council Member of THE TWO
4 HUNDRED. He was born in East L. A., with a long history in California. Working
5 on his first political campaign at age nine he learned that if you want change you
6 have to be involved. As an adult he was involved in the labor movement through
7 the California School Employees Association and later as a union shop steward at
8 the U.S.P.S. A father of three, Steven has been advocating for children with
9 disabilities for 30 years, beginning in 1985, for his own son, who is autistic. He
10 took the Hesperia School District to court for violating his disabled son’s rights
11 and prevailed. He advocates for disabled children throughout the United States,
12 focusing on California. Currently, he serves as president of the Inland Empire
13 Latino Coalition and sits on the advisory boards of California Hispanic Chambers
14 of Commerce, the National Latina Business Women Association Inland Empire
15 the Disability Rights and Legal Center Inland Empire, and as Executive Director
16 for Latin PBS. He previously served as the vice president of the Mexican
17 American Political Association Voter Registration & Education Corp.
- 18 • Sunne Wright McPeak – Sunne McPeak is a Council Member of THE TWO
19 HUNDRED. She is the President and CEO of the California Emerging Technology
20 Fund, a statewide non-profit whose mission is to close the Digital Divide by
21 accelerating the deployment and adoption of broadband. She previously served for
22 three years as Secretary of the California Business, Transportation and Housing
23 Agency where she oversaw the largest state Agency and was responsible for more
24 than 42,000 employees and a budget in excess of \$11 billion. Prior to that she
25 served for seven years as President and CEO of the Bay Area Council, as the
26 President and CEO of the Bay Area Economic Forum, and for fifteen years as a
27 member of the Contra Costa County Board of Supervisors. She has led numerous
28 statewide initiatives on a variety of issues ranging from water, to housing, to child

1 care, and served as President of the California State Association of Counties in
2 1984. She was named by the San Francisco League of Women Voters as “A
3 Woman Who Could Be President.” She also served on the Boards of Directors of
4 First Nationwide Bank and Simpson Manufacturing Company.

- 5 • George Dean – George Dean is a Council Member of THE TWO HUNDRED. Mr.
6 Dean has been President and Chief Executive Officer of the Greater Phoenix
7 Urban League since 1992. As such, he has brought a troubled affiliate back to
8 community visibility, responsiveness and sound fiscal accountability. Mr. Dean, a
9 former CEO of the Sacramento, California and Omaha, Nebraska affiliates boasts
10 more than 25 years as an Urban League staff member. His leadership focuses on
11 advocacy toward issues affecting the African-American and minority community,
12 education, training, job placement and economic development. Mr. Dean annually
13 raises more than 3 million dollars from major corporations, local municipalities
14 and state agencies for the advancement of minority enterprises, individuals,
15 families and non-profits. Mr. Dean is nationally recognized in the field of minority
16 issues and advancement, and affordable housing.

- 17 • Joey Quinto – Joey Quinto is a Council Member of THE TWO HUNDRED. Mr.
18 Quinto’s has made many contributions to the advancement of the API community.
19 He began his professional career as a mortgage banker. As a publisher, his weekly
20 newspaper advances the interests of the API community and addresses local,
21 consumer and business news, and community events. He is a member of several
22 organizations including the Los Angeles Minority Business Opportunity
23 Committee and The Greenlining Coalition. Mr. Quinto is the recipient of the
24 Award for Excellence in Journalism during the Fourth Annual Asian Pacific
25 Islander Heritage Awards in celebration of the Asian Pacific Islander American
26 Heritage Month. He was also listed among the Star Suppliers of the Year of the
27 Southern California Regional Purchasing Council, received the Minority Media
28

1 Award from the U.S. Small Business Administration, and earned a leadership
2 award from the Filipino American Chamber of Commerce based in Los Angeles.

- 3 • Bruce Quan, Jr. – Bruce Quan is a Council Member of THE TWO HUNDRED.
4 Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing
5 founded the Pacific Coast Canning Company in West Oakland in 1905, then one
6 of the largest employers in Oakland. Bruce attended Oakland schools, UC
7 Berkeley, and Boalt Hall School of Law. At Berkeley, he was a community
8 activist for social justice, participated in the Free Speech Movement and the
9 Vietnam Day Committee and was elected student body president. In 1973, he was
10 chosen as one of three students to clerk for the Senate Watergate Committee and
11 later returned to Washington to draft the “Cover-up” and “Break-in” sections of
12 the committee’s final report. He worked in the Alameda’s City Attorney office, his
13 own law practice advising Oakland’s Mayor Lionel Wilson on economic
14 development issues in Chinatown and serving Mayor Art Agnos as General
15 Counsel for the San Francisco-Shanghai Sister City Committee and the San
16 Francisco-Taipei Sister City Committee. In 2000, he moved to Beijing, continued
17 his law practice, worked as a professor with Peking Law School, and became
18 senior of counsel with Allbright Law Offices. Now in Oakland, he has reengaged
19 in issues affecting the Chinese community and on issues of social justice, public
20 safety and economic development in Oakland.

- 21 • Robert J. Apodaca – Robert Apodaca is a Council Member of THE TWO
22 HUNDRED. He is a Founder of ZeZeN Advisors, Inc., a boutique financial
23 services firm that connects institutional capital with developers and real estate
24 owners. He has a 45-year career that spans private and public sectors. He was
25 Chairman and Trustee of Alameda County Retirement Board (pension fund) and
26 then joined Kennedy Associates, an institutional investor for pension funds as
27 Senior Vice President & Partner. He represented Kennedy Companies on Barings
28 Private Equity’s “Mexico Fund” board of directors. He later joined McLarand

1 Vasquez Emsiek & Partners, a leading international architectural and planning
2 firm, as Senior Vice President of Business Development. He currently serves on
3 numerous board of directors including Jobs and Housing Coalition, Greenlining
4 Institute, California Community Builders and California Infill Federation.

- 5 • Ortensia Lopez – Ortensia Lopez is a Council Member of THE TWO HUNDRED.
6 She is a nationally recognized leader in creating coalitions, collaboratives and
7 partnerships, resulting in innovative initiatives that ensure participation for low-
8 income communities. Ms. Lopez has worked in the non-profit sector for over
9 forty-one years in executive management positions. She is the second of 11
10 children born to parents from Mexico and the first to graduate from college. She
11 currently serves on the California Public Utilities Commission’s Low-Income
12 Oversight Board, as Co-Chairperson and founding member of the Greenlining
13 Institute, as Vice-President Chicana/Latina Foundation, as Director of Comerica
14 Advisory Board, and on PG&E’s Community Renewables Program Advisory
15 Group. Ms. Lopez has earned numerous awards, including Hispanic Magazine’s
16 “Hispanic Achievement Award”, San Francisco’s “ADELITA Award”, the
17 prestigious “Simon Bolivar Leadership Award”, the League of Women Voters of
18 San Francisco “Woman Who Could Be President” award, California Latino Civil
19 Rights Network award, and the Greenlining Lifetime Achievement.
- 20 • Frank Williams – Frank Williams is a Council Member of THE TWO
21 HUNDRED. He is an established leader in the mortgage banking industry, with
22 over 25 years of experience, and is an unwavering advocate for creating wealth
23 through homeownership for underrepresented communities. Frank began his real
24 estate finance career in 1990, emphasizing Wholesale Mortgage Banking. He
25 founded Capital Direct Funding, Inc. in 2009. Today, as Co-founder and
26 Divisional Manager, Mr. Williams has made Capital Direct Funding into
27 California’s premier private lending firm. Capital Direct Funding’s foundations are
28 built on giving back to the community by supporting several non-profits. He

1 currently serves as President of East LA Classic Theater, a non-profit that works
2 with underserved school districts in California. Frank was also Past President for
3 Los Angeles' National Association of Hispanic Real Estate Professionals.

- 4 • Leticia Rodriguez - Leticia Rodriguez is a resident of Fresno County, California.
5 She is a low-income single mother and Latina who suffers ongoing personal harm
6 from the severe shortage of housing that is affordable to working-class families.
7 Within the last three years, she has spent more than 30% of her income on rent.
8 She has been forced to move into her parents' home because she cannot afford a
9 decent apartment for herself and her family.
- 10 • Teresa Murillo – Teresa Murillo is a resident of the City of Parlier in Fresno
11 County, California. She is a young Latina with a low income. In recent years, she
12 has spent approximately 30% of her income on housing. She currently is unable to
13 afford a decent apartment and has been forced to move back in with her parents.
- 14 • Eugenia Perez – Eugenia Perez is a resident of Fresno County, California. She is a
15 Latina grandmother. The majority of her income goes to pay rent. She currently is
16 renting a room on E. Fremont Avenue in Fresno. She struggles to pay rent and
17 lives in fear of becoming homeless if housing prices and rent continue to increase.

18 73. Defendant CALIFORNIA AIR RESOURCES BOARD is an agency of the State
19 of California. On information and belief, current members of the CALIFORNIA AIR
20 RESOURCES BOARD are: Mary D. Nichols, Sandra Berg, John R. Balmes, Hector De La Torre,
21 John Eisenhut, Dean Flores, Eduardo Garcia, John Gioia, Ricardo Lara, Judy Mitchell, Barbara
22 Riordan, Ron Roberts, Phil Serna, Alexander Sherriffs, Daniel Sperling, and Diane Takvorian.

23 74. Defendant RICHARD COREY, sued herein in his official capacity, is Executive
24 Officer of the CALIFORNIA AIR RESOURCES BOARD.

25 75. Petitioners are ignorant of the true names or capacities of the defendants sued
26 herein under the fictitious names DOES 1 through 20 inclusive. When their true names and
27 capacities are ascertained, Petitioners will amend this Petition/Complaint to show such true names
28 and capacities. Petitioners are informed and believe, and thereon allege, that DOES 1 through 20,

1 inclusive, and each of them, are agents or employees of one or more of the named Defendants
2 responsible, in one way or another, for the promulgation and prospective enforcement of the
3 GHG Housing Measures sought to be invalidated and set aside herein.

4 **IV. GENERAL ALLEGATIONS**

5 **A. California’s Statutory Scheme To Reduce Greenhouse Gas Emissions and**
6 **Avoid Disparate Impacts**

7 76. As part of developing solutions to global warming, the California Legislature
8 adopted the California Global Warming Solutions Act of 2006 (otherwise known as “AB 32” or
9 the “GWSA”) and established the first comprehensive greenhouse gas regulatory program in the
10 United States. H&S Code § 38500 *et seq.*

11 77. Under AB 32, CARB is the state agency charged with regulating and reducing the
12 sources of emissions of GHGs that cause global warming. H&S Code § 38510.

13 78. AB 32 required CARB to set a statewide GHG emissions limit equivalent to
14 California’s 1990 GHG emissions to be achieved by 2020. H&S Code § 38550.

15 79. AB 32 also required CARB to prepare, approve, and periodically update a scoping
16 plan detailing how it would achieve the maximum technologically feasible and cost-effective
17 GHG emissions reductions by 2020. H&S Code § 38561(a). The scoping plan is required to
18 identify and make recommendations on direct emissions reductions measures, alternative
19 compliance mechanisms, market-based compliance mechanisms, and potential monetary and
20 nonmonetary incentives for sources to achieve reductions of GHGs by 2020. H&S Code
21 § 38561(b). The scoping plan must be updated at least every five years. H&S Code § 38561(h).

22 80. In adopting a scoping plan, CARB must evaluate the total potential costs and total
23 potential benefits of the plan to California’s economy, environment, and public health. H&S Code
24 § 38561(d).

25 81. Each scoping plan update also must identify, for each emissions reduction
26 measure, the range of projected GHG emissions reductions that result from the measure, the range
27 of projected air pollution reductions that result from the measure, and the cost-effectiveness,
28 including avoided social costs, of the measure. H&S Code § 38562.7.

1 82. The initial scoping plan⁵⁴ was discussed in public hearings on or about December
2 11, 2008. The initial scoping plan was adopted by CARB on or about May 7, 2009.

3 83. On or about December 23, 2009, the initial scoping plan was challenged in the
4 Superior Court for the City and County of San Francisco for failing to meet the statutory
5 requirements of AB 32, the APA, and CEQA. The superior court accepted the challenge in part
6 and the appeal was thereafter resolved after a further environmental document was filed.⁵⁵

7 84. The Low Carbon Fuel Standard (“LCFS”) was an early action item under AB 32.
8 The LCFS was adopted on or about November 25, 2009 by CARB’s executive officer. CARB’s
9 action to adopt the LCFS also was challenged for CEQA and APA violations. On or about
10 November 2011, the Superior Court of Fresno County found that CARB had not violated the
11 APA or CEQA. On or about July 15, 2013 the Fifth District Court of Appeal reversed the
12 superior court’s judgment and ordered it to issue a preemptory writ of mandate ordering CARB to
13 revise and recertify its environmental assessment to meet CEQA’s standards.⁵⁶

14 85. The first update to the scoping plan⁵⁷ was adopted on or about May 22, 2014.

15 86. Thereafter, on or about May 30, 2017, the Fifth District Court of Appeal again
16 found that CARB had violated CEQA and the APA, and that it had not acted in good faith in
17 responding to certain of the Court’s prior orders.⁵⁸ Specifically, the court found that CARB
18 violated CEQA in deferring its analysis and mitigation of potential increases in nitrogen oxide
19 emissions resulting from impacts of the LCFS regulations.

20
21 _____
22 ⁵⁴ California Air Resources Board, Climate Change Scoping Plan (Dec. 2008),
https://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

23 ⁵⁵ *Ass’n. of Irrigated Residents v. Cal. Air Res. Bd.*, 2011 WL 8897315 (Cal. Super. May 20,
24 2011) (approving challenges to alternatives analysis and improper “pre-approval” under CEQA)
and *Ass’n. of Irrigated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487.

25 ⁵⁶ *POET, LLC v. California Air Resources Board* (2013) 217 Cal.App.4th 1214 (holding that
26 CARB prematurely approved the LCFS and improperly deferred analysis and mitigation of
potential NOx emissions increased by the rule).

27 ⁵⁷ California Air Resources Board, First Update to the Climate Change Scoping Plan (May 2014),
https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf.

28 ⁵⁸ *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App. 5th 52.

1 87. In 2016, the California Legislature adopted SB 32, which required CARB to
2 ensure that rules and regulations adopted pursuant to the GWSA would target California’s GHG
3 emissions for reductions of 40% below 1990 levels by 2030. H&S Code § 38566.

4 88. AB 32 requires CARB to update the scoping plan at least every five years. CARB
5 superseded its 2014 Scoping Plan with the current 2017 Scoping Plan adopted on December 14,
6 2017. The 2017 Scoping Plan contains the new GHG Housing Measures complained of herein.⁵⁹

7 89. Between December, 2017 and mid-April, 2018, Petitioners, through counsel,
8 sought to persuade CARB to eliminate or materially modify the four new GHG Housing
9 Measures complained of herein, without success. During this time, the parties entered into a series
10 of written tolling agreements that were continuously operative until April 30, 2018.

11
12 **B. The 2017 Scoping Plan**

13 90. Throughout 2016 and 2017, CARB prepared the 2017 Scoping Plan. CARB held
14 meetings on or about January 27, 2017, February 16-17, 2017 and December 14, 2017 to accept
15 public comment on the proposed 2017 Scoping Plan.

16 91. Because the Scoping Plan is both sweeping and vague, and because it was not
17 preceded by a notice of proposed rulemaking, Petitioners THE TWO HUNDRED, *et al.* did not
18 initially appreciate the significance of the new GHG regulations and standards embedded in the
19 2017 Scoping Plan by CARB staff.

20 92. Petitioners submitted a detailed letter commenting on the 2017 Scoping Plan on
21 December 11, 2017, in advance of CARB’s meeting to vote on the 2017 Scoping Plan.⁶⁰ The
22 letter included extensive citations to documents and publications analyzing California’s ongoing
23 housing crisis and the disproportionate impact of the worsening housing shortage on marginalized
24 minority communities.

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26 ⁵⁹ California Air Resources Board, The 2017 Climate Change Scoping Plan Update (Jan. 20,
2017), https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf.

27 ⁶⁰ The Two Hundred Comment Letter dated Dec. 11, 2017, can be found in the Supplemental
28 Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for
Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 74,
<https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>

1 93. On December 14, 2017, CARB adopted the 2017 Scoping Plan.

2 94. While the 2017 Scoping Plan is replete with protestations to the effect that it is
3 only providing “guidance” rather than a “directive or mandate to local governments” (see, e.g.,
4 Scoping Plan, p. 99), it is plain that CARB’s pronouncements on the GHG Housing Measures, by
5 their nature, will be given the force and effect of law. Numerous courts have stated that when an
6 agency has specific expertise in an area and/or acts as lead or responsible agency under CEQA,
7 and publishes guidance, that guidance must be taken into consideration and will be given heavy
8 weight.

9 95. In *California Building Industry Assn. v. Bay Area Air Quality Mgmt. Dist.* (2016)
10 2 Cal.App.5th 1067, 1088, the court rejected the notion that the District’s CEQA guidelines were
11 a nonbinding, advisory document. The court stated that the guidelines suggested a routine
12 analysis of air quality in CEQA review and were promulgated by an air district that acts as either
13 lead or responsible agency on projects within its jurisdictional boundaries.

14 96. In addition, in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife*
15 (2015) 62 Cal.4th 204, 229, the court recognized the value of “performance based standards” as
16 CEQA thresholds, as outlined in the Scoping Plan or other authoritative body of regulations.

17 97. Further, in *Cleveland Nat. Forest Foundation, et al v. San Diego Assoc. of*
18 *Governments* (2017) 3 Cal.5th 497, 515, the court held that even though the 2050 Executive
19 Order was not an adopted GHG reduction plan and there was no legal requirement to use it as a
20 threshold of significance, that was not dispositive of the issue. Although lead agencies have
21 discretion in designing an Environmental Impact Report (“EIR”) under CEQA, the court stated
22 that the exercise of that discretion must be “based to the extent possible on scientific and factual
23 data” and thus the scientific basis for the Executive Order’s and CARB’s emission reduction
24 goals must be considered in a CEQA analysis.

25 98. Thus, because CEQA documents must take a long term view of GHG compliance
26 and because of the deference and weight other agencies are required to give to CARB guidance,
27 the measures alleged to be “guidance” are in reality self-implementing regulations having an
28 immediate “as applied” effect.

1 99. The LAO also has recognized that CARB’s Scoping Plans include “a wide variety
2 of regulations intended to help the state meet its GHG goal...”⁶¹

3 **C. CARB’s Improper “Cumulative Gap” Reduction Requirement**

4 100. In AB 32, the Legislature directed CARB to reduce statewide GHG emissions to
5 1990 levels by 2020 via measures in the first Scoping Plan. This legislative mandate is simple and
6 uncontested. CARB concluded that California’s GHG emissions were 431 million metric tons of
7 carbon dioxide equivalent (“MMTCO₂e”) in 1990.

8 101. SB 32 established the more stringent mandate of reducing GHG emissions to 40%
9 below 1990 levels by 2030, even though California’s population and economic activities are
10 expected to continue to increase during this period. The 2030 Target is simple math: 40% below
11 431 MMTCO₂e equals 258.6 MMTCO₂e.⁶² Thus, the 2017 Scoping Plan created measures to
12 reduce statewide emissions to 260 MMTCO₂e by 2030.

13 102. The 2017 Scoping Plan first evaluates the “Reference Scenario”, which is the
14 emissions expected in 2030 by continuing “Business as Usual” and considering existing legal
15 mandates to reduce GHG emissions that have been implemented, but without adopting any new
16 GHG reduction measures. The Scoping Plan concludes that in this scenario California’s GHG
17 .emissions will fall to 389 MMTCO₂e by 2030.

18 103. Because numerous GHG reduction mandates are being phased in over time, CARB
19 also evaluated a “Known Commitments Scenario” (which CARB confusingly named the
20 “Scoping Plan Scenario”) which estimates GHG emissions in 2030 based on compliance with all
21 legally required GHG reduction measures, including those that have not yet been fully
22 implemented. Under the “Known Commitments Scenario” the 2017 Scoping Plan concludes that
23 California’s GHG emissions will fall to 320 MMTCO₂e by 2030.

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27 ⁶¹ LAO, Cap-and-Trade Revenues: Strategies to Promote Legislative Priorities (Jan. 21, 2016),
<http://www.lao.ca.gov/reports/2016/3328/cap-trade-revenues-012116.pdf>, at p. 5-6.

28 ⁶² CARB generally rounds this to 260 MMTCO₂e.

1 104. Given that SB 32 required a reduction to 260 MMTCO₂e, this left a gap of 60
2 MMTCO₂e for which CARB was required to identify measures in the 2017 Scoping Plan in the
3 “Known Commitments Scenario” and 129 MMTCO₂e in the “Reference Scenario”.

4 105. CARB declined to comply with this legislated mandate, and instead invented a
5 different “cumulative gap” reduction requirement which requires far more GHG emission
6 reductions.

7 106. Neither the Scoping Plan nor any of its appendices explain how this “cumulative
8 gap” reduction requirement was derived, and the methodology and assumptions CARB used can
9 only be located in one of several modeling spreadsheets generally referenced in the plan.

10 107. CARB’s unlegislated “cumulative gap” requirement is based on the unsupportable
11 assumption that state emissions must decline in a fixed trajectory from 431 MMTCO₂e in 2020 to
12 258.6 MMTCO₂e in 2030 despite the fact that SB 32 does not require that the state reach the
13 2030 Target in any specific way. CARB arbitrarily created the “cumulative gap” requirement by
14 summing the annual emissions that would occur from 2021-2030 if emissions declined in a
15 straight line trajectory, which totaled 3,362 MMTCO₂e, as follows:

	Annual emissions based on a straight line trajectory from 2020 to 2030 (MMTCO ₂ e)
2020	431.0
2021	413.8
2022	396.5
2023	379.3
2024	362.0
2025	344.8
2026	327.6
2027	310.3
2028	293.1
2029	275.8
2030	258.6
2021-2030 Cumulative Emissions	3,362

1 108. CARB then summed the annual emissions projected to occur from 2021-2030
2 under the “Reference Scenario” without the implementation of the measures included in the
3 “Known Commitments Scenario,” as 3,982 MMTCO₂e.

4 109. CARB then subtracted the cumulative “Reference Scenario” emissions (3,982
5 MMTCO₂e) from the cumulative emissions based on the straight line trajectory (3,362
6 MMTCO₂e) and illegally used the difference, 621 MMTCO₂e, as a new, unlegislated GHG
7 “cumulative gap” reduction requirement.

Year	“Reference Scenario” Annual Emissions (MMTCO ₂ e)
2020	415.8
2021	411.0
2022	405.5
2023	400.3
2024	397.6
2025	398.7
2026	396.8
2027	395.5
2028	394.4
2029	393.9
2030	388.9
2021-2030 Cumulative Emissions	3,982
Difference from Straight Line Cumulative Emissions Total	621

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22 110. Scoping Plan Figure 7, for example, is titled “Scoping Plan Scenario – Estimated
23 Cumulative GHG Reductions by Measure (2021–2030).” The identified measures show the
24 amount of reductions required to “close” the 621 MMTCO₂e GHG “cumulative gap” CARB
25 invented from the difference in cumulative emissions from 2021-2030 between a hypothetical
26 straight line trajectory to the 2030 Target and the “Reference Scenario” projections.

1 111. Figure 8 of the Scoping Plan and associated text provide an “uncertainty analysis
2 to examine the range of outcomes that could occur under the Scoping Plan policies and measures”
3 which is entirely based on the 621 MMTCO_{2e} GHG “cumulative gap” metric.⁶³

4 112. CARB also calculated that the cumulative annual emissions projected to occur
5 under the “Known Commitments Scenario” from 2021-2030 would be 3,586 MMTCO_{2e} and
6 subtracted this amount from the cumulative emissions generated by the straight line trajectory
7 (3,362 MMTCO_{2e}). The difference is 224 MMTCO_{2e}, which is incorrectly shown as 236
8 MMTCO_{2e} in Table 3 of the Scoping Plan and in the text following Table 3. CARB illegally
9 characterized the 224 MMTCO₂ difference as the “cumulative emissions reduction gap” in the
10 “Known Commitments Scenario” in the Scoping Plan and evaluated the need for additional
11 measures on the basis of “closing” this unlegislated and unlawful “cumulative gap”.

Year	“Known Commitments Scenario” Annual Emissions (MMTCO _{2e})
2020	405.5
2021	396.8
2022	387.1
2023	377.6
2024	367.4
2025	362.7
2026	354.4
2027	347.1
2028	340.4
2029	331.8
2030	320.4
2021-2030 Cumulative Annual Emissions	3,586
Difference from Straight Line Cumulative Emissions Total	224

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⁶³ The analysis discussion references Scoping Plan Appendix E for more details.

1 113. The California legislature in no way authorized CARB to invent a “cumulative
2 gap” methodology based on an unreasonable and arbitrary straight line trajectory from 2020 to
3 the 2030 Target, which counted each year’s shortfall against the 2030 Target and then added all
4 such shortfalls to inflate reduction needed from the 129 and 60 MMTCO_{2e} (depending on
5 scenario) required by the 2030 Target to the 621 and 224 MMTCO_{2e} “cumulative gap”
6 requirements.

7 114. SB 32 does not regulate cumulative emissions and only requires that the 2030
8 Target of 260 MMTCO_{2e} be achieved by 2030. CARB’s own analysis shows that existing legal
9 requirements will reduce emissions to 320 MMTCO_{2e} in 2030. At most, CARB was authorized to
10 identify measures in the Scoping Plan that would further reduce emissions by 60 MMTCO_{2e} in
11 2030 under the “Known Commitments Scenario”. CARB instead illegally created new, and much
12 larger “cumulative gap” reduction requirements of 224 MMTCO_{2e} and 621 MMTCO_{2e}.

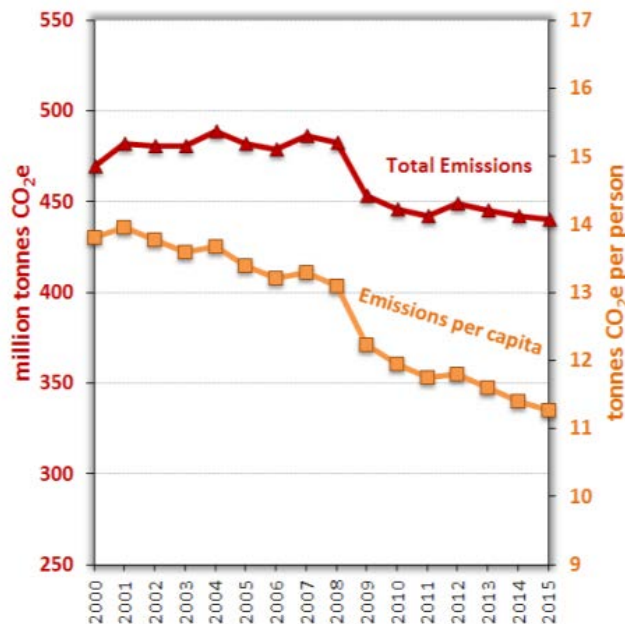
13 115. CARB arbitrarily determined that the straight line trajectory to the 2030 Target
14 was the only way to reach the mandate of 260 MMTCO_{2e} by 2030 when there are numerous
15 potential paths that California’s GHG emission reductions could take between 2021 and 2030.

16 116. For example, as shown in Figure 1 below, in reaching the 2020 Target,
17 California’s GHG emissions reductions have not followed a straight line trajectory, but have gone
18 up and down based on the economy and other factors.⁶⁴

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28 ⁶⁴ Figure 1 is from the California Air Resources Board’s 2017 Edition of California’s GHG
Emission Inventory (June 6, 2017), p. 2,
https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2015/ghg_inventory_trends_00-15.pdf.

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Figure 1. California Total and Per Capita GHG Emissions



117. CARB’s arbitrary and capricious requirement that reductions must meet a cumulative GHG reduction total, rather than take any path feasible that gets the state to the 2030 Target is unlawful.

118. Both AB 32 (and earlier Scoping Plans) and SB 32 contemplated a “step down” of GHG emissions to the quantity established for the target year, with the “step down” increments occurring as new technologies, regulations, and other measures took effect. This step down approach has been part of air pollution control law for decades.

119. Under the federal Clean Air Act (“CAA”), the EPA sets National Ambient Air Quality Standards (“NAAQS”) that set air quality levels in certain years for specific pollutants (e.g., the 2015 NAAQS for ozone is 70 ppb and it must be achieved as expeditiously as possible). States then create and adopt State Implementation Plans (“SIPs”) which include control measures to indicate how the state will meet the NAAQS standard. The reductions that the SIPs must achieve via their control measures to reach the NAAQS are always interpreted as being applicable to the target year, *i.e.*, how much reduction will need to occur in one year to reduce emissions from business as usual to the NAAQS level? The SIPs do not plan for emission reduction measures that must reduce emissions cumulatively over time (from the time of adoption of the

1 2015 ozone NAAQS until the year it is reached), such that not meeting the NAAQS in earlier
2 years means that those excess emissions must be added to future years to create the required
3 emissions reductions to balloon over time as the NAAQS goes unmet.

4 120. In addition, criteria air pollutants regulated by EPA, CARB, and California’s local
5 air districts are always regulated under a cost/ton disclosure metric in which the expected cost to
6 reduce emissions must be not only explained in rulemaking documents, but taken into
7 consideration in deciding whether to adopt any rule controlling emissions. This system has
8 worked to reduce tailpipe emissions of criteria pollutants from passenger cars by 99% over time.

9 121. Given this clear and consistent pattern of EPA and CARB interpretation of the
10 legal status of air quality levels to be achieved by a certain time, it was arbitrary and capricious
11 for CARB to create this “deficit accounting” metric in the cumulative gap analysis rather than
12 merely creating measures which would meet the 2030 Target by 2030.

13 122. CARB also used the unlawful “cumulative gap” reduction metric to identify the
14 nature and extent of Scoping Plan reduction measures, including the GHG Housing Measures,
15 address uncertainties in achieving these reductions, and to complete the legally mandated FA and
16 EA for the 2017 Scoping Plan.

17 123. CARB’s unilateral creation and use of the “cumulative gap” reduction
18 requirement instead of the statutory SB 32 2030 Target is unlawful, and imposes new cost
19 burdens, including on housing, that will further exacerbate the housing-induced poverty crisis.

20 **D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan**
21 **Authorizes**

22 **1. Unlawful VMT Reduction Requirement**

23 124. Among the new regulations and standards added to CARB’s 2017 Scoping Plan—
24 which were not in any of its earlier scoping plans—is a requirement to reduce VMT. This
25 requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the “Mobile Source
26 Strategy.”⁶⁵

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28 ⁶⁵ See Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy
(Cleaner Technology and Fuels [CTF] Scenario)).

1 125. The “Mobile Source Strategy” includes a requirement to reduce VMT. This
2 allegedly would be achieved by continued implementation of SB 375, regional Sustainable
3 Communities Strategies, statewide implementation of SB 743, and potential additional VMT
4 reduction strategies included in Appendix C (“Potential VMT Reduction Strategies for
5 Discussion”). Scoping Plan, p. 25.

6 126. The 2017 Scoping Plan states that “VMT reductions will be needed to achieve the
7 2030 target” and to meet the 2050 GHG emission reduction goal set in Executive Order S-3-05.
8 Scoping Plan, p. 75.

9 127. CARB states that VMT reductions of 7 percent below projected VMT are
10 necessary by 2030 and 15 percent below projected VMT by 2050. Scoping Plan, p. 101.

11 128. The “Mobile Source Strategy” measure requires a 15 percent reduction in total
12 light-duty VMT from the business as usual scenario by 2050. Scoping Plan, p. 78. It also requires
13 CARB to work with regions to update SB 375 targets to reduce VMT to reach the 2050 goal and
14 to implement VMT as the CEQA metric for assessing transportation impacts. *Id.*

15 129. The “Mobile Source Strategy” as a whole is estimated to result in cumulative GHG
16 emission reductions of 64 MMTCO_{2e} per year. Scoping Plan, p. 28.

17 130. These VMT reduction requirements are included in the 2017 Scoping Plan without
18 appropriate recognition of the counterproductive effects of such a fixation on reducing VMT in
19 the context of affordable housing proximate to job centers.

20 131. The 2017 Scoping Plan notes that promoting stronger boundaries to suburban
21 growth, such as urban growth boundaries, will reduce VMT. Scoping Plan, p. 78. This also raises
22 housing prices within the urban growth boundary and pushes low-income Californians, including
23 minorities, to unacceptable housing locations with long drive times to job centers.

24 132. Other VMT reduction measures in the 2017 Scoping Plan, such as road user and/or
25 VMT-based pricing mechanisms, congestion pricing, and parking pricing, further disadvantage
26 low-income and minority residents who must drive farther through more congested roads.

27 133. The VMT reductions called for in Chapters 2 and 5 of the Scoping Plan make no
28 distinction for miles driven by electric vehicles with zero GHG emissions or for miles driven by

1 hybrid vehicles when using only electric power. Instead, they would advance a suite of new
2 burdens, including charging individual drivers for each vehicle mile travelled, and intentionally
3 increasing overall roadway congestion to induce more workers to use public transit.

4 134. CARB's new VMT requirements, which purport to encourage public transit,
5 essentially ignore the fact that far fewer than 10% of Californians can get from their home to their
6 jobs in less than one hour on public transit, and that public transit ridership has fallen nationally
7 and in California.⁶⁶ CARB's new VMT requirements fail to rationally address the reality that
8 VMT continues to increase rather than decrease in California due to increasing population and
9 employment levels.⁶⁷

10 135. CARB's answer to reducing VMT by increasing bicycling, walking, and transit
11 use is a laughable solution for low-income Californians, such as those living in the San Joaquin
12 Valley and commuting to jobs in the San Francisco Bay Area.⁶⁸

13 136. The burden of CARB's VMT reduction measures falls disproportionately on
14 minority workers already forced by the housing crisis to endure long and even "mega" commutes
15 lasting more than three hours per day.⁶⁹ The vast majority of middle and lower-income jobs
16 (disproportionately performed by minority workers) require those workers to be physically
17 present at their job sites to be paid. Affected job categories include teachers, nurses, emergency
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19 ⁶⁶ Laura J. Nelson, *L.A. Bus Ridership Continues to Fall: Officials Now Looking to Overhaul the*
20 *System*, L.A. Times (May 23, 2017) <http://www.latimes.com/local/lanow/la-me-ln-bus-ridership-study-20170518-story.html>; Center for Transportation Studies, Access Across America, University of Minnesota (2017) <http://www.cts.umn.edu/research/featured/access>.

21 ⁶⁷ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
22 Greenhouse Gas Emission Reduction Targets, Feb. 2018,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf, p. 19.

23 ⁶⁸ Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7*
24 *A.M.*, N.Y. Times (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html>.

25 ⁶⁹ 2007 and 2016 American Community Survey 1-Year Estimates, Table B08303 series (Travel
26 Time To Work, Workers 16 years and over who did not work at home),
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (showing increase
27 in commute time from 2007 to 2016 in California and Bay Area); 2007 and 2016 American
28 Community Survey 1-Year Estimates, Table S802 series (Means of transportation to work by
selected characteristics),
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (showing more
Latino and noncitizen workers commuting to work by driving alone).

1 responders, courtroom and municipal service workers, construction workers, day care and home
2 health care workers, retail clerks, and food service workers.⁷⁰

3 137. In addition to being ill-conceived, CARB’s new VMT measures are not statutorily
4 authorized. The Legislature has repeatedly rejected proposed legislation to mandate that
5 Californians reduce their use of cars and light duty trucks (e.g., personal pickup trucks), including
6 most recently in 2017 (Senate Bill 150, Allen).

7 138. Only a different agency, the Office of Planning and Research (“OPR”), has
8 legislative authority to regulate VMT. It has not done so. In Senate Bill 743 (2013), the
9 Legislature authorized OPR to consider adopting VMT as a new threshold for assessing the
10 significance of transportation impacts under CEQA, but only after OPR completed a rulemaking
11 process and amended the regulatory requirements implementing CEQA, *i.e.*, the CEQA
12 Guidelines (14 C.C.R. § 15000 *et seq.*) (“CEQA Guidelines”). OPR has commenced but not
13 completed the process for amending the CEQA Guidelines as authorized by SB 743.

14 139. Instead of regulating VMT, CARB’s role under SB 375 is to encourage higher
15 density housing and public transit and thereby reduce GHGs. In this context, CARB has included
16 VMT reduction metrics for helping achieve GHG reduction goals in current SB 375 targets.

17 140. In the past, when CARB proposed to establish standalone VMT reduction targets
18 (independent of GHG emission reduction targets) it has been swamped with objections and
19 concerns, including challenges to its legal authority to attempt to impose fees and restrictions on
20 driving as a standalone mandate independent of regional GHG reduction targets.

21 141. Until its adoption of the 2017 Scoping Plan, CARB had rightly stopped short of
22 purporting to set out standalone VMT reduction targets and methods. At the same meeting that
23 CARB approved the 2017 Scoping Plan, CARB agreed to indefinitely postpone establishing
24 regional VMT reduction targets for a variety of reasons (including but not limited to the fact that
25 notwithstanding current efforts, VMT is actually increasing).

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27 ⁷⁰ Adam Nagourney and Conor Dougherty, *The Cost of a Hot Economy in California: A Severe*
28 *Housing Crisis*, N.Y. Times (July 17, 2017), <https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html>.

1 142. Immediately following its determination to indefinitely postpone its proposal to
2 adopt standalone VMT reduction targets, CARB nevertheless voted to approve the 2017 Scoping
3 Plan’s VMT reduction mandate, which includes in pertinent part a GHG measure requiring
4 additional VMT reductions beyond the reductions achieved via SB 743 and SB 375. See Scoping
5 Plan p. 25, Table 1, p. 101.

6 143. The inherent contradiction between the morning CARB agenda discussion
7 indefinitely postponing establishing SB 375 VMT reduction targets, and CARB’s afternoon
8 agenda item approving the 2017 Scoping Plan, going above and beyond the VMT reductions
9 CARB elected not to set a few hours earlier, caused widespread confusion. Even the CARB
10 Board chair reported that she was “confused” – but CARB’s unlawful action to mandate reduced
11 driving by individual Californians was nevertheless unanimously approved in the 2017 Scoping
12 Plan that CARB has now adopted.

13 144. In order to achieve these newly-mandated reductions in VMT, CARB intends to
14 intentionally increase congestion to induce transit use. OPR’s proposal for updating the CEQA
15 Guidelines to include VMT as a metric for analyzing transportation impacts states that adding
16 new roadway capacity increases VMT.⁷¹ The OPR proposal further states that “[r]educing
17 roadway capacity (i.e. a “road diet”) will generally reduce VMT and therefore is presumed to
18 cause a less than significant impact on transportation. Building new roadways, adding roadway
19 capacity in congested areas, or adding roadway capacity to areas where congestion is expected in
20 the future, typically induces additional vehicle travel.” *Id.* at p. III:32.

21 145. Attempting to reduce VMT by purposefully increasing congestion by reducing
22 roadway capacity will not lead to GHG emission reductions. Instead, increasing congestion will
23 cause greater GHG emissions due to idling, not to mention increased criteria air pollutant⁷² and
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26 ⁷¹ OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts
27 in CEQA (Jan. 20, 2016), p. I:4,
28 http://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

⁷² The six criteria air pollutants designated by the Environmental Protection Agency (“EPA”) are
particulate matter (“PM”), ozone, nitrogen dioxide (“NO₂” or “NO_x”), carbon monoxide (“CO”),
sulfur dioxide (“SO₂”), and lead.

1 toxic air contaminant⁷³ emissions. CARB has no authority to impose a VMT limit and any VMT
2 limit imposed by an agency must be approved in a formal rulemaking process.

3 146. As implemented, CARB's VMT reduction measure will not achieve the GHG
4 reductions ascribed to it in the 2017 Scoping Plan and has no rational basis. In fact, it will
5 increase air quality and climate related environmental impacts, something not analyzed in the EA
6 for the 2017 Scoping Plan.

7 147. In addition, CARB has recently undergone an update of regional GHG emission
8 reduction targets under SB 375 in which CARB stated that: "In terms of tons, CARB staff's
9 proposed [SB 375] targets would result in an estimated additional reduction of approximately 8
10 million metric tons of CO₂ per year in 2035 compared to the existing targets. The estimated
11 remaining GHG emissions reductions needed would be approximately 10 million metric tons
12 CO₂ per year in 2035 based on the Scoping Plan Update scenario. These remaining GHG
13 emissions reductions are attributed to new State-initiated VMT reduction strategies described in
14 the Scoping Plan Update."⁷⁴

15 148. Thus, CARB's only stated support for needing the VMT reduction mandates in the
16 2017 Scoping Plan is to close a gap to the Scoping Plan Update Scenario that the SB 375 targets
17 will not meet. However, all of the allegedly "necessary" reductions in the Scoping Plan Update
18 Scenario are based on CARB's unlawful "cumulative gap" reduction requirement, which, as
19 described above, improperly ballooned the GHG reductions required from 60 to 224 MMTCO_{2e}
20 based on the "Known Commitments Scenario" and from 129 to 621 MMTCO_{2e} based on the
21 "Reference Case Scenario."

22 149. Because of CARB's unlawful "cumulative gap" calculation, CARB now argues
23 that the VMT reduction mandates are necessary, but the only reason they are necessary is to meet
24 the unlawful "cumulative gap" reduction requirements.

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26 ⁷³ Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform,
vinyl chloride, formaldehyde, and numerous other chemicals.

27 ⁷⁴ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 35,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

1 150. There is also no evidence that CARB’s estimated 10 MMTCO₂e per year
2 reductions based on the VMT reduction mandate is in any way achievable. The Right Type, Right
3 Place report⁷⁵ estimates only 1.79 MMTCO₂e per year will be reduced from both lower VMT and
4 smaller unit size houses using less energy and thus creating lower operational emissions.

5 151. The Staff Report for SB 375 acknowledges that VMT has increased, that the
6 results of new technologies are at best mixed in early reports as to VMT reductions, and that the
7 correlation between VMT and GHG is declining.⁷⁶ There is no evidence that the 10 MMTCO₂e
8 per year reductions based on the VMT reduction mandate in the 2017 Scoping Plan is in any way
9 something other than a number created solely based on the fundamental miscalculation about the
10 2030 target demonstrated by the “cumulative gap” methodology in the 2017 Scoping Plan.

11 **2. Unlawful CEQA Net Zero GHG Threshold**

12 152. The 2017 Scoping Plan also sets a net zero GHG threshold for all projects subject
13 to CEQA review, asserting that “[a]chieving no net additional increase in GHG emissions,
14 resulting in no contribution to GHG impacts, is an appropriate overall objective for new
15 development”. Scoping Plan, p. 101-102.

16 153. The Scoping Plan directs that this new CEQA “zero molecule” GHG threshold be
17 presumptively imposed by all public agencies when making all new discretionary decisions to
18 approve or fund projects in all of California, where under CEQA “project” is an exceptionally
19 broad legal term encompassing everything from transit projects to recycled water plants, from the
20 renovation of school playgrounds to building six units of affordable housing, from the adoption of
21 General Plans applicable to entire cities and counties to the adoption of a single rule or regulation.

22 154. This is an unauthorized, unworkable and counterproductive standard as applied to
23 new housing projects. CEQA applies to the “whole of a project”, which includes construction
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25 ⁷⁵ Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic
26 Impacts of Infill Residential Development through 2030, U.C. Berkeley Turner Center for
Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017),
<https://turnercenter.berkeley.edu/right-type-right-place>.

27 ⁷⁶ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 19,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

1 activities, operation of new buildings, offsite electricity generation, waste management,
2 transportation fuel use, and a myriad of other activities. Meeting a net zero threshold for these
3 activities is not possible. While there have been examples of “net zero” buildings—which are
4 more expensive than other housing⁷⁷—none of these examples included the other components of
5 a “project” as required by CEQA.

6 155. The Scoping Plan’s “net zero” CEQA provisions also would raise housing and
7 homeowner transportation costs and further delay completion of critically needed housing by
8 increasing CEQA litigation risks—thereby exacerbating California’s acute housing and poverty
9 crisis.⁷⁸

10 156. Despite CARB’s claim that this “net zero” threshold is “guidance”, CARB’s status
11 as the expert state agency on GHG emissions means that all lead agencies or project proponents
12 will have to accept this standard in CEQA review unless they can prove by substantial evidence
13 that a project cannot meet the standard.

14 157. The threshold has immediate evidentiary weight as the expert conclusion of the
15 state’s expert GHG agency. An agency’s failure to use the 2017 Scoping Plan’s CEQA threshold
16 has already been cited as legal error in the comment letter preceding the expected lawsuit against
17 the Northlake housing project in Los Angeles.⁷⁹

18 158. A “net zero” GHG threshold is inconsistent with current California precedent
19 affirming that compliance with law is generally an acceptable CEQA standard. See, e.g., *Center*
20 *for Biological Diversity v. Dept. of Fish and Wildlife* (2016) 62 Cal.4th 204, 229 (“*Newhall*”) (a
21 lead agency can assess consistency with AB 32 goal by looking to compliance with regulatory
22 programs). This includes, but is not limited to, using compliance with the cap-and-trade program
23 as appropriate CEQA mitigation for GHG and transportation impacts.

24 _____
25 ⁷⁷ LAO, *Evaluating California’s Pursuit of Zero Net Energy State Buildings* (Nov. 14, 2017),
<http://www.lao.ca.gov/Publications/Report/3711>.

26 ⁷⁸ Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S.*
27 *Economy*, N.Y. Times (Sept. 6, 2017), <https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html>.

28 ⁷⁹ Center for Biological Diversity, *Letter to Los Angeles County* (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

1 159. The Scoping Plan’s expansive new “net zero” GHG CEQA threshold is directly at
2 odds with, and is dramatically more stringent than, the existing CEQA regulatory threshold for
3 GHG emissions. This existing threshold was adopted by OPR pursuant to specific authorization
4 and direction from the Legislature in SB 97. In the SB 97 rulemaking context, OPR, in its
5 Statement of Reasons, expressly rejected a “zero molecule” or “no net increase” GHG threshold
6 (now adopted by CARB without Legislative authority) as being inconsistent with, and not
7 supported by, CEQA’s statutory provisions or applicable judicial precedent. OPR stated that
8 “[n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of
9 significance. As case law makes clear, there is no “one molecule rule” in CEQA.”⁸⁰

10 160. In January of 2017, OPR commenced a formal rulemaking process for what it
11 describes as a “comprehensive” set of regulatory amendments to the CEQA Guidelines. After
12 adoption of the 2017 Scoping Plan, OPR has not proposed to change the existing GHG thresholds
13 in the Guidelines to conform with CARB’s unauthorized new “net zero” GHG threshold. Instead,
14 OPR has expressly criticized reliance on a numerical project-specific assessment of GHGs.

15 161. In short, CARB’s “net zero” GHG threshold is inconsistent with OPR’s legal
16 conclusion that CEQA cannot be interpreted to impose a “net zero” standard.⁸¹

17 162. In addition to being Legislatively unauthorized and unlawful, the “net zero” GHG
18 threshold would operate unconstitutionally so as to disproportionately disadvantage low income
19 minorities in need of affordable housing relative to wealthier, whiter homeowners who currently
20 occupy the limited existing housing stock.⁸² This disadvantage arises because of the use of CEQA

21
22 ⁸⁰ OPR, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA
23 Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97
(Dec. 2009), p. 25, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

24 ⁸¹ See OPR, Proposed Updates to the CEQA Guidelines (Nov. 2017), p. 81-85,
http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

25 ⁸² See Richard Rothstein, *Color of Law: A Forgotten History of How Our Government*
26 *Segregated America* (2017) for a historical review of how zoning and land use laws were
27 designed to promote discrimination against African Americans and other communities of color,
28 patterns that, in many instances, have been maintained to this day; see also Housing Development
Toolkit, The White House (Sept. 2016),
[https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%
20f.2.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf).

1 litigation by current homeowners to block new housing for others, including especially low
2 income housing for minorities.⁸³

3 163. Under CEQA, once an impact is considered “significant”, it must be “mitigated”
4 by avoidance or reduction measures “to the extent feasible.” Pub. Res. Code §§ 21002, 21002.1;
5 14 C.C.R. § 15020(a)(2). By imposing a presumptive “net zero” GHG threshold on all new
6 projects pursuant to CEQA, CARB has instantly and unilaterally increased the GHG CEQA
7 mitigation mandate to “net zero” unless a later agency applying CEQA can affirmatively
8 demonstrate, through “substantial evidence”, that this threshold is not “feasible” as that term is
9 defined in the CEQA Guidelines.

10 164. Under CEQA, any party—even an anonymous litigant—can file a CEQA lawsuit
11 challenging the sufficiency of a project’s analysis and mitigation for scores of “impacts,”
12 including GHG emissions. *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011)
13 52 Cal.4th 155.

14 165. Anonymous use of CEQA lawsuits, as well as reliance on CEQA lawsuits to
15 advance economic objectives such as fast cash settlements, union wage agreements, and
16 competitive advantage, has been repeatedly documented—but Governor Brown has been unable
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23 ⁸³ See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
24 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
25 [https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf)
26 [df](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf); see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
27 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
28 [https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)
[ceqa-august-2015/](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/).

1 to secure the Legislature’s support for CEQA because, as he explains, unions use CEQA to
2 leverage labor agreements.⁸⁴

3 166. Using CEQA to advance economic rather than environmental objectives, and
4 allowing anonymous lawsuits to mask more nefarious motives including racism and extortion, has
5 established CEQA litigation (and litigation threats) as among the top reasons why adequate
6 housing supplies have not been built near coastal jobs centers.⁸⁵

7 167. The “net zero” threshold, as applied to new housing projects in California, adds
8 significantly to the risk and CEQA litigation outcome uncertainty faced by persons who wish to
9 build such housing.⁸⁶ Not even the California Supreme Court, in *Newhall, supra*, 62 Cal.4th 204,
10 could decide how CEQA should apply to a global condition like climate change in the context of
11 considering the GHG impacts of any particular project. Instead, the Supreme Court identified four
12 “potential pathways” for CEQA compliance. Notably, none of these was the “net zero” threshold
13 adopted by CARB in its 2017 Scoping Plan.

14 168. The California Supreme Court has declined to mandate, under CEQA, a non-
15 statutory GHG threshold. Instead, the California Supreme Court has recognized that this area
16 remains in the province of the Legislature, which has acted through directives such as SB 375.
17 *Cleveland National Forest Foundation v. San Diego Assn. of Gov’ts* (2017) 3 Cal.5th 497
18 (“*SANDAG*”).

19 169. As explained in The Two Hundred’s comment letter, and referenced academic and
20 other studies in that letter, the top litigation targets of CEQA lawsuits statewide are projects that

21
22 ⁸⁴ See Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
23 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
24 <https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf>, p. 10-12 (stating Governor Brown’s 2016 conclusion that CEQA litigation reform was
25 politically impossible because labor unions use litigation threats to “hammer” project sponsors
26 into agreeing to enter into union labor agreements, and Building Trades Council lobbyist Caesar
27 Diaz testimony in “strong opposition” to legislative proposal to require disclosure of the identity
28 and interests of those filing CEQA lawsuits at the time CEQA lawsuits are filed, rather than at the
end of the litigation process when seeking attorneys’ fees, wherein Mr. Diaz concluded that
requiring such disclosure would “dismantle” CEQA).

⁸⁵ Legislative Analyst’s Office, California’s High Housing Costs: Causes and Consequences, May
17, 2015, <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

⁸⁶ See *Id.*

1 include housing.⁸⁷ Over a three year period in the SCAG region, nearly 14,000 housing units were
2 challenged in CEQA lawsuits, even though 98% of these units were located in already developed
3 existing communities and 70% were located within a short distance of frequent transit and other
4 existing infrastructure and public services. This and a referenced prior study also showed that the
5 vast majority of CEQA lawsuits filed statewide are against projects providing housing,
6 infrastructure and other public services and employment uses within existing communities.⁸⁸

7 170. Thus, the same minority families victimized by the housing-induced poverty crisis,
8 and forced to drive ever longer distances to qualify for housing they can afford to rent or buy are
9 disproportionately affected by CEQA lawsuits attacking housing projects that are proximate to
10 jobs.

11 171. Expanding CEQA to require only future occupants of acutely needed housing units
12 to double- and triple-pay to get to and from work with a CEQA mitigation obligation to purchase
13 GHG offsets to satisfy a “net zero” threshold unlawfully and unfairly discriminates against new
14 occupants in violation of equal protection and due process.

15 172. Finally, CARB’s “net zero” threshold fails to address the likelihood that it will
16 actually be counterproductive because of “leakage” of California residents driven out to other
17 states because of unaffordable housing prices.⁸⁹ Including this measure in the 2017 Scoping Plan
18 bypasses statutory requirements to discourage and minimize “leakage”—movement of
19

20 ⁸⁷ See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
21 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
22 [https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf)
23 [df](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf); see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
24 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
25 [https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf)
26 [uits.pdf](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/); Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
27 Environment: Litigation Abuse Under CEQA (August 2015),
28 [https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)
[ceqa-august-2015/](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)

⁸⁸ *Ibid.*

⁸⁹ California experienced a net loss of 556,710 former residents to other states during 2010 to
2017. U.S. Census Bureau, Table 4. Cumulative Estimates of the Components of Resident
Population Change for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July
1, 2017 (NST-EST2017-04) (Dec. 2017),
<https://www.census.gov/data/datasets/2017/demo/popest/nation-total.html>.

1 economically productive activities to other states or countries that have much higher GHG
2 emissions on a per capita basis than California. Imposing “net zero” standards that end up
3 shutting down or blocking economic activities in California results in a global increase in GHGs
4 when those activities move to other states or countries with higher per capita GHG emissions.⁹⁰

5 173. It is noteworthy that the GWSA and SB 32 “count” only GHG emissions produced
6 within the state, and from the generation of out-of-state electricity consumed in the state. When a
7 family moves from California to states such as Texas (nearly three times higher per capita GHG
8 emissions) or Nevada (more than double California’s per capita GHG emissions), *global* GHG
9 emissions increase even though California’s GHG emissions decrease.

10 174. The housing crisis has resulted in a significant emigration of families that cannot
11 afford California housing prices, and this emigration increases global GHG emissions—precisely
12 the type of “cumulative” contribution to GHGs that OPR explains should be evaluated under
13 CEQA, rather than CARB’s net zero GHG threshold which numerically-focuses on project-level
14 GHG emissions and mitigation.⁹¹

15 175. The Scoping Plan’s CEQA threshold is appropriately justiciable, and should be
16 vacated for the reasons set forth herein.

17 3. Unlawful Per Capita GHG Targets for Local Climate Action Plans

18 176. California’s per capita GHG emissions are already far lower than all but two
19 states. The only state with low per capita GHG emissions that is comparable to California is New
20 York, which has a lower per capita GHG emission level but also six nuclear power plants

21 ⁹⁰ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move*
22 *In*, The Sacramento Bee (Mar. 5, 2017),
23 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
24 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>;
U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

25 ⁹¹ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move*
26 *In*, The Sacramento Bee (Mar. 5, 2017),
27 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
28 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>;
U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 (compared to California’s one) as well as more reliable hydropower from large dams that are less
2 affected by the cyclical drought cycles affecting West Coast rivers.⁹²

3 177. California’s current very low per capita GHG emissions are approximately 11
4 MMTCO_{2e}.

5 178. The existing CEQA Guidelines include a provision that allows projects that
6 comply with locally-adopted “climate action plans” (“CAPs”) to conclude that project-related
7 GHG emissions are less than significant, and thus require no further mitigation that would add to
8 the cost of new housing projects.

9 179. In *Newhall, supra*, 62 Cal.4th at 230, the California Supreme Court endorsed
10 CAPs, and wrote that a project’s compliance with an approved CAP could be an appropriate
11 “pathway” for CEQA compliance. No local jurisdiction is required by law to adopt a CAP, but if
12 a CAP is adopted, then the Supreme Court has held that it must have enforceable measures to
13 actually achieve the CAP’s GHG reduction target. *SANDAG, supra*, 3 Cal.5th 497.

14 180. The CAP compliance pathway through CEQA was upheld in *Mission Bay Alliance*
15 *v. Office of Community Invest. & Infrastructure* (2016) 6 Cal.App.5th 160. This compliance
16 pathway provides a more streamlined, predictable, and generally cost-effective pathway for
17 housing and other projects covered by the local CAP.

18 181. In stark contrast, CARB’s unlawful new per capita GHG requirements effectively
19 direct local governments—cities and counties—to adopt CAPs that reduce per capita GHG
20 emissions from eleven to six MMTCO_{2e} per capita by 2030, and to two MMTCO_{2e} per capita by
21 2050. This mandate is unlawful.

22 182. First, CARB has no statutory authority to impose any 2050 GHG reduction
23 measure in CAPs or otherwise since the Legislature has repeatedly declined to adopt a 2050 GHG
24 target (including by rejecting earlier versions of SB 32 that included such a 2050 target), and the
25 California Supreme Court has declined to interpret CEQA to mandate a 2050 target based on an
26 Executive Order. *SANDAG, supra*, 3 Cal.5th at 509; *Newhall, supra*, 62 Cal.4th at 223.

27 _____
28 ⁹² U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 183. Second, the Scoping Plan attributes the vast majority of state GHG emissions to
2 transportation, energy, and stationary source sectors over which local governments have little or
3 no legal jurisdiction or control. A local government cannot prohibit the sale or use of gasoline or
4 diesel-powered private vehicles, for example—nor can a local government regulate and redesign
5 the state’s power grid, or invent and mandate battery storage technology to capture intermittent
6 electricity produced from solar and wind farms for use during evening hours and cloudy days.

7 184. The limited types of GHG measures that local governments can mandate (such as
8 installation of rooftop solar, water conservation, and public transit investments) have very
9 small—or no—measurable quantitative effect on GHG emission reductions. The 2017 Scoping
10 Plan Appendix recommending local government action does not identify any measure that would
11 contribute more than a tiny fraction toward reducing a community’s per capita GHG emissions to
12 six metric tons or two metric tons, respectively.

13 185. Additionally, under state law, local governments’ authority to require more
14 aggressive GHG reductions in buildings is subject to a cost-effectiveness test decided by the
15 California Building Standards Commission (“CBSC”)—the same CBSC that has already
16 determined that “net zero”, even for single family homes and even for just the electricity used in
17 such homes, is *not* yet feasible or cost-effective to impose.⁹³

18 186. Third, it is important to consider the per capita metrics that the 2017 Scoping Plan
19 wants local governments to achieve in their localized climate action plans in a real world context.
20 Since most of the world’s energy is still produced from fossil fuels, energy consumption is still
21 highly correlated to economic productivity and per capita incomes and other wealth-related
22 metrics such as educational attainment and public health.⁹⁴ The suggested very low per capita
23

24 ⁹³ California Energy Commission, 2019 Building Energy Efficiency Standards PreRulemaking
25 Presentation - Proposed 2019 Building Energy Efficiency Standards ZNE Strategy (Aug. 24,
2017), [http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-
01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf).

26 ⁹⁴ See Mengpin Ge, Johannes Friedrich, and Thomas Damassa, 6 Graphs Explain the World’s
27 Top 10 Emitters, World Resources Institute (Nov. 25, 2014), [https://wri.org/blog/2014/11/6-
graphs-explain-world%E2%80%99s-top-10-emitters](https://wri.org/blog/2014/11/6-graphs-explain-world%E2%80%99s-top-10-emitters) (see tables entitled “Per Capita Emissions
28 for Top 10 Emitters” and “Emissions Intensity of Top 10 Emitters” showing that emissions are
generally linked to GDP).

1 metrics in the 2017 Scoping Plan are currently only achieved by countries with struggling
2 economies, minimal manufacturing and other higher wage middle income jobs, and extremely
3 high global poverty rates.

4 187. Growing economies such as China and India bargained for, and received,
5 permission to substantially increase their GHG emissions under the Paris Accord precisely
6 because economic prosperity remains linked to energy use.⁹⁵ This is not news: even in the 1940's,
7 the then-Sierra Club President confirmed that inexpensive energy was critical to economic
8 prosperity AND environmental protection.

9 188. Nor has CARB provided the required economic or environmental analysis that
10 would be required to try to justify its irrational and impractical new per capita GHG target
11 requirements. As with CARB's project-level "net zero" CEQA threshold, the per capita CEQA
12 expansion for CAPs does not quantify the GHG emission reductions to be achieved by this
13 measure.

14 189. Finally, these targets effectively create CEQA thresholds as compliance with a
15 CAP is recognized by the California Supreme Court as a presumptively valid CEQA compliance
16 pathway. *Newhall, supra*, 62 Cal.4th at 230 (stating that local governments can use climate action
17 plans as a basis to tier or streamline project-level CEQA analysis). The targets clearly establish
18 CARB's position on what would (or would not) be consistent with the 2017 Scoping Plan and the
19 State's long-term goals. Courts have stated that GHG determinations under CEQA must be
20 consistent with the statewide CARB Scoping Plan goals, and that CEQA documents taking a
21 goal-consistency approach to significance need to consider a project's effects on meeting the
22 State's longer term post-2020 goals. Thus, these per capita targets are essentially self-
23 implementing CEQA requirements that lead and responsible agencies will be required to use.

24 190. The CAP measure thus effectively eliminates the one predictable CEQA GHG
25 compliance pathway that has been upheld by the courts, compliance with an adopted CAP. The
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27 ⁹⁵ Marianne Lavelle, *China, India to Reach Climate Goals Years Early, as U.S. Likely to Fall Far*
28 *Short*, Inside Climate News (May 16, 2017), <https://insideclimatenews.org/news/15052017/china-india-paris-climate-goals-emissions-coal-renewable-energy>.

1 pathway that CARB’s per capita GHG targets would unlawfully displace is fully consistent with
2 the existing CEQA Guidelines adopted pursuant to full rulemaking procedures based on express
3 Legislative direction.

4 191. In short, the 2017 Scoping Plan directs local governments to adopt CAPs—which
5 the Supreme Court has explained must then be enforced—with per capita numeric GHG reduction
6 mandates in sectors that local governments have no legal or practical capacity to meet, without
7 any regard for the consequential losses to middle income jobs in manufacturing and other
8 business enterprises, or to the loss of tax revenues and services from such lost jobs and
9 businesses,⁹⁶ or to the highly disparate impact that such anti-jobs measures would have on
10 minority populations already struggling to get out of poverty and afford housing.

11 192. While the 2017 Scoping Plan acknowledges that some local governments may
12 have difficulty achieving the per capita targets if their communities have inherently higher GHG
13 economic activities, such as agriculture or manufacturing, such communities are required to
14 explain why they cannot meet the numeric targets—and withstand potential CEQA lawsuit
15 challenges from anyone who can file a CEQA lawsuit.

16 193. As with CARB’s project-level “net zero” CEQA threshold, CARB’s new per
17 capita GHG targets are entirely infeasible, unlawful, and disparately affect those in most need of
18 homes they can afford with jobs that continue to exist in manufacturing, transportation, and other
19 sectors having GHG emissions that are outside the jurisdiction and control of local governments.

20
21 _____
22 ⁹⁶ Just four states—Ohio, Pennsylvania, Georgia and Indiana—collectively have a population and
23 economy comparable with California. With a combined gross product of \$2.25 trillion in 2016,
24 these four states would be the 8th largest economy in the world if considered a nation. Yet despite
25 achieving five times more GHG emission reductions than California since 2007, in 2016 these
26 four states had 560,000 fewer people in poverty and 871,000 more manufacturing jobs (including
27 200,000 new jobs from 2009 to 2017 compared with just 53,000 in California). U.S. Bureau of
28 Labor Statistics, Monthly Total Nonfarm Employment, Seasonally Adjusted, <https://www.bls.gov/data/>; U.S. Bureau of Economic Analysis, Table 3. Current-Dollar Gross Domestic Product (GDP) by State, 2016:Q1-2017:Q3, https://www.bea.gov/newsreleases/regional/gdp_state/qgdpstate_newsrelease.htm; Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261 (Sept. 21, 2017), <https://www.census.gov/library/publications/2017/demo/p60-261.html>; U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Table B15001, Sex by age by educational attainment for the population 18 years and over, <https://factfinder.census.gov/>.

1 They are also inconsistent with current standards and common sense and result in unjustifiable
2 disproportionate adverse impacts on California minorities, including Petitioners.

3 **4. Appendix C “Vibrant Communities” Policies Incorporating Unlawful**
4 **VMT, “Net Zero” and CO2 Per Capita Standards**

5 194. Chapter 5 of CARB’s 2017 Scoping Plan explains that notwithstanding the other
6 GHG Housing Measures (*e.g.*, the VMT reduction mandated in Chapter 2), California must do
7 “more” to achieve the 2030 Target. With this in mind, CARB purports to empower eight new
8 state agencies—including itself—with a new, non-legislated role in the plan and project approval
9 process for local cities and counties. This hodgepodge of unlegislated, and in many cases
10 Legislatively-rejected, new “climate” measures is included in what the Scoping Plan calls a
11 “Vibrant Communities” appendix.

12 195. Cities and counties have constitutional and statutory authority to plan and regulate
13 land use, and related community-scale health and welfare ordinances. Cities and counties are also
14 expressly required to plan for adequate housing supplies, and in response to the housing crisis and
15 resulting poverty and homeless crisis, in 2017 the Legislature enacted 15 new bills designed to
16 produce more housing of all types more quickly. These include: Senate Bills (“SB”) 2, SB 3, SB
17 35, SB 166, SB 167, SB 540, SB 897, and Assembly Bills (“AB”) 72, AB 73, AB 571, AB 678,
18 AB 1397, AB 1505, AB 1515, and AB 1521.

19 196. The Legislature has periodically, and expressly, imposed new statutory obligations
20 on how local agencies plan for and approve land use projects. For example, in recent years, the
21 Legislature required a greater level of certainty regarding the adequacy of water supplies as well
22 as expressly required new updates to General Plans, which serve as the “constitution” of local
23 land use authority, to expressly address environmental justice issues such as the extent to which
24 poor minority neighborhoods are exposed to disproportionately higher pollution than wealthier
25 and whiter neighborhoods.

26 197. Local government’s role in regulating land uses, starting with the Constitution and
27 then shaped by scores of statutes, is where the “rubber hits the road” on housing: without local
28

1 government approval of housing, along with the public services and infrastructure required to
2 support new residents and homes, new housing simply cannot get built.

3 198. The Legislature has repeatedly authorized and/or directed specific agencies to have
4 specific roles in land use decisionmaking.

5 199. The Legislature also is routinely asked to impose limits on local land use controls
6 that have been rejected during the legislative process, such as the VMT reduction mandates
7 described above. The Vibrant Communities Scoping Plan appendix is a litany of new policies,
8 many of which were previously considered and rejected by the Legislature, directing eight state
9 agencies to become enmeshed in directing the local land use decisions that under current law
10 remain within the control of cities and counties (and their voting residents) and not within any
11 role or authority delegated by the Legislature.

12 200. Just a few examples of Vibrant Community Scoping Plan measures adopted by
13 CARB that have been expressly considered and rejected by the Legislature or are not legal
14 include:

15 (A) **Establishing mandatory development area boundaries (urban growth**
16 **boundaries) around existing cities**, that cannot be changed even if approved by local voters as
17 well as the city and county, to encourage higher density development (*e.g.*, multi-story apartments
18 and condominiums) and to promote greater transit use and reduce VMT. An authoritative study
19 that CARB funded, as well as other peer reviewed academic studies, show that there is no
20 substantial VMT reduction from these high density urban housing patterns—although there is
21 ample confirmation of “gentrification” (displacement of lower income, disproportionately
22 minority) occupants from higher density transit neighborhoods to distant suburbs and exurbs
23 where workers are forced to drive greater distances to their jobs.⁹⁷ Mandatory urban growth
24 boundaries have been routinely rejected in the Legislature. See AB 721 (Matthews, 2003)

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27 ⁹⁷ UCLA Department of Urban and Regional Planning, *Oriented For Whom? The Impacts of*
28 *TOD on Six Los Angeles Neighborhoods* (June 2, 2015),
http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.

1 (proposing the addition of mandatory urban growth boundaries in the land use element of
2 municipalities' general plans).

3 (B) **Charging new fees for cities and counties to pay for “eco-system services”**
4 such as carbon sequestration from preserved vegetation on open space forests, deserts,
5 agricultural and rangelands. Taxes or fees could not be imposed on residents of Fresno or Los
6 Angeles to pay for preservation of forests in Mendocino or watersheds around Mount Lassen
7 unless authorized by votes of the people or the Legislature—*except* that payment of fees has
8 become a widespread “mitigation measure” for various “impacts” under CEQA. The 2017
9 Scoping Plan’s express approval of the “Vibrant Communities” Appendix creates a massive
10 CEQA mitigation measure work-around that can be imposed in tandem with agency approvals of
11 local land use plans and policies that entirely bypasses the normal constitutional and statutory
12 requirements applicable to new fees and taxes. Since CEQA applies only to new agency
13 approvals, this unlawful and unauthorized framework effectively guarantees that residents of
14 newly-approved homes will be required to shoulder the economic costs of the additional
15 “mitigation” measures. This idea of taxation has been rejected by voter initiatives such as
16 Proposition 13 (which limits ad valorem tax on real property to 1 percent and requires a 2/3 vote
17 in both houses to increase state tax rates or impose local special taxes) and Proposition 218
18 (requiring that all taxes and most charges on property owners are subject to voter approval).

19 (C) **Intentionally worsening roadway congestion**, even for voter-funded and CARB-
20 approved highway and roadway projects, to “induce” people to rely more on walking, biking, and
21 public transit, and reduce VMT. Efficient goods movement, and avoidance of congestion, on
22 California’s highways and roads is required under both federal and state transportation and air
23 quality laws. This component of “Vibrant Communities” is another example of a VMT reduction
24 mandate, but is even more flatly inconsistent with applicable laws and common sense. Voters
25 have routinely approved funding for new carpool lanes and other congestion relief projects. The
26 goods movement industry—which is linked to almost 40% of all economic activity in Southern
27 California and is critical to agricultural and other product-based business sectors throughout
28

1 California—cannot function under policies that intentionally increase congestion.⁹⁸ CARB has
2 itself approved hundreds of highway improvement projects pursuant to the Legislative mandates
3 in SB 375—yet the “Vibrant Communities” appendix unilaterally rejects this by telling
4 Californians not to expect any relief from gridlock, ever again. The Legislature and state agencies
5 have also consistently rejected VMT reduction mandates. See SB 150 (Allen, 2017) (initially
6 requiring regional transportation plans to meet VMT reductions but modified before passage); SB
7 375 (Steinberg, 2008) (early version stating bill would require regional transportation plan to
8 include preferred growth scenario designed to achieve reductions in VMT but modified before
9 passage).

10 (D) **Mileage-based road pricing strategies which charge a fee per miles driven.**

11 These types of “pay as you drive” fees are barred by current California law, which prohibits local
12 agencies from “imposing a tax, permit fee or other charge” in ways that would create congestion
13 pricing programs. Vehicle Code § 9400.8. Yet CARB attempts to override a Legislative mandate
14 via the 2017 Scoping Plan and its “Vibrant Communities” strategies.

15 201. Through the Vibrant Communities strategies, CARB attempts to give state
16 agencies expansive authority and involvement in city and county decisionmaking. The 2017
17 Scoping Plan asserts that the Vibrant Communities strategies will reduce GHG emissions by an
18 amount that is “necessary” to achieving California’s 2030 Target. However, no effort is made by
19 CARB to quantify the reductions it anticipates would result from injecting these agencies into
20 local decisionmaking processes. Instead, CARB merely states that the “Vibrant Communities”
21 appendix is a supposedly-necessary step to meet the 2030 Target.

22 202. The eight named state agencies CARB attempts to give unauthorized authority
23 over local actions are:⁹⁹

24 ⁹⁸ Edward Humes, *Four Easy Fixes for L.A. Traffic*, L.A. Times (Apr. 10, 2016),
25 [http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-](http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-along-20160410-story.html)
26 [along-20160410-story.html](http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion); Eleanor Lamb, *California Eyes Future Projects to Relieve Freight*
27 *Congestion*, Transport Topics (Mar. 26, 2018), [http://www.ttnews.com/articles/california-eyes-](http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion)
28 [future-projects-relieve-freight-congestion](http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion).

⁹⁹ Several of the eight named agencies are parent agencies, each of which has several subordinate
agencies and departments. If these are counted, they collectively elevate the number of state
agencies being coopted to join in CARB’s local land use power grab to nearly twenty.

1 (1) **Business, Consumer Services and Housing Agency**, which among other
2 subordinate agencies includes the Department of Housing and Community Development (HCD),
3 which alone among these agencies has direct statutory responsibility for designating housing
4 production and corresponding land use planning requirements for cities and counties;

5 (2) **California Environmental Protection Agency**, which is the parent agency for
6 CARB as well as several other agencies and departments;

7 (3) **California Natural Resources Agency**, another parent agency of subordinate
8 agencies and departments;

9 (4) **California State Transportation Agency**, most notably **Caltrans** – which the
10 Scoping Plan would redirect from implementing their statutory responsibilities to reduce
11 congestion and facilitate transportation on the state’s highways to instead advancing CARB’s
12 “road diet” policy of intentionally increasing congestion to satisfy CARB’s desire to induce more
13 public transit ridership;

14 (5) **California Health and Human Services Agency**, which among other duties
15 administers health and welfare assistance programs;

16 (6) **California Department of Food and Agriculture**, which among other duties
17 regulates food cultivation and production activities;

18 (7) **Strategic Growth Council**, formed in 2008 by SB 732, which is tasked with
19 “coordinating” activities of state agencies to achieve a broad range of goals but has no
20 independent statutory authority to regulate housing or local land use plans and projects; and

21 (8) **Governor’s Office of Planning and Research**, which has statutory responsibility
22 to issue the CEQA Guidelines as well as “advisory” guidelines for local agency preparation of
23 General Plans pursuant to Gov. Code § 65040.

24 203. The “Vibrant Communities” Appendix includes provisions that conflict with
25 applicable law and/or have been rejected by the Legislature and cannot now be imposed by
26 CARB through the 2017 Scoping Plan given California’s comprehensive scheme of agency-
27 allocated land use obligations (certain agencies—such as California Department of Fish and
28

1 Game, the Regional Water Quality Control Boards, and the Coastal Commission—already
2 possess land use authority or obligations based on statutory or voter-approved schemes).

3 204. If CARB intends that other agencies be imbued with similar land use authority, it
4 should ask the Legislature for such authority for those agencies, not its own Board. The “Vibrant
5 Communities” Appendix should be struck from the 2017 Scoping Plan for this reason.

6 205. Less housing that is more expensive (urban growth boundary)¹⁰⁰, increased
7 housing cost (CEQA mitigation measure fees), and ever-worsening gridlock resulting in ever-
8 lengthier commutes with ever-increasing vehicular emissions and ever-reduced time at home with
9 children, is the dystopian “necessity” built into the “Vibrant Communities” appendix.

10 206. Bureaucrats and tech workers in the “keyboard” economy who can work remotely,
11 with better wages, benefits and job security that remove the economic insecurity of lifetime renter
12 status, should be just fine. They can live in small apartments in dense cities filled with coffee
13 shops and restaurants, rely on home delivery of internet-acquired meals and other goods, and
14 enjoy “flextime” jobs that avoid the drudgery of the five-day work week model.

15 207. But for the rest of the California populace—including particularly the people
16 (disproportionately minorities) staffing those restaurants and coffee shops, delivering those
17 goods, providing home healthcare and building and repairing our buildings and infrastructure, and
18 those Californians that are actually producing food and manufacturing products that are
19 consumed in California and around the world—“Vibrant Communities” is where they can’t afford
20 to live, where they sleep in their cars during the week, where they fall into homelessness for
21 missing rental payments because of an illness or injury to themselves or a family member.¹⁰¹ For
22 these folks, “Vibrant Communities” amounts to an increase in poverty, homelessness, and
23 premature “despair deaths” as well as permanent drop outs from the work force.

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25 _____
26 ¹⁰⁰ Shishir Mathur, *Impact of Urban Growth Boundary on Housing and Land Prices: Evidence*
27 *from King County, Washington*, *Journal of Housing Studies* Vol. 29 – Issue 1 (2014),
28 <https://tandfonline.com/doi/abs/10.1080/02673037.2013.825695>.

¹⁰¹ Alastair Gee, *Low-income workers who live in RVs are being 'chased out' of Silicon Valley streets*, *The Guardian* (June 29 2017), <https://www.theguardian.com/us-news/2017/jun/29/low-income-workers-rvs-palo-alto-california-homeless>.

1 208. For the foregoing reasons, the “Vibrant Communities” appendix is an unlawful
2 and unconstitutional attempt by CARB to supplant existing local land use law and policy
3 processes with a top-down regime that is both counterproductive and discriminatory against
4 already-disadvantaged minority Californians, including but not limited to Petitioners.

5 **E. CARB’s Inadequate Environmental Analysis and Adverse Environmental**
6 **Effects of the 2017 Scoping Plan**

7 209. Along with the 2017 Scoping Plan, CARB prepared an EA purporting to comply
8 with CEQA requirements.¹⁰²

9 210. Under its certified regulatory program, CARB need not comply with requirements
10 for preparing initial studies, negative declarations, or environmental impact reports. CARB’s
11 actions, however, remain subject to other provisions of CEQA. CEQA Guidelines § 15250.

12 211. CARB’s regulatory program is contained in 17 C.C.R. §§ 60005, 60006, and
13 60007. These provisions require the preparation of a staff report at least 45 days before the public
14 hearing on a proposed regulation, which report is required to be available for public review and
15 comment. It is also CARB's policy “to prepare staff reports in a manner consistent with the
16 environmental protection purposes of [ARB’s] regulatory program and with the goals and policies
17 of [CEQA].” The provisions of the regulatory program also address environmental alternatives
18 and responses to comments on the EA.

19 212. For purposes of its CEQA review, CARB defined the project as the Proposed
20 Strategy for Achieving California’s 2030 Greenhouse Gas Target (Scoping Plan) and the
21 recommended measures in the 2017 Plan (Chapter 2).

22 213. The Draft EA was released on or about January 20, 2017 for an 80-day public
23 review period that concluded on or about April 10, 2017.

24 214. On or about November 17, 2017, CARB released the Final EA. CARB did not
25 modify the Draft EA to bring it into compliance with CEQA’s requirements.

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¹⁰² CARB has a regulatory program certified under Pub. Res. Code § 21080.5 and pursuant to this
program CARB conducts environmental analyses to meet the requirements of CEQA.

1 215. The Final EA provides a programmatic analysis of the potential for adverse
2 environmental impacts associated with implementation of the 2017 Scoping Plan. It also
3 describes feasible mitigation measures for identified significant impacts.

4 216. The Final EA states that, although the 2017 Scoping Plan is a State-level planning
5 document that recommends measures to reduce GHG emissions to achieve the 2030 target, and its
6 approval does not directly lead to any adverse impacts on the environment, implementation of the
7 measures in the Plan may indirectly lead to adverse environmental impacts as a result of
8 reasonably foreseeable compliance responses.

9 217. The Final EA also states that CARB expects that many of the identified potentially
10 significant impacts can be feasibly avoided or mitigated to a less-than-significant level either
11 when the specific measures are designed and evaluated (e.g., during the rulemaking process) or
12 through any project-specific approval or entitlement process related to compliance responses,
13 which typically requires a project-specific environmental review.

14 218. The EA violated CEQA by failing to comply with its requirements in numerous
15 ways, as described below.

16 **1. Deficient Project Description**

17 219. The EA's Project description was deficient because CARB did not assess the
18 "whole of the project" as required by CEQA. The GHG Housing Measures are included in the
19 2017 Scoping Plan (in Chapters 2 and 5) and thus the "project" for CEQA purposes should have
20 been defined to include potential direct and indirect impacts on the environment from the four
21 GHG Housing Measures. Instead, CARB described the Project for CEQA purposes as the
22 measures only in Chapter 2 of the 2017 Scoping Plan.

23 220. CARB has acknowledged that Chapter 5 of the 2017 Scoping Plan (which sets out
24 the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In
25 CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the
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1 Scoping Plan are not part of the proposed ‘project’ for purposes of CEQA review.”¹⁰³ Thus,
2 CARB admits that it did not even pretend to analyze the consequences of the provisions of
3 Chapter 5 of the Scoping Plan.

4 221. The VMT reduction requirement is part of the Scoping Plan Scenario presented in
5 Chapter 2 in the “Mobile Source Strategy”.¹⁰⁴ Chapter 2 is included in the description of the
6 Project in the EA but Chapter 5 is not, despite the fact that the VMT reduction mandate is found
7 in both chapters.

8 222. For this reason, CARB applied an unreasonable and unlawful “project” definition
9 and undermined CEQA’s informational and decision-making purposes.

10 2. Improper Project Objectives

11 223. The Project objectives in the EA are also improperly defined in relation to the
12 2017 Scoping Plan, the unlawful GHG Housing Measures, and the goals explained in the 2017
13 Scoping Plan.¹⁰⁵ The EA states that the primary objectives of the 2017 Scoping Plan are:

- 14 • Update the Scoping Plan for achieving the maximum technologically feasible and
15 cost-effective reductions in GHG emissions to reflect the 2030 target;
- 16 • Pursue measures that implement reduction strategies covering the State’s GHG
17 emissions in furtherance of executive and statutory direction to reduce GHG
18 emissions to at least 40 percent below 1990 levels by 2030;
- 19 • Increase electricity derived from renewable sources from one-third to 50 percent;
- 20 • Double efficiency savings achieved at existing buildings and make heating fuels
21 cleaner;
- 22 • Reduce the release of methane and other short-lived climate pollutants;

23
24 ¹⁰³ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
25 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

26 ¹⁰⁴ Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner
Technology and Fuels [CTF] Scenario)).

27 ¹⁰⁵ Appendix F to 2017 Scoping Plan, Final Environmental Analysis for the Strategy for
28 Achieving California’s 2030 Greenhouse Gas Target, p. 10-11,
https://www.arb.ca.gov/cc/scopingplan/2030sp_appf_finalea.pdf.

- 1 • Pursue emission reductions that are real, permanent, quantifiable, verifiable and
- 2 enforceable;
- 3 • Achieve the maximum technologically feasible and cost-effective reductions in
- 4 GHG emissions, in furtherance of reaching the statewide GHG emissions limit;
- 5 • Minimize, to the extent feasible, leakage of emissions outside of the State;
- 6 • Ensure, to the extent feasible, that activities undertaken to comply with the
- 7 measures do not disproportionately impact low-income communities;
- 8 • Ensure, to the extent feasible, that activities undertaken pursuant to the measures
- 9 complement, and do not interfere with, efforts to achieve and maintain the
- 10 NAAQS and CAAQS and reduce toxic air contaminant (“TAC”) emissions;
- 11 • Consider overall societal benefits, including reductions in other air pollutants,
- 12 diversification of energy sources, and other benefits to the economy, environment,
- 13 and public health;
- 14 • Minimize, to the extent feasible, the administrative burden of implementing and
- 15 complying with the measure;
- 16 • Consider, to the extent feasible, the contribution of each source or category of
- 17 sources to statewide emissions of GHGs;
- 18 • Maximize, to the extent feasible, additional environmental and economic benefits
- 19 for California, as appropriate;
- 20 • Ensure that electricity and natural gas providers are not required to meet
- 21 duplicative or inconsistent regulatory requirements.

22 224. Because CARB used the unlawful “cumulative gap” methodology to calculate the
23 emission reductions that it was required to achieve by 2030, the 2017 Scoping Plan does not meet
24 the project objectives as described in the EA, *i.e.*, to meet the 2030 Target.

25 225. As explained throughout this Petition, CARB’s 2017 Scoping Plan and the
26 unlawful GHG Housing Measures are not cost-effective, are contrary to law, are not equitable to
27 all Californians, and will increase criteria and TAC emissions preventing attainment of the
28 NAAQS and CAAQS

1 226. For this reason, other alternatives to the 2017 Scoping Plan, including an
2 alternative without the GHG Housing Measures, should have been assessed in the EA.

3 **3. Illegal Piecemealing**

4 227. CEQA requires an environmental analysis to consider the whole of the project and
5 not divide a project into two or more pieces to improperly downplay the potential environmental
6 impacts of the project on the environment.

7 228. CARB improperly piecemealed its 2017 Scoping Plan and the GHG Housing
8 Measures within it from its similar and contemporaneous SB 375 GHG target update.¹⁰⁶ Both
9 projects address mandated GHG reductions based on VMT and thus should have been addressed
10 as one project for CEQA purposes.

11 229. In separately issuing the 2017 Scoping Plan and the SB 375 GHG target update,
12 CARB improperly piecemealed a project under CEQA and thus the EA is inadequate as a matter
13 of law.

14 **4. Inadequate Impact Analysis**

15 230. The analysis in the EA also was deficient because the EA did not analyze impacts
16 from implementing the four GHG Housing Measures in Chapter 5, including, but not limited to,
17 the CEQA net zero threshold, the VMT limits, and per capita GHG CAP targets, and the suite of
18 Vibrant Communities measures.

19 231. Potential environmental impacts from these GHG Housing Measures overlap
20 substantially with similar high density, transit-oriented, automobile use reduction measures
21 included in regional plans to reduce GHGs from the land use and transportation sectors under SB
22 375. CARB has reviewed and approved more than a dozen SB 375 regional plans, each of which
23 is informed by its own “programmatic environmental impact report (“PEIR”).

24 232. Each PEIR for each regional plan has identified multiple significant adverse
25 environmental impacts which cannot be avoided or further reduced with feasible mitigation
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27 ¹⁰⁶ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018),
<https://www.arb.ca.gov/cc/sb375/sb375.htm>.

1 measures or alternatives.¹⁰⁷ In the first regional plan adopted for the SCAG region, California’s
2 most-populous region, the PEIR compared the impacts of developing all new housing within
3 previously-developed areas in relation to developing half of such new housing in such areas, and
4 the other half in previously-undeveloped areas near existing major infrastructure like freeways.

5 233. The SCAG 2012 PEIR concluded that the all-infill plan caused substantially more
6 unavoidable significant adverse environmental impacts in relation to the preferred plan which
7 divided new development equally between infill and greenfield locations.¹⁰⁸

8 234. Following public comments and refinement of the PEIR (inclusive of the addition
9 and modification of various mitigation measures to further reduce significant adverse
10 environmental impacts), SCAG approved the mixed infill/greenfield plan instead of the all-infill
11 alternative. CARB then approved SCAG’s plan—first in 2012 and then again in 2016—as
12 meeting California’s applicable statutory GHG reduction mandates.¹⁰⁹

13 235. The Scoping Plan’s GHG Housing Measures now direct an infill only (or mostly
14 infill) outcome, which SCAG’s 2012 PEIR assessed and concluded caused far worse
15 environmental impacts, even though it would result in fewer GHG emissions. In other words,
16 SCAG’s PEIR—and the other regional land use and transportation plan PEIRs prepared under SB
17 375—all disclosed a panoply of adverse non-GHG environmental impacts of changing
18 California’s land use patterns, and shaped both their respective housing plans and a broad suite of
19 mitigation measures to achieve California’s GHG reduction mandates while minimizing other
20 adverse environmental impacts to California.

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24 ¹⁰⁷ See SB 375 “Sustainable Communities Strategies” review page at
<https://www.arb.ca.gov/cc/sb375/sb375.htm>, which includes links to the regional land use and
transportation plans for multiple areas (which then further link to the PEIRs).

25 ¹⁰⁸ SCAG, Final PEIR for the 2012-2035 RTP/SCS (April 2012),
26 <http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx>.

27 ¹⁰⁹ CARB Executive Order accepted the SCAG determination that its regional plan that balanced
28 infill and greenfield housing development, and increased transit investments to encourage greater
transit use without any VMT reduction mandate, would meet the GHG reduction targets
mandated by law. See generally <https://www.arb.ca.gov/cc/sb375/sb375.htm>.

1 236. CARB’s willful refusal to acknowledge, let alone analyze, the numerous non-GHG
2 environmental impacts of its GHG Housing Measures in the 2017 Scoping Plan EA is an
3 egregious CEQA violation.

4 237. Based on the greater specificity and the significant unavoidable adverse non-GHG
5 environmental impacts identified in regional SB 375 plan PEIRs, the EA here clearly did not fully
6 analyze the potential adverse environmental impacts from creating high-density, transit-oriented
7 development that will result from the measures in the 2017 Scoping Plan, such as:

- 8 • Aesthetic impacts such as changes to public or private views and character of existing
9 communities based on increased building intensities and population densities;
- 10 • Air quality impacts from increases in GHG, criteria pollutants, and toxic air
11 contaminant emissions due to longer commutes and forced congestion that will occur
12 from the implementation of the VMT limits in the 2017 Scoping Plan;
- 13 • Biological impacts from increased usage intensities in urban parks from substantial
14 infill population increases;
- 15 • Cultural impacts including adverse changes to historic buildings and districts from
16 increased building and population densities, and changes to culturally and religiously
17 significant resources within urbanized areas from increased building and population
18 densities;
- 19 • Urban agriculture impacts from the conversion of low intensity urban agricultural uses
20 to high intensity, higher density uses from increasing populations in urban areas,
21 including increasing the urban heat island GHG effect;
- 22 • Geology/soils impacts from building more structures and exposing more people to
23 earthquake fault lines and other geologic/soils hazards by intensifying land use in
24 urban areas;
- 25 • Hazards and hazardous materials impacts by locating more intense/dense housing and
26 other sensitive uses such as schools and senior care facilities near freeways, ports, and
27 stationary sources in urbanized areas;
- 28

- 1 • Hydrology and water quality impacts from increasing volumes and pollutant loads
2 from stormwater runoff from higher density/intensity uses in transit-served areas as
3 allowed by current stormwater standards;
- 4 • Noise impacts from substantial ongoing increases in construction noise from
5 increasing density and intensity of development in existing communities and ongoing
6 operational noise from more intensive uses of community amenities such as extended
7 nighttime hours for parks and fields;
- 8 • Population and housing impacts from substantially increasing both the population and
9 housing units in existing communities;
- 10 • Recreation and park impacts from increasing the population using natural preserve and
11 open space areas as well as recreational parks;
- 12 • Transportation/traffic impacts from substantial total increases in VMT in higher
13 density communities, increased VMT from rideshare/carshare services and future
14 predicted VMT increases from automated vehicles, notwithstanding predicted future
15 decrease in private car ownership;
- 16 • Traffic-gridlock related impacts and multi-modal congestion impacts including noise
17 increases and adverse transportation safety hazards in areas of dense multi-modal
18 activities;
- 19 • Public safety impacts due to impacts on first responders such as fire, police, and
20 paramedic services from congested and gridlocked urban streets; and
- 21 • Public utility and public service impacts from substantial increases in population and
22 housing/employment uses and demands on existing water, wastewater, electricity,
23 natural gas, emergency services, libraries and schools.

24 238. CARB failed to complete a comprehensive CEQA evaluation of these and related
25 reasonably foreseeable impacts from forcing all or most development into higher densities within
26 existing urban area footprints, intentionally increasing congestions and prohibiting driving, and
27 implementing each of the many measures described in the “Vibrant Communities” appendix. The
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1 EA failed to identify, assess, and prescribe feasible mitigation measures for each of the significant
2 unavoidable impacts identified above.

3 **F. CARB’s Insufficient Fiscal Analysis and Failure To Comply with the APA’s**
4 **Cost-Benefit Analysis Requirements**

5 239. The APA sets out detailed requirements applicable to state agencies proposing to
6 “adopt, amend or repeal any administrative regulation.” Gov. Code § 11346.3.

7 240. CARB is a state agency with a statutory duty to comply with the rulemaking laws
8 and procedures set out in the APA.

9 241. The APA requires that CARB, “prior to submitting a proposal to adopt, amend, or
10 repeal a regulation to the office [of Administrative Law], shall consider the proposal’s impact on
11 business, with consideration of industries affected including the ability of California businesses to
12 compete with businesses in other states. For purposes of evaluating the impact on the ability of
13 California businesses to compete with businesses in other states, an agency shall consider, but not
14 be limited to, information supplied by interested parties.” Gov. Code § 11346.3(a) (2).

15 242. The APA further requires that “[a]n economic assessment prepared pursuant to this
16 subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in
17 accordance with subdivision (c), and shall be included in the initial statement of reasons as
18 required by Section 11346.2.” Gov. Code § 11346.3(a)(3).

19 243. CARB’s new GHG Housing Measures will have an economic impact on California
20 business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000)
21 and therefore constitute a “major regulation” within the meaning of the APA and the California
22 Department of Finance regulations incorporated therein. Gov. Code § 11346.3(c); 1 C.C.R. §
23 2000(g).

24 244. In adopting its 2017 Scoping Plan, CARB has failed to comply with these and
25 other economic impact analysis requirements of the APA.

26 245. The 2017 Scoping Plan continues CARB’s use of highly aggregated
27 macroeconomic models that provide almost no useful information about potential costs and
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1 impacts in industries and households. The LAO, an independent state agency, has consistently
2 pointed out the flaws in CARB’s approach since the first Scoping Plan was developed in 2008.

3 246. CARB’s disregard of the APA’s economic impact analysis requirements in issuing
4 the 2017 Scoping Plan is only the latest example of a repeated flouting of the APA’s requirements
5 in pursuit of its pre-determined regulatory goals. The inadequacy of CARB’s compliance with
6 APA requirements has been documented in multiple LAO documents, including the following:

- 7 ● In a November 17, 2008 letter to Assembly Member Roger Niello,¹¹⁰ the LAO found
8 that “ARB’s economic analysis raises a number of questions relating to (1) how
9 implementation of AB 32 was compared to doing BAU, (2) the incompleteness of
10 the ARB analysis, (3) how specific GHG reduction measures are deemed to be cost-
11 effective, (4) weak assumptions relating to the low-carbon fuel standard, (5) a lack
12 of analytical rigor in the macroeconomic modeling, (6) the failure of the plan to lay
13 out an investment pathway, and (7) the failure by ARB to use economic analysis to
14 shape the choice of and reliance on GHG reduction measures.”
- 15 ● In a March 4, 2010 letter to State Senator Dave Cogdill,¹¹¹ the LAO stated that while
16 large macroeconomic models used by CARB in updated Scoping Plan assessments
17 can “capture some interactions among broad economic sectors, industries, consumer
18 groupings, and labor markets,” the ability of these models to “adequately capture
19 behavioral responses of households and firms to policy changes is more limited.
20 Additionally, because the data in such models are highly aggregated, they capture at
21 best the behavioral responses of hypothetical “average” households and firms and do
22 not score well in capturing and predicting the range of behavioral responses to
23 policy changes that can occur for individual or subgroupings of households or firms.
24 As a result, for example, the adverse jobs impacts—including job losses associated
25 with those firms that are especially negatively impacted by the Scoping Plan—can
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27 ¹¹⁰ LAO, http://www.lao.ca.gov/2008/rsrc/ab32/AB32_scoping_plan_112108.pdf.

28 ¹¹¹ LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_impact/ab32_impact_030410.aspx.

1 be hard to identify since they are obscured within the average outcome.” The letter
2 further noted multiple ways that the SP could affect jobs.

- 3 • Similarly, in a June 16, 2010 letter to Assembly Member Dan Logue,¹¹² the LAO
4 found that CARB’s revision to CARB’s 2008 Scoping Plan analysis “still exhibits a
5 number of significant problems and deficiencies that limit its reliability. These
6 include shortcomings in a variety of areas including modeling techniques,
7 identification of the relative marginal costs of different SP measures, sensitivity and
8 scenario analyses, treatment of economic and emissions leakages, identification of
9 the market failures used to justify the need for the regulations selected, analysis of
10 specific individual regulations to implement certain Scoping Plan measures, and
11 various data limitations.” As a result, the LAO concluded that, contrary to CARB’s
12 statutory mandates, “The SP May Not Be Cost-Efficient.” Given these and other
13 issues, it is unclear whether the current mix and relative importance of different
14 measures in the Scoping Plan will achieve AB 32’s targeted emissions reductions in
15 a cost-efficient manner as required.”

- 16 • In a June 2017 presentation to the Joint Committee on Climate Change Policies,
17 *Overview of California Climate Goals and Policies*,¹¹³ and after the draft 2017
18 Scoping Plan had been released for public review, the LAO concluded that “To date,
19 there have been no robust evaluations of the overall statewide effects—including on
20 GHG reductions, costs, and co-pollutants—of most of the state’s major climate
21 policies and spending programs that have been implemented.”

22 247. CARB’s persistent failure to address the APA’s economic analysis requirements,
23 and its penchant for “jumping the gun” by taking actions without first complying with CEQA and
24 other rulemaking requirements, also has drawn criticism from the courts.

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27 ¹¹² LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_logue_061610/ab32_logue_061610.pdf.

28 ¹¹³ LAO, <http://lao.ca.gov/handouts/resources/2017/Overview-California-Climate-Goals-Policies-061417.pdf>.

1 248. In *Lawson v. State Air Resources Board* (2018) 20 Cal.App.5th 77, 98, 110-116
2 (“*Lawson*”), the Fifth District Court of Appeal, in upholding Judge Snauffer’s judgment, found
3 both that CARB “violated CEQA by approving a project too early” and that it also violated the
4 APA. The Court explained the economic impact assessment requirements of the APA
5 “granularly” to provide guidance to CARB for future actions and underscored that “an agency’s
6 decision to include non-APA compliant interpretations of legal principles in its regulations will
7 not result in additional deference to the agency”, because to give weight or deference to an
8 improperly-adopted regulation “would permit an agency to flout the APA by penalizing those
9 who were entitled to notice and opportunity to be heard but received neither.” *Id.* at 113. Despite
10 these recent warnings, CARB has chosen to proceed without complying with CEQA or the APA.

11 249. CARB’s use of the improper “cumulative gap” methodology to determine the
12 GHG reductions it claims are necessary for the 2017 Scoping Plan to meet the 2030 Target means
13 that the inputs for the CARB FA were improper. The FA, which is supposed to inform
14 policymakers and the public about the cost-effectiveness and equity of the Scoping Plan
15 measures, is based on meeting the 621 MMTCO_{2e} GHG “cumulative gap” reduction requirement
16 invented by CARB.

17 250. In fact, the final FA adopted by CARB indicates that an earlier version was based
18 on the asserted “need” to fill an even larger “cumulative gap” of 680 MMTCO_{2e}. This improper
19 analysis renders the FA and the cost analysis required under the APA invalid.

20 **G. The Blatantly Discriminatory Impacts of CARB’s 2017 Scoping Plan**

21 251. CARB has recognized that “[i]t is critical that communities of color, low-income
22 communities, or both, receive the benefits of the cleaner economy growing in California,
23 including its environmental and economic benefits.” Scoping Plan, p. 15.

24 252. The GWSA specifically provides, at H&S Code § 38565, that: “The state board
25 shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms,
26 and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and
27 private investment toward the most disadvantaged communities in California and provide an
28 opportunity for small businesses, schools, affordable housing associations, and other community

1 institutions to participate in and benefit from statewide efforts to reduce greenhouse gas
2 emissions.”

3 253. CARB’s standards, rules, and regulations also must, by statute, be consistent with
4 the state goal of providing a decent home and suitable living environment for every Californian.
5 H&S Code § 39601(c). This includes affordable housing near jobs for hard working, low-income
6 minority families.

7 254. California produces less than one percent of global GHG emissions, and has lower
8 per capita GHG emissions than any other large state except New York, which unlike California
9 still has multiple operating nuclear power plants to reduce its GHG emissions.¹¹⁴

10 255. As Governor Brown and many others have recognized, California’s climate
11 change leadership depends not on further mass reductions of the one percent of global GHG
12 emissions generated within California, but instead on having other states and nations persuaded to
13 follow the example already set by California.

14 256. In any event, as recently demonstrated in a joint study completed by scholars from
15 the University of California at Berkeley and regulators at the Bay Area Air Quality Management
16 District (“BAAQMD”)¹¹⁵, high wealth households cause far more global GHG emissions than
17 middle-class and poor households. The Scoping Plan ignores this undisputed scientific fact and
18 unfairly, and unlawfully, seeks to burden California’s minority and middle-class households in
19 need of affordable housing with new regulatory costs and burdens that do not affect existing,
20 wealthier homeowners who “already have theirs”.

21 257. California has the nation’s highest poverty rate, highest housing prices, greatest
22 housing shortage, highest homeless population—and highest number of billionaires.¹¹⁶ While it is

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24 ¹¹⁴ U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

25 ¹¹⁵ BAAQMD and Cool Climate Network at UC Berkeley, Consumption Based GHG Emissions
26 Inventory (2016), [http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-
based-ghg-emissions-inventory](http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-based-ghg-emissions-inventory).

27 ¹¹⁶ David Friedman, Jennifer Hernandez, California’s Social Priorities, Holland & Knight,
28 Chapman University Press (2015), <https://perma.cc/XKB7-4YK4>; Liana Fox, The Supplemental
Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21,
2017), <https://www.census.gov/library/publications/2017/demo/p60-261.html>.

1 not the function of the courts to address economic inequalities, the federal and state Constitutions
2 prohibit the State from enacting regulatory provisions that have the inevitable effect of
3 unnecessarily and disproportionately disadvantaging minority groups by depriving them of access
4 to affordable housing that would be available in greater quantity but for CARB’s new GHG
5 Housing Measures.

6 258. Members of hard working minority families, in contrast to wealthier white elites,
7 currently are forced to “drive until they qualify” for housing they can afford to own, or even
8 rent.¹¹⁷ As a result, long-commute minority workers and their families then suffer a cascading
9 series of adverse health, educational and financial consequences.¹¹⁸

10 259. It is well-documented and undisputed, in the record that the current housing
11 shortage—which CARB’s regulations would unnecessarily exacerbate—falls disproportionately
12 on minorities. As stated in a United Way Study, “Struggling to Get By: The Real Cost Measure in
13 California 2015”¹¹⁹: “Households led by people of color, particularly Latinos, disproportionately
14 are likely to have inadequate incomes. Half (51%) of Latino households have incomes below the
15 Real Cost Measure,¹²⁰ the highest among all racial groups. Two in five (40%) of African
16 American households have insufficient incomes, followed by other races/ethnicities (35%), Asian
17 Americans (28%) and white households (20%).” Put simply, approximately 80% of the poorest
18 households in the State are non-white families.

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21 ¹¹⁷ Mike McPhate, *California Today: The Rise of the Super Commuter*, N.Y. Times (Aug. 21,
22 2017), <https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html>;
23 Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*,
N.Y. Times (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html>.

24 ¹¹⁸ Rebecca Smith, Here’s the impact long commutes have on your health and productivity,
25 *Business Insider* (May 22, 2017), <http://www.businessinsider.com/long-commutes-have-an-impact-on-health-and-productivity-2017-5>.

26 ¹¹⁹ Betsy Block et al, *Struggling to Get By: The Real Cost Measure in California 2015* (2016), p.
27 10,
28 https://www.norcalunitedway.org/sites/norcalunitedway.org/files/Struggling_to_Get_By_3.pdf.

¹²⁰ The United Way study uses the “Real Cost Measure” to take account of a family budget to
meet basic needs, composed of “costs all families must address such as food, housing,
transportation, child care, out-of-pocket health expenses, and taxes.” *Id.*, p. 8.

1 260. As noted in the same report: “Housing costs can consume almost all of a
2 struggling household’s income. According to Census Bureau data, housing (rent, mortgage,
3 gas/electric) makes up 41% of household expenses in California. . . . Households living above the
4 Federal Poverty Level but below the Real Cost Measure spend almost half of their income on rent
5 (and more in many areas), and households below the Federal Poverty Level, however, report
6 spending 80% of their income on housing, a staggering amount that leaves precious little room
7 for food, clothing and other basics of life.” *Id.*, p. 65.¹²¹

8 261. As further documented in the United Way report presented to CARB:
9 “Recognizing that households of all kinds throughout the state are struggling should not obscure
10 one basic fact: race matters. Throughout *Struggling to Get By*, we observe that people of Latino
11 or African American backgrounds (and to a lesser extent Asian American ones) are less likely to
12 meet the Real Cost Measure than are white households, even when the families compared share
13 levels of education, employment backgrounds, or family structures. While all families face
14 challenges in making ends meet, these numbers indicate that families of color face more obstacles
15 in attempting to achieve economic security.”¹²²

16 262. Against this background, CARB’s new GHG Housing Measures, which
17 disproportionately harm housing-deprived minorities while not materially advancing the cause of
18 GHG reductions, cannot be justified. CARB’s new GHG Housing Measures, facially and as
19 applied to the housing sector in particular, are not supported by sound scientific analysis and are
20 in fact counterproductive. CARB’s new GHG Housing Measures establish presumptive legal
21 standards under CEQA that currently impose, as a matter of law, costly new mitigation
22 obligations that apply only to housing projects proposed now and in the future to meet
23

24 ¹²¹ In addition, family wealth of homeowners has increased in relation to family wealth of renters
25 over time and a homeowners’ net worth is 36 times greater than a renters’ net worth. Jesse
26 Bricker, et al., *Changes in US Family Finances from 2010 to 2013: Evidence from the Survey of
Consumer Finances*, 100 Fed. Reg. Bull. 4 (Sept. 2014),
<https://www.federalreserve.gov/pubs/bulletin/2014/articles/scf/scf.htm>.

27 ¹²² *Id.* p. 75. Studies predict that the 2014-2016 dataset will show a wealth differential between
28 homeowners and renters of 45 times. Lawrence Yun, *How Do Homeowners Accumulate Wealth?*,
Forbes (Oct. 14, 2015), <https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-homeowners-accumulate-wealth/#7eabbecd1e4b>.

1 California’s current shortfall of more than three million homes that experts and the Governor-
2 elect agree are needed to meet current housing needs. Two specific examples are provided below.

3 263. By establishing a new “net zero” GHG CEQA significance threshold for all new
4 projects, CARB has created a new legal obligation for such new projects to “mitigate” to a “less
5 than significant” level all such GHG impacts. The California Air Pollution Control Officers
6 Association (“CAPCOA”), which consists of the top executives of all of the local and regional air
7 districts in California, has developed a well-established model for calculating GHG emissions
8 from such new projects called The California Emissions Estimator Model (“CalEEMod”).¹²³ This
9 model is in widespread use throughout the state, and has been determined by the California
10 Supreme Court to be a valid basis for estimating GHG emissions from residential projects for
11 purposes of CEQA. *Newhall*, supra, 62 Cal.4th at 217-218.

12 264. CalEEMod calculates GHG emissions for 63 different types of development
13 projects, including multiple types of residential projects. The scientific and legal framework of
14 CalEEMod is the foundational assumption that all GHG project emissions are “new” and would
15 not occur if the proposed project was not approved or built.

16 265. Within this overall framework, CalEEMod identifies GHG emissions that occur
17 during construction (e.g., from construction vehicles and construction worker vehicular trips to
18 and from the project site), and during ongoing project occupancy by new residents. GHG
19 occupancy or “operational” emissions include GHG emissions from offsite electricity produced to
20 serve the project, from onsite emissions of GHG from natural gas appliances, from on- and off-
21 site GHG emissions associated with providing drinking water and sewage treatment services to
22 the project, from vegetation removal and planting, and from vehicular use by project occupants
23 on an ongoing basis. *See, e.g.*, Appendix A of CalEEMod¹²⁴; South Coast Air Quality
24 Management District User’s Guide to CalEEMod¹²⁵.

25 ¹²³ Available at: <http://www.caleemod.com/>.

26 ¹²⁴ CalEEMod Appendix A: Calculation Details for CalEEMod, available at:
27 <http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf>.

28 ¹²⁵ CalEEMod User’s Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

1 266. Under the CalEEMod CEQA compliance framework, if the project does not occur
2 then the GHG emissions do not occur—notwithstanding the practical and obvious fact that people
3 who cannot live in new housing they can afford must still live somewhere, where they will still
4 engage in basic activities like consuming electricity, drinking water, and driving cars.

5 267. Under CEQA, a “significant” environmental impact is required to be “mitigated”
6 by measures that avoid or reduce the significance of that impact by all “feasible” means. Pub.
7 Res. Code § 21102. The CEQA Guidelines define “feasible” as “capable of being accomplished
8 in a successful manner within a reasonable period of time, taking into account economic,
9 environmental, legal , social and technological factors.” 14 C.C.R. § 15364.

10 268. The first of two examples of immediate and ongoing harm relates to the increased
11 cost of housing caused by the “net zero” threshold. Before the 2017 Scoping Plan was approved,
12 no agency or court had ever required a “net zero” GHG threshold. The only example of a
13 residential project that met this target involved a voluntary commitment by the project applicant
14 to a “net zero” project, in which 49% of the project’s GHG emissions were “offset” by GHG
15 reductions to be achieved elsewhere (e.g., funding the purchase of cleaner cook stoves in Africa)
16 and paid for by higher project costs.

17 269. There is no dispute that funding these types of GHG reduction measures
18 somewhere on Earth is “feasible” taking into account three of CEQA’s five “feasibility” factors
19 (environmental, social and technological). With housing costs already nearly three times higher in
20 California than other states, home ownership rates far lower, and housing-induced poverty rates
21 the highest in the nation, it remains possible – in theory – to demonstrate that in the context of a
22 given housing project, adding \$15,000-\$30,000 more to the price of a home to fund the purchase
23 of cleaner cook stoves in Africa, for example, would not be “legally” or “economically” feasible.

24 270. This theoretical possibility of demonstrating that any particular mitigation cost
25 results in “economic infeasibility” has not succeeded, however, for any housing project in the
26 nearly-50 year history of CEQA. A lead agency decision that a mitigation measure is infeasible
27 must be supported by substantial evidence in the record—effectively the burden is placed on the
28 project applicant to prove this latest “net zero” increment of mitigation costs is simply too

1 expensive and will make the project “infeasible.” No court has found that a housing project has
2 met this burden. *See, e.g., Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th
3 587. Further, this infeasibility evaluation applies to the applicant for the housing project, not
4 prospective future residents—simply raising housing prices affordable only to wealthier buyers.

5 271. The CEQA mitigation criterion of legal infeasibility is likewise illusory when
6 applied to the GHG mitigation measures required to achieve a “net zero” significance threshold.
7 Although there is some judicial precedent recognizing that lead agencies cannot impose CEQA
8 mitigation obligations outside their jurisdictional boundaries (e.g. in adjacent local jurisdictions),
9 this precedent—like OPR’s definitive regulatory conclusion that CEQA cannot be used to impose
10 a “net zero” threshold even and specifically within the context of GHG—is directly challenged by
11 the 2017 Scoping Plan, which cited with approval the one “net zero” GHG residential project that
12 relied in part on offsite (off-continent) GHG reduction measures.

13 272. This “legal infeasibility” burden of proof also is extremely high under CEQA. For
14 example, the California Supreme Court considered in *City of San Diego, et al. v. Board of*
15 *Trustees of California State University* (2015) 61 Cal.4th 945, the University’s “economic
16 infeasibility” argument in relation to making very substantial transfer payments to local
17 government to help fund local highway and transit infrastructure, which would be used in part by
18 the growing student, faculty and staff for the San Diego campus. Although the Court
19 acknowledged that the Trustees had expressly requested, and been denied, funding by the
20 Legislature to help pay for these local transportation projects, the Court did not agree this was
21 adequate to establish economic infeasibility under CEQA since the Trustees could have sought
22 alumni donations or funding from other sources, or elected to stop accommodating new students
23 in San Diego and instead grown other campuses with potentially lower costs. When CARB’s
24 “net zero” GHG measures are coupled with the “legal infeasibility” burden of proof, the result is a
25 legal morass that frustrates the efforts of local governments to implement the Legislature’s pro-
26 housing laws and policies, to the detriment of under-housed minorities, including Petitioners.

27 273. The second example of immediate and ongoing harm is CARB’s direct
28 intervention in projects already in CEQA litigation by opining on the acceptable CEQA

1 mitigation for GHG emissions from fuel use, which typically create the majority of GHG
2 emissions from new housing projects. In a long series of evolving regulations including most
3 recently the 2018 adoption of new residential Building Code standards¹²⁶, and in compliance with
4 the consumer protection and cost-effectiveness standards required for imposing new residential
5 Building Code requirements established by the Legislature (Pub. Resources Code §§
6 25402(b)(3), (c)(1); 25943(c)(5)(B)), California law requires new residences to be better
7 insulated, use less electricity, install the most efficient appliances, use far less water (especially
8 for outdoor irrigation), generate electricity (from rooftop solar or an acceptable alternative), and
9 transition to future electric vehicles. These and similar measures have substantially reduced the
10 GHG emissions from ongoing occupancy of new housing.

11 274. Under the CalEEMod methodology, however, gasoline and hybrid cars used by
12 new residents are also counted as “new” GHG emissions attributed to that housing project – and
13 these vehicular GHG emissions now account for the vast majority of a typical housing project’s
14 GHG emissions.¹²⁷

15 275. In 2017, the Legislature expanded its landmark “Cap and Trade” program
16 establishing a comprehensive approach for transitioning from fossil fuels to electric or other zero
17 GHG emission technologies, which already includes a “wells to wheels” program for taxing oil
18 and natural gas extraction, refinement, and ultimate consumer use.¹²⁸ CARB has explained that
19 the Cap and Trade Program requires fuel suppliers to reduce GHG emissions by supplying low
20

21 ¹²⁶ See California Building Standards Commission, 2018 Triennial Code Adoption Cycle,
22 available at:
23 <http://www.bsc.ca.gov/Rulemaking/adoptcycle/2018TriennialCodeAdoptionCycle.aspx>. See also
24 California Energy Code, California Code of Regulations, Title 24, Part 6; Building Energy
25 Efficiency Standards (2019 update).

26 ¹²⁷ In the Northlake project challenged in a comment letter citing noncompliance with the 2017
27 Scoping Plan discussed *supra* ¶ 42, for example, total project GHG emissions after mitigation
28 were 56,722 metric tons, of which mobile sources from vehicles comprised 53,863 metric tons.
Los Angeles County, Draft Supplemental EIR (May 2017), Table 5.7-3 (p. 5.7-26), available at
https://scvhistory.com/scvhistory/files/northlakehills_deir_0517/northlakehills_deir_0517.pdf

¹²⁸ A.B. 398, 2017 (California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption).

1 carbon fuels or purchasing allowances to cover the GHG emissions produced when the
2 conventional petroleum-based fuels they supply are burned.

3 276. Specifically, as part of the formal rulemaking process for the Cap and Trade
4 Legislation, CARB staff explained in its *Initial Statement of Reasons for the Proposed Regulation*
5 *to Implement the California Cap and Trade Program*, that:

6 To cover the emissions from transportation fuel combustion and that of other fuels by
7 residential, commercial, and small industrial sources, staff proposes to regulate fuel
8 suppliers based on the quantities of fuel consumed by their customers. ... Fuel suppliers
9 are responsible for the emissions resulting from the fuel they supply. In this way, a fuel
10 supplier is acting on behalf of its customers who are emitting the GHGs ... Suppliers of
11 transportation fuels will have a compliance obligation for the combustion of emissions
12 from fuel that they sell, distribute, or otherwise transfer for consumption in California. ...
[B]ecause transportation fuels and use of natural gas by residential and commercial users
is a significant portion of California’s overall GHG emissions, ***the emissions from these
sources are covered indirectly through the inclusion of fuel distributors [in the Cap and
Trade program].***”(emphasis added).¹²⁹

13 277. CARB’s express recognition of the fact that the Cap and Trade program “covers”
14 emissions from the consumption of fossil fuels in the Cap and Trade regulatory approval process,
15 in marked contrast with the challenged Housing Measures in the 2017 Scoping Plan, was subject
16 to its own comprehensive environmental and economic analysis – which in no way disclosed,
17 analyzed, or assessed the impacts of forcing residents of new housing to pay for GHG emission
18 reductions from their fossil fuel uses at the pump (and in electricity bills) like their already-
19 housed neighbors, and then paying *again – double-paying –* in the form extra GHG mitigation
20 measures for the *same emissions*, resulting in higher housing costs.

21 278. The 2017 Scoping Plan likewise entirely omitted any analysis of the double-
22 charging of residents of new homes for GHG emissions from the three million new homes the
23 state needs to build to solve the housing crisis. Simply put, CARB should not now be permitted
24 to use what purports to be only an “advisory” 2017 Scoping Plan to disavow and undermine its

25 _____
26 ¹²⁹ CARB. October 2011. California’s Cap-And-Trade Program Final Statement of Reasons, p. 2:
27 <https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf>; (incorporating by reference CARB.
28 October 28, 2010. Staff Report: *Initial Statement of Reasons for the Proposed Regulation to*
Implement the California Cap-and-Trade Program Part 1, Vol. 1, pp. II-10, II-20, II-21, 11-53:
<https://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf>)

1 formal rulemaking statement for the Cap and Trade regulations, nor can CARB use this asserted
2 “advisory” document to invent the new CEQA GHG mitigation mandates (and preclude use of
3 Cap and Trade as CEQA mitigation) without going through a new regulatory process to amend its
4 Cap and Trade program.

5 279. Whether compliance with Cap and Trade for fossil fuels used to generate
6 electricity or power cars used by a particular project is an adequate mitigation measure for GHG
7 under CEQA has been hotly contested in past and pending CEQA lawsuits. In *Newhall, supra*, 62
8 Cal.4th 204, one of the approved GHG compliance pathways for CEQA identified by the Court
9 was compliance with applicable laws and regulations. That case was extensively briefed by
10 numerous advocates (*see* Opening Brief on the Merits, *Center for Biological Diversity v.*
11 *California Department of Fish and Game* (2015) 62 Cal.4th 204 (No. 5-S217763), and
12 Consolidated Reply Brief, *Center for Biological Diversity v. California Department of Fish and*
13 *Game*, (2015) 62 Cal.4th 204 (No. 9-S217763), which urged the Court to conclude as a matter of
14 law that CEQA requires “additive” mitigation beyond what is otherwise required to comply with
15 applicable environmental, health and safety laws.

16 280. Neither the appellate courts nor Supreme Court have imposed this novel
17 interpretation of the GHG mandates imposed by CEQA as a newly discovered legal requirement
18 lurking within this 1970 statute. As noted above, the Supreme Court declined to do so by
19 expressly recognizing that compliance with law was one of several compliance “pathways” for
20 addressing GHG impacts under CEQA. (*Newhall, supra*, 62 Cal.4th at 229). (*See also, Center for*
21 *Biological Diversity et al. v. Department of Fish and Game* (2014) 224 Cal.App.4th 1105.)¹³⁰

22 281. Consistent with this Supreme Court directive, and informed by both the
23 Legislative history of the Cap and Trade program and by CARB’s contemporaneous explanation
24 that compliance with Cap and Trade is indeed the sole GHG mitigation required for fossil fuel
25 use, several projects have mitigated GHG emissions from fossil fuel by relying on the legislated,
26

27 ¹³⁰ This appellate court decision, which was reversed and remanded by the Supreme Court
28 decision in the same case, is cited as evidence for the proposition that what constitutes adequate
mitigation for GHG impacts under CEQA has been hotly contested in the courts.

1 and regulated, Cap and Trade program and similar legislative as well as regulatory mandates to
2 reduce GHG emissions from fossil fuel. This has been accomplished through measures such as
3 the Low Carbon Fuel Standards, which collectively and comprehensively mandate prescribed
4 reductions in GHG emissions from fossil fuel use.

5 282. This approach has been expressly upheld by the Fifth District Court of Appeal in
6 *Association of Irrigated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708
7 (“AIR”). Although the project at issue was a refinery source that was itself clearly included within
8 the category of industrial operations directly regulated by the Cap and Trade Program, opponents
9 challenged that project’s reliance on the Cap and Trade program for non-refining GHG emissions
10 such as GHG emissions produced offsite by the electricity producers that provided power to the
11 consumer power grid, and by vehicles used by contractors and employees engaged in refinery
12 construction and operational activities. *See, e.g.,* Appellants’ Opening Brief, *AIR*, *5th Dist. Case
13 No. F073892 (December 9, 2016) at 29 (arguing that “[c]ap-and-trade does not apply to
14 greenhouse gas emissions from trains, trucks, and building construction”) and at 34-35
15 (arguing that participation in the cap and trade program is inadequate mitigation for project
16 emissions). The CEQA lead agency and respondent project applicant argued that reliance on Cap
17 and Trade as CEQA mitigation was lawful and sufficient under CEQA. *See* Joint Respondents’
18 Brief, *AIR*, 5th Dist. Case No. F073892 (March 10, 2017), at 52-56 (arguing that “The EIR
19 Properly Incorporated GHG Emission Reductions Resulting From Cap-and-Trade In The
20 Environmental Analysis”).

21 283. The Fifth District concluded that compliance with the Cap and Trade program for
22 the challenged project were adequate CEQA GHG mitigation. That case was then unsuccessfully
23 challenged, and unsuccessfully petitioned for depublication, by numerous advocates that
24 continued to assert that CEQA imposes an “additive” GHG mitigation obligation that could not
25 be met by paying the higher fuel costs imposed by the Cap and Trade program.¹³¹

26
27 ¹³¹ *See* Letter from CARB to City of Moreno Valley regarding Final Environmental Impact
28 Report for World Logistics Center, available at:
<https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf>.

1 284. California already has the highest gasoline prices of any state other than Hawaii.
2 CARB has consistently declined to disclose how much gasoline and diesel prices would increase
3 under the 2017 Cap and Trade legislation. The non-partisan LAO completed an independent
4 analysis of this question, and in 2017 concluded that under some scenarios, gasoline would
5 increase by about 15¢ per gallon – and in others by about 73¢ per gallon. The LAO also noted
6 that these estimated increases in gasoline prices “are an intentional design feature of the
7 program.”¹³²

8 285. By using CEQA mitigation mandates created by the Scoping Plan to require only
9 the disproportionately minority occupants of critically needed future housing to double-pay (both
10 at the pump and in the form of higher housing costs imposed as a result of CEQA mitigation for
11 the same fuel consumption), CARB has established a disparate new financial burden that is
12 entirely avoided by those generally whiter, wealthier, and older Californians who have the good
13 fortune of already occupying a home.

14 286. Both CARB and the Attorney General have acted in bad faith, and unlawfully, in
15 their public description of and subsequent conduct regarding the immediate effectiveness and
16 enforcement of the 2017 Scoping Plan.

17 287. First, in a written staff report distributed at the December 17, 2017 hearing at
18 which the CARB Board approved the Scoping Plan, CARB staff misled the public and its Board
19 by pretending that the challenged Housing Measures are simply not part of the Scoping Plan at
20 all, and thus need not be considered as part of the environmental or economic study CARB was
21 required to complete as part of the Scoping Plan approval process. This assertion flatly
22 contradicted an earlier description of the immediately-implementing status of these Housing
23 Measures made in a public presentation by a senior CARB executive.

24 288. Next, the Attorney General repeatedly advised this Court that the challenged
25 Housing Measures were merely “advisory” and explained “the expectation that new measures
26 proposed in the [Scoping] plan would be implemented through subsequent legislation or
27

28 ¹³² LAO, <https://lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf>.

1 regulations.” (Memorandum of Points and Authorities in Support of Demurrer to Plaintiff’s
2 Verified Petition for Writ of Mandate, Case No. 18-CECG-01494 (August 31, 2018), p. 8:18-19
3 (“AG Memo”). The AG Memo argued that the disparate harms caused by such measures are not
4 ripe because such subsequent implementing legislative or regulatory actions “have yet to be
5 taken” (Reply Memorandum in Support of Defendants California Air Resources Board and
6 Richard Corey’s Demurrer to Plaintiffs’ Verified Petition for Writ of Mandate *etc.*, Case No. 18-
7 CECG-01494(October 16, 2018), p. 2:6-7 (“AG Reply Memo”), and that Petitioners’ assertions
8 that the challenged Housing Measures would result in litigation disputes aimed at stopping or
9 increasing the cost of housing was “wildly speculative” (AG Memo, p. 10:7). Further the
10 Attorney General argued that the 2017 Scoping Plan “cannot be reasonably viewed as providing a
11 valid basis for filing suit under CEQA.” (AG Memo, p. 14:15) The same arguments were
12 advanced in this Court’s hearing on October 26, 2018.

13 289. Meanwhile, however, and virtually simultaneously with making contrary
14 assertions to this Court, both the Attorney General and CARB were filing comment letters
15 (precedent to CEQA lawsuits), and the Attorney General filed an amicus brief in a CEQA lawsuit,
16 to challenge the legality of a CEQA lead agency’s mitigation measure (in one case) and proposed
17 General Plan element approval (in another case) *based on alleged failure to comply with*
18 *applicable Housing Measures in the Scoping Plan.*

19 290. CARB’s (and the Attorney General’s) claims that the 2017 Scoping Plan is merely
20 “advisory” and that its future effects are merely “speculative” (as well as its express denial at
21 the December 2017 hearing on the 2017 Scoping Plan that the four challenged GHG Housing
22 Measures are even part of the Plan), have been belied by the actual use of the 2017 Scoping Plan
23 by CARB and the Attorney General themselves, as well as by third party agencies and anti-
24 housing project CEQA litigants. Among the recent examples of the use of the Scoping Plan are
25 the following:

- 26 A. **CARB September 7, 2018 Comment Letter:** Before even completing its
27 Demurrer briefing to this Court, on September 7, 2018, CARB filed a comment
28 letter criticizing the revised Final Environmental Impact Report for the World

1 Logistics Center project. A copy of this letter can be found at
2 <https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf>. CARB’s comment
3 letter opines that as an absolute and unambiguous matter of law, compliance with
4 the Cap and Trade program is not a permissible mitigation under CEQA. CARB’s
5 comment dismisses as “novel” the contention that compliance with laws and
6 regulations requiring reductions in GHG can be, and is in fact, a permissible and
7 legally sufficient mitigation measure under CEQA. Strikingly, CARB’s letter
8 simply ignores the *Newhall* decision. As for the Fifth District’s on-point decision
9 in *AIR*, CARB’s letter states (at p. 11, note 23) that, “[i]n CARB’s view this case
10 was wrongly decided as to the Cap-and-Trade issue” Thus, CARB in its
11 public comments is urging permitting agencies to *disregard* court decisions on
12 GHG issues and instead to follow CARB’s supposedly “advisory” Scoping Plan
13 policies, which it cites extensively . This type of CEQA “expert agency” letter can
14 be used by the agency itself, if it chooses to file a lawsuit against an agency
15 approving a project in alleged noncompliance with CEQA, or it can be used for its
16 evidentiary value (and expert agency opinions are presumptively entitled to greater
17 deference) by any other third party filing a CEQA lawsuit against that project, or
18 even in another lawsuit raising similar issues provided that the CARB comment
19 letter is submitted in the agency proceeding that is targeted by such second and
20 subsequent lawsuits.

21 B. **Attorney General’s September 7, 2018 Comment Letter:** Also on September 7,
22 2018, the Attorney General (“AG”) joined CARB in criticizing the World
23 Logistics Project’s GHG analysis in a comment letter that prominently featured the
24 2017 Scoping Plan. A copy of this letter can be found at
25 [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf)
26 [sections-feir.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf). Like CARB, the AG relied on the Scoping Plan to measure the
27 adequacy of GHG measures under CEQA. Also like CARB, the AG sought to
28 sidestep the Fifth District’s *AIR* decision, but did so “[w]ithout commenting on

1 whether or not that case was rightly decided” in the AG’s opinion (p. 6). The
2 Attorney General’s comment letter relies on the 2017 Scoping Plan in opining that
3 “CEQA requires” the CEQA lead agency to “evaluate the consistency of the
4 Project’s substantial increases in GHG emissions with state and regional plans and
5 policies calling for a dramatic reduction in GHG emissions” The AG goes on to
6 conclude that the lead agency engaged in a “failure to properly mitigate” impacts
7 as required by CEQA because the project’s “increase in GHG emissions conflicts
8 with the downward trajectory for GHG emissions necessary to achieve state
9 climate goals.” The AG again cites the 2017 Scoping Plan text in explaining that,
10 unless they mandate CEQA GHG mitigation measures that go beyond compliance
11 with applicable GHG reduction laws and regulations, “local governments would
12 . . . not be doing their part to help the State reach its ambitious, yet necessary,
13 climate goals.” [AG letter at p. 7-11]

14 C. **Attorney General’s November 8, 2018 Amicus Filing:** A third example is
15 provided by the AG’s November 8, 2018 filing of an “Ex Parte Application of
16 People of the State of California for Leave to File Amicus Curiae Brief in Support
17 of Petitioners” in *Sierra Club, et al. v. County of San Diego* (Nov. 8, 2018) No. 37-
18 2018-00014081-CU-TT-CTL (San Diego Superior Court). A true copy of this Ex
19 Parte Application and accompanying AG memorandum is attached hereto as
20 **Exhibit 1**. A copy of the underlying Sierra Club petition, into which the AG has
21 sought to inject the Scoping Plan, is attached hereto as **Exhibit 2**. In the amicus
22 filing (Exhibit 1), the Attorney General asserts that he “has a special role in
23 ensuring compliance with CEQA”, and that he “has actively participated in CEQA
24 matters raising issues of greenhouse gas (“GHG”) emissions and climate change.”
25 (Application at 3:16, 24-25.) The challenged San Diego County Climate Action
26 Plan actually includes and requires implementation of the 2017 Scoping Plan’s
27 “recommended” Net Zero GHG CEQA threshold for new projects, but was
28 nevertheless challenged in this lawsuit the grounds that it did not also mandate a

1 reduction in Vehicle Miles Traveled because it allowed the County to approve new
2 housing projects that fully mitigated (“Net Zero GHG”) all GHG emissions but
3 still resulted in an increase in VMT from residents living in this critically needed
4 new housing. Petitioners in the consolidated proceedings in this case have claimed
5 that based on the state’s climate laws including the 2017 Scoping Plan, the County
6 could not lawfully approve any amendment to its General Plan to accommodate
7 any of the state’s three million home shortfall unless such housing was higher
8 density (e.g., apartments) and located inside or immediately adjacent to existing
9 urban areas served by transit, because only that type of housing and location could
10 result in the required reduction in VMT. Petitioners in these cases further
11 identified the pending housing projects they believed could not be approved by the
12 County. Petitioners sought (and obtained) injunctive relief to prevent such
13 housing projects from relying on this “Net Zero” GHG Climate Action Plan as
14 allowed by one of the CEQA compliance pathways identified by the Supreme
15 Court in its *Newhall* decision, and identified by the Legislature itself in CEQA
16 compliance provisions set forth in SB 375. In his amicus brief, the Attorney
17 General repeatedly cites CARB’s 2017 Scoping Plan as the legal basis for a new
18 mandate that allegedly prohibits San Diego County (and all other counties) from
19 meeting any part of the housing shortfall with more traditional homes (e.g., small
20 “starter” homes and duplexes, which cost less than a third to build than higher
21 density apartment units), or from locating these new homes anywhere other than
22 an existing developed city or unincorporated community. The Attorney General
23 also falsely argues that VMT reductions are mandated by other state laws;
24 however, no law enacted by the California Legislature mandates any VMT
25 reduction, and the Legislature has repeatedly rejected enacting such a mandate.¹³³

27 ¹³³ The Attorney General further argues that VMT reductions are required by SB 375,
28 which is designed to reduce GHG (not VMT) with land use and transportation plans, even
though SB 375 specifically directs CARB to develop compliance metrics and CARB has

1 291. CARB cannot have it both ways: it cannot coyly claim that the 2017 Scoping Plan
2 is merely “advisory” and then fire into the end of a second round of CEQA documentation for a
3 single project a new legal conclusion that upends the published judicial precedents of our courts.
4 The AG similarly cannot assure this Court that it is “wildly speculative” for a CEQA lawsuit to be
5 filed in reliance on the challenged measures in the 2017 Scoping Plan, and then six days later file
6 an amicus in a CEQA lawsuit that does just that. If CARB wants to change Cap and Trade laws
7 and regulations, and other GHG reduction laws and regulations applicable to fossil fuels, to make
8 those not already fortunate enough to have housing pay both at the pump, and in their down-
9 payment/mortgage and rent check, for “additive” GHG reductions above and beyond what their
10 more fortunate, generally whiter, wealthier and older well-housed residents have to pay, then that
11 is first and foremost a new mandate that can only be imposed by the Legislature given direct court
12 precedent on this issue.

13 292. If such a mandate were proposed by the Legislature, a full and transparent debate
14 about the disparate harms such a proposal would confirm that those most affected by the housing
15 crisis, including disproportionately our minority communities, would suffer the equivalent of yet
16 another gasoline tax on those least able to pay, and most in need of new housing. Petitioners are
17 confident that the Legislature would not approve such a proposal.

18 293. Even these few examples of direct CARB and Attorney General implementation
19 actions of the 2017 Scoping Plan to require more mitigation or block new housing demonstrate
20 the immediate and ongoing harm of the 2017 Scoping Plan’s challenged Housing Measures,
21 which CARB and the Attorney General have opined impose higher CEQA “mitigation” costs on
22 housing under a “net zero” GHG mitigation framework, and block otherwise lawful new housing
23 altogether under the Scoping Plan’s “VMT reduction” framework. The harms caused by these
24 Housing Measures is not “wildly speculative”— they are already underway. They already
25 disproportionately affect California minority communities not already blessed with wealth and
26

27 itself repeatedly declined to require VMT reduction compliance metrics under SB 37 as
28 late as December of 2017 and March of 2018.

1 homeownership, and they are already the subject of both administrative and judicial proceedings.
2 They are properly and timely before this Court. The following paragraphs provide additional
3 evidence of ripeness in the context of the three other challenged Housing Measures, beyond the
4 “Net Zero” GHG threshold and corresponding mitigation mandates described above.

5 294. The 2017 Scoping Plan’s new numeric thresholds for local climate action plans
6 present similarly immediate and ongoing harms to Petitioner/Plaintiffs. In its *Newhall* decision,
7 the California Supreme Court concluded that one of the “pathways” for CEQA compliance was
8 designing projects that complied with a local Climate Action Plan (“CAP”) having the then-
9 applicable GHG statutory reduction mandate of reducing GHG emissions to 1990 levels by 2020.

10 295. Housing projects that complied with a local CAP had been duly approved by the
11 same local governments responsible for planning and approving adequate housing for our
12 minority communities. This provided a judicially streamlined pathway for GHG CEQA
13 compliance for housing. Local CAPs include community-scale GHG reduction strategies such as
14 pedestrian, bicycle and transit improvements that are beyond the ability of any single housing
15 project to invent or fully fund, and thus CAP compliance is a known and legally-defensible
16 CEQA GHG compliance pathway. The Scoping Plan destroyed that pathway, and accordingly
17 caused and is causing immediate harm to new housing projects that could otherwise rely on the
18 CAP compliance pathway for CEQA.

19 296. There is no statutory obligation for a city or county to adopt a CAP, nor are there
20 any regulations prescribing the required contents of a CAP; instead, a CAP’s primary legal
21 relevance to proposed new housing projects occurs within the CEQA compliance context.

22 297. There has been a flurry of unresolved and ongoing CEQA interpretative issues
23 with respect to CAPs that have been and remain pending in courtrooms throughout California.
24 For example, in the City of San Diego and the County of Sonoma, multi-year lawsuits have
25 resulted in two judicial decisions that make clear that any jurisdiction electing to voluntarily
26 approve a CAP must assure that the CAP has clear, adequate and enforceable measures to achieve
27 the GHG reduction metric included in the CAP. *See Sierra Club v. County of San Diego* (2014)
28 231 Cal.App.4th 1152; *California Riverwatch v. County of Sonoma* (July 20, 2017) Case No.

1 SCV-259242 (Superior Court for the County of Sonoma)¹³⁴; *see also Mission Bay Alliance, et. al.*
2 *v. Office of Community Investment and Infrastructure, et. al.* (2016) 6 Cal.App.5th 160
3 (upholding the adequacy of a CAP as CEQA compliance for a new professional sports facility).

4 298. The new numeric GHG per capita metric that the 2017 Scoping Plan prescribes as
5 the presumptively correct GHG reduction target for CAPs places the entire burden of achieving
6 the state’s legislated 40% reduction target by 2030, and the unlegislated 80% reduction target by
7 2050, on local governments, with for example a numeric GHG reduction target of 2 tons per
8 person per year by 2050. However, as the 2017 Scoping Plan itself makes clear, the vast majority
9 of GHG emissions derive from electric power generation, transportation, manufacturing, and
10 other sectors governed by legal standards, technologies, and economic drivers that fall well
11 beyond the land use jurisdiction and control of any local government. The Scoping Plan does not
12 even quantify the GHG reductions to be achieved by local governments, in their voluntary caps or
13 otherwise: it seeks to define and achieve the state’s GHG reduction mandates with measures
14 aimed at specific GHG emission sectors.

15 299. The 2018 San Diego County CAP, adopted after the County lost its first CEQA
16 lawsuit, adopts both CARB’s numeric GHG targets—and the mandate that new housing projects
17 entirely absorb the additional cost of fully offsetting GHG emissions in compliance with the “net
18 zero” standard by paying money to fund GHG reduction projects somewhere on earth. The San
19 Diego CAP both proves the immediacy of the disparate mitigation cost harms of the Scoping
20 Plan’s imposition of even higher costs to housing critically needed by California’s minority
21 communities, and provides a case study in the anti-housing legal morass created by the 2017
22 Scoping Plan’s ambiguous—and unexamined from an equity, environmental, economic
23 disclosure or public review process—new CEQA “net zero” threshold and CAP per capita
24 numeric standards.

25
26 _____
27 ¹³⁴ The trial court order in *California Riverwatch v. County of Sonoma* is cited herein as evidence
28 for the existence of CEQA litigation challenges to local climate action plans and not as legal
precedent. The order is available at: <http://transitionsonomavalley.org/wp-content/uploads/2017/07/Order-Granting-Writ-7-20-17.pdf>.

1 300. San Diego County faces its third round of CAP litigation (with the prior two
2 rounds still ongoing in various stages of judicial remand and review) in a lawsuit filed in 2018, in
3 which the same group of petitioners allege that the County again failed to include sufficient
4 mandatory measures to achieve the 2017 Scoping Plan per capita GHG reduction metric because
5 it continued to allow new housing to be built if offsetting GHG reductions were funded by the
6 housing project in or outside the County. A copy of one such lawsuit (consolidated with others)
7 is attached for reference as Exhibit 2. This lawsuit seeks a blanket, County-wide writ of mandate
8 that would block “processing of permits for development projects on unincorporated County
9 lands” unless these new housing-blocking measures are included. (See Exhibit 2 at p. 17:3-7.)
10 The petitioners in these consolidated cases against San Diego County have further made clear that
11 their ongoing objections to the County’s CAP were so severe that they had also been compelled
12 to file CEQA lawsuits *against individual housing projects*, and in their lawsuit, they have
13 included a list of nearly a dozen pending housing projects that in their judgment should not be
14 allowed to proceed. As described above, the Attorney General filed a request for leave to file an
15 amicus brief in this case, accompanied by an amicus brief. See Exhibit 1. Based on CARB’s
16 2017 Scoping Plan, the AG has sought to bolster to the petitioners’ anti-housing CEQA lawsuits,
17 including their claims that designated housing projects in unincorporated San Diego County
18 cannot lawfully be approved or built based on VMT impacts, even if all GHG impacts are
19 mitigated to “net zero.”

20 301. This CEQA morass of extraordinary GHG reduction costs imposed only on
21 residents of newly constructed housing, with still pending and unresolved CEQA lawsuit
22 challenges against the CAP and specific housing projects, for GHG reductions that are not even
23 quantified, let alone critical to California’s climate leadership, is itself an ample demonstration of
24 the disparate harms of CARB’s poorly-conceived and discriminatory GHG Housing Measures.

25 302. The Scoping Plan’s VMT reduction measure is likewise causing immediate,
26 ongoing, and disparate harm to California’s minority communities who are forced to drive ever-
27 greater distances to find housing they can afford to buy or rent. As in the case of local climate
28 action plans, there is no statewide statutory or regulatory mandate for reducing VMT. The

1 Legislature considered and rejected imposing a VMT reduction mandate, and CARB considered
2 and rejected imposing a VMT reduction mandate as part of the regional land use and
3 transportation planning mandated under SB 375 (first postponing its decision in December of
4 2017, at the same hearing CARB approved the Scoping Plan – and then definitively rejecting it in
5 March of 2018).

6 303. At these hearings, CARB was informed that VMT had increased in California
7 while transit utilization had fallen dramatically notwithstanding billions of dollars in new transit
8 system investments. VMT reduction thus could not appropriately be included as SB 375
9 compliance metrics and with increases in electric and high efficiency hybrid vehicles, the
10 correlation between VMT and GHG emissions is increasingly weak.

11 304. Even more than CARB’s other GHG Housing Measures, the VMT reduction
12 mandate is uniquely targeted to discriminate against minority workers. The American Community
13 Survey (“ACS”) is a project of the U.S. Census Bureau and tracks a wide range of data over
14 time—including the ethnicity, transportation mode, and times of California commuters. The ACS
15 data demonstrate that in the 10 year period between 2007 and 2016, 1,117,273 *more* Latino
16 workers drove to their jobs, 377,615 *more* Asian workers drove to their jobs, and 18,590 *more*
17 African American workers drove to their jobs.¹³⁵ During the same period, 447,063 *fewer* white
18 workers drove to their jobs. Transit utilization increased for white and Asian workers, but fell for
19 Latino and African American workers. During the same period, commute times lengthened
20 substantially as more people—again disproportionately minorities—were forced to commute
21 longer distances to housing they could afford.

22 305. By 2016, about 445,000 people in the Bay Area were commuting more than an
23 hour each direction—an increase of 75% over the 2006 count of long distance Bay Area
24 commuters. Anyone driving between the Bay Area and Central Valley during commute times
25 vividly experiences the gridlock conditions, adverse personal health (e.g., stress, high blood
26

27 ¹³⁵ David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate
28 Change, Holland & Knight, Chapman University Press (2018), Table 3.7, p. 84,
https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

1 pressure, back pain), and adverse family welfare (e.g., missed dinners, homework assistance, and
2 exhaustion) consequences of these commutes.

3 306. CARB (and the Attorney General) also have no support for their argument
4 disputing the fact that the challenged Housing Measures disproportionately affect minority
5 community members. As early as 2014, CARB received a comprehensive report from NextGen,
6 a firm closely aligned with the strongest supporters of California’s climate leadership, urging
7 CARB to restructure its electric car subsidy program, which was found to be disproportionately
8 benefitting those in Marin County and other wealthier and whiter areas that could afford to
9 purchase costly new electric vehicles. In “No Californian Left Behind,” Next Gen noted the
10 obvious: “the overwhelming majority of Californians still use cars to get to work,” including 77%
11 who commute alone and 12% who carpool. Further, “[i]n less densely developed and rural areas
12 like California’s San Joaquin Valley, commuters often have long distances to drive between
13 home, school, work and shopping; as a result, car ownership is often not a choice, but a
14 necessity.” Even more specifically, the report found that in Fresno County, even for workers
15 earning less than \$25,000, fewer than 3 percent of commuters take public transportation to work;
16 in Madera County, only 0.3% of low-income workers took transit, and the results were
17 comparable in in the rest of the San Joaquin Valley. Next Generation, *No Californian Left*
18 *Behind: Clean and Affordable Transportation Options for all through Vehicle Replacement*,
19 *http://www.thenextgeneration.org/files/No_Californian_Left_Behind_1.pdf (February 27, 2014)
20 at p. 9. NextGen advocated a restructured vehicle program designed to equitably retire and
21 replace the oldest most polluting cars, and to shift subsidy and incentive programs to help those
22 who are either low income or need rural transport to obtain cleaner, lower-GHG emitting cars.
23 (*Id.* p. 5) NextGext noted:

24 “California is already a leader in advanced and high tech transportation and transit
25 solutions. It is time we also became a leader in pragmatic solutions for a population that
26 is sometimes left behind in these discussions: non-urban, low-income, car-dependent
27 households.”
28

1 The VMT reduction mandate in the 2017 Scoping Plan was specifically identified as CARB was
2 fully on notice of the disparate harms caused to minority communities by its approach. In a
3 report submitted to CARB by the climate advocacy group NextGen in February 2014, CARB was
4 informed that Central Valley Latinos drive longer distances than any other ethnic group in any
5 other part of California—and live in communities and households with the highest poverty rates.

6 307. Notwithstanding CARB’s express acknowledgement in March of 2018 (and
7 preview in December of 2017) that even the regional transportation and housing plans required by
8 SB 375 cannot attain a VMT reduction target, CARB and its fellow “Vibrant Communities
9 Appendix” agencies, remain committed to using CEQA to require new projects—including
10 housing that is affordable and critically needed for California’s minority communities—to pay
11 higher costs to fund VMT reductions through CEQA.

12 308. As with the “net zero” GHG mitigation mandate, the immediate and ongoing effect
13 of this VMT reduction measure is to increase housing costs to even less affordable and attainable
14 levels for California’s minority communities.

15 309. Even before enactment of the 2017 Scoping Plan, OPR (the Vibrant Communities
16 agency that has the responsibility for adopting regulatory updates to CEQA) had been proposing
17 to regulate the act of driving a car (even an electric vehicle or carpool) one mile (one VMT) as a
18 new CEQA “impact” requiring “mitigation”— independent of whether the mile that was driven
19 actually caused any air quality, noise, GHG, safety, or other impacts to the physical environment.

20 310. This expansion of CEQA was prompted in 2013, when OPR was directed by the
21 Legislature in SB 743 to adopt a metric other than congestion-related traffic delay in transit-
22 served “infill” areas as the appropriate transportation impact required to be evaluated and
23 mitigated under CEQA, since these neighborhoods were intentionally being planned for higher
24 density, transit/bike/pedestrian rather than automobile-dependent, neighborhoods. Pub. Res. Code
25 § 21099(b).

26 311. In SB 743, the Legislature authorized but did not require the state Office of
27 Planning and Research (OPR) to use VMT as the replacement metric for transit-served areas, and
28 authorized but did not require OPR to apply an alternate transportation impact metric outside

1 designated urban infill transit neighborhoods. OPR responded with three separate rounds of
2 regulatory proposals, each of which proposed expanding CEQA by making VMT a new CEQA
3 impact, and requiring new mitigation to the extent a VMT impact was “significant.” OPR further
4 proposed a series of VMT significance thresholds, analytical methodologies, and potential
5 mitigation measures, which varied over time but included a “road diet” and measures to
6 discourage reducing congestion, on the theory that such congestion could somehow “induce”
7 transit use and VMT reductions.

8 312. Under all three sets of OPR proposals, projects would be required to do more
9 mitigation to reduce significant VMT impacts—by reducing VMT (i.e., reducing GHG or other
10 air pollutants is not a valid CEQA mitigation approach for a new VMT impact). OPR received
11 scores of comments objecting to expanding CEQA by making driving a mile a new “impact”
12 requiring “mitigation,” particularly given the disparate impact such a metric has on minority
13 communities and the many adverse impacts to the environment, and public health and welfare,
14 caused by the housing crisis and the state’s worst-in-the-nation commutes.

15 313. OPR, again and repeatedly citing to the asserted need to reduce VMT to meet
16 California’s GHG reduction and climate leadership commitments, held a recent round of
17 workshops on VMT mitigation strategies, working in close coordination with CARB’s earlier and
18 since-abandoned proposal to include VMT reductions as a required SB 375 regional
19 transportation plan compliance measures.

20 314. At these workshops, OPR and its outside experts from an Oregon university
21 conceded that VMT could likely not be “mitigated” by reducing miles driven by the future
22 residents of any particular housing project (e.g., by adding secure bike racks or charging extra for
23 parking), since whether people drive a mile or call an Uber—or hop on a bike or bus—is a
24 function of available, cost- and time-effective transportation modes as well as the incomes and
25 planned destinations of future residents. Agency workshop participants expressly acknowledged
26 that VMT had increased 6% over 2011 levels, even though California’s primary climate statutes
27 (including many programs designed to promote transit and higher density development, and many
28

1 billions of dollars in completed transit systems improvements) were in effect during this same
2 period.

3 315. These experts also conceded that with the success of on-demand ride services like
4 Uber and Lyft, including the increasing cost-effectiveness and popularity of voucher-based on-
5 demand rides by transit agencies in lieu of operating fixed route buses with low and still-declining
6 utilization levels, there was *no evidence* that VMT could be substantially reduced by a particular
7 project in a particular location as part of the CEQA review process for that project.

8 316. Instead, the VMT mitigation proposals shared during the workshops required that
9 new housing pay others to operate school buses, bikeshare, and make improvements to bike and
10 pedestrian pathways to the extent these measures could be demonstrated to reduce VMT. The
11 suggested VMT mitigation measures had in common the payment of substantial fees (with some
12 options suggested requiring annual payments, in perpetuity, of \$5000 per apartment or home).

13 317. A recent academic study of VMT mitigation under CEQA likewise concedes the
14 difficulty of a particular project achieving VMT reductions, and endorses the concept of adding to
15 housing and other project costs payments to VMT “banks” or “exchanges” to fund third party
16 VMT reductions – VMT reductions that occur somewhere, by someone.

17 318. This OPR VMT saga, like CARB’s ultimate decision not to require a VMT
18 compliance metric under SB 375, further demonstrates that the 2017 Scoping Plan’s VMT
19 reduction mandate measure – which CARB’s senior executive expressly acknowledged was
20 intended to be “self-executing” - is a fundamentally flawed “throw-away” measure that was
21 neither acknowledged nor given an equity, environmental, or economic evaluation before being
22 included in CARB’s 2017 Scoping Plan.

23 319. The last of the challenged GHG Housing Measures is the Vibrant Communities
24 Appendix, in which eight state agencies (including OPR) join with CARB in committing to
25 undertake a series of actions to implement the approved Scoping Plan. Some of these agencies
26 already have begun implementing the Scoping Plan, to the immediate and ongoing harm of
27 California minority communities who are already disproportionately suffering from the housing
28 crisis.

1 320. The Vibrant Communities appendix is an “interagency vision for land use, **and** for
2 discussion” (emphasis added) of “State-Level Strategies to Advance Sustainable, Equitable
3 Communities and Reduce Vehicles Miles of Travel (VMT).” 2017 Scoping Plan Appendix C, p.
4 1.

5 321. **First**, all of disparate and unlawful current and ongoing harms described in
6 connection with the Scoping Plan’s VMT Reduction measure apply equally to the actions of other
7 State agencies based on the Vibrant Communities appendix measures. None have a rational basis
8 for claiming any actual success in reducing VMT through their respective direct regulatory
9 activities.

10 322. **Second**, there is no constraint in the “Vibrant Communities Appendix” preventing
11 any of the eight state agency signatories from taking immediate steps to directly enforce these
12 “land use” policies, while claiming to “work together to achieve this shared vision and to
13 encourage land use and transportation decisions that minimize GHG emissions.” 2017 Scoping
14 Plan Appendix C, p. 2.

15 323. OPR’s VMT expansion of CEQA, discussed above, is an example of an agency
16 action to reduce VMT and GHG that is at least subject to formal rulemaking procedures and is
17 thus not yet being “implemented.”

18 324. In contrast, in June of 2018, a combination of four Vibrant Communities Appendix
19 implementing agencies joined by one other agency¹³⁶ announced that they would henceforth
20 implement – without benefit of any further Legislative or regulatory action – the “December 2017
21 Scoping Plan directive”. This announcement was made at the San Francisco Bay Area Regional
22 Meeting announcing the “California’s 2030 Natural and Working Lands Climate Change
23 Implementation Plan.” Consistent with the anti-housing bias built into CARB’s GHG Housing
24 Measures, these agencies collectively promised to avoid “conversion of land for development.”
25
26

27 ¹³⁶ The five agencies are: the California Environmental Protection Agency, the California
28 Natural Resources Agency, CARB, the California Department of Food and Agriculture, and the
Coastal Conservancy.

1 325. These five agencies made no exception for developing housing, even for housing
2 that CARB has already concluded as part of the SB 375 regional plan process meets California’s
3 legislated GHG emission reduction requirements. These agencies likewise made no exception for
4 transportation or other critical infrastructure, even if consistent with local and regional plans, even
5 if approved by federal or state agencies other than this five-agency consortium, even if within an
6 approved city limit, and even if approved by voters. *Simply put, these agencies – which have*
7 *combinations of funding, permitting, planning and enforcement obligations – have signaled that*
8 *they are not going to approve new development on land that is not already developed.*

9 326. The sole reed upon which this vast new legal prohibition rests is the 2017 Scoping
10 Plan, and more specifically the Vibrant Communities Appendix. See SF Bay Area Regional
11 Meeting, *California’s 2020 Natural and Working Lands Climate Change Implementation Plan*,
12 available at [http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-](http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf)
13 [presentation-6.18.pdf](http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf).

14 327. Less than 6% of California is urbanized, and each city and county is charged by
15 state law with adopting a General Plan that must accommodate the housing, transportation, and
16 infrastructure needs of its existing and planned future residents. Under SB 375, these local land
17 use plans are effectively consolidated into regional transportation and land use plans that must
18 accommodate future population and economic growth as well as meet CARB targets for reducing
19 GHG from the land use sector. Every regional Sustainable Communities Strategy (“SCS”) plan
20 includes some combination of housing, infrastructure (including transportation improvements),
21 schools and other land uses that are carefully and deliberatively sited within each jurisdiction’s
22 boundaries – and adopted only after each local government first complies with CEQA and
23 completes an extensive public notice, comment, and hearing process before appointed and elected
24 officials.

25 328. The decision of the California Department of Fish & Wildlife (“CDFW”) to
26 simply stop issuing permits for housing and related infrastructure projects that have already been
27 approved by local elected officials, after community input, in compliance with all applicable
28 laws—and have further already been approved by CARB, as part of the SB 375 regional plan

1 approval process—is a blatant example an announced harm being committed against housing by a
2 state agency in furtherance of CARB’s 2017 Scoping Plan.

3 329. **Third**, consistent with normal practice for lawsuits that include a claim that the
4 respondent agency has failed to comply with CEQA, Petitioners elected to prepare the
5 administrative record that is relevant to the disposition of this CEQA cause of action. The
6 Legislature has specifically prescribed the content of the CEQA administrative record, which
7 includes in part: “Any other written materials relevant to the respondent public agency’s
8 compliance with this division or to its decision on the merits of the project” and “all . . . internal
9 agency communications, including staff notes and memoranda relating to the project.” Pub. Res.
10 Code § 21167.6(c)(10).

11 330. Petitioners timely sought the administrative record from CARB, and in another
12 normal practice for CEQA lawsuits submitted requests filed under the California Public Records
13 Act (“CPRA”) to each of the Vibrant Communities Appendix agencies in relation to each
14 agency’s Scoping Plan and Vibrant Communities Appendix, and VMT or other Scoping Plan
15 documents.

16 331. Many months later, only incomplete responses have been provided by CARB
17 (which sought to limit the administrative record in this case to select excerpts from its Scoping
18 Plan docket).

19 332. Several of the Vibrant Communities Appendix agencies, including CDFW, OPR,
20 parent and affiliated agencies of each (Natural Resources Agency and Strategic Growth Council),
21 and CalSTA, responded with minimal documents and instead asserted that the requested
22 documents were exempt from disclosure under the CPRA because they could result in public
23 “controversy.”

24 333. One of these partially-responsive agencies admitted that the withheld documents
25 involved the highest level of state government, and included legislative proposals. All of these
26 partially-responsive agencies declined a second letter request to disclose the withheld documents,
27 or provide a privilege log describing each withheld document and the reason for its concealment.
28

1 334. There is no centralized or otherwise public repository of Vibrant Communities
2 Appendix agency documents that disclose to the public their current, planned, or future activities
3 with respect to implementing the Scoping Plan. There is likewise no centralized or otherwise
4 public repository of which implementing activities are being (or will be) directly undertaken, and
5 which will not be undertaken without future rulemaking or authorizing legislation.

6 335. From just the “direct” implementation activities noted above—and in particular
7 CARB’s intervention in an ongoing CEQA project-level review to opine on GHG mitigation
8 requirements in a manner that is contrary to published judicial opinions, and CDFW’s announced
9 intention to cease authorizing activities that would convert land to development with no exception
10 for new housing or related infrastructure that is already included in approved General Plans,
11 infrastructure plans, voter-approved bonds, or CARB-approved Sustainable Communities
12 Strategies implementing SB 375, is ample evidence of the immediate and ongoing new costs and
13 regulatory obstacles already being imposed by these agency Scoping Plan implementing actions.

14 336. CARB’s GHG reduction compliance metric is arbitrary, not supported by science,
15 has no rational basis, and is racially discriminatory. In California’s GHG and climate leadership
16 laws, the Legislature did not prescribe any specific measurement methodology or compliance
17 metric for meeting California’s GHG reduction goals. The methodology and metrics that CARB
18 has chosen completely ignore massive GHG emissions that occur when California’s forests burn,
19 as has tragically occurred at a large scale for several of the past years, notwithstanding estimates
20 that just one major forest fire wipes out an entire year of GHG reductions achieved by CARB’s
21 regulatory actions.¹³⁷

22 337. Similarly, CARB does not count—or require reductions of—GHG emissions
23 associated with imported foods or other goods, or with a multitude of other activities such as
24 airplane trips. However, every time a California resident (or job) leaves California, CARB counts
25 that as a GHG reduction—even though the top destinations for the hundreds of thousands of

26 ¹³⁷ David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate
27 Change, Holland & Knight, Chapman University Press (2017), p. 60-61,
28 https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

1 Californians who have migrated to lower cost states in recent years, notably including Texas,
2 Arizona and Nevada—have per capita GHG emissions that are more than double the emissions
3 those same individuals would have if they remained in California.

4 338. Climate change and GHG emissions are a global challenge, and nearly tripling the
5 GHG emissions of a California family that needs to move to Texas or Nevada to find housing
6 they can afford to rent or buy, increases global GHG.

7 339. It may be that there are other environmental priorities favored by CARB and its
8 allies that justify policies that are in fact resulting in the displacement and relocation of
9 California’s minority communities, that reduce the state’s population, and that eliminate higher
10 energy production jobs like manufacturing that traditionally provided a middle class income (and
11 home ownership) to a hard worker without a college degree. These discriminatory anti-minority
12 policies cannot, however, be scientifically, politically, or legally justified in the name of global
13 reductions of GHG.

14 340. CARB’s International Policy Director on climate, former Obama administration
15 senior climate team Lauren Sanchez, admitted that the GHG reduction metrics used by CARB –
16 that simply and completely ignores the increased global GHG emissions from forcing
17 Californians to live in high GHG states to find housing they can afford to buy with commute
18 times that did not damage driver health, family welfare, and the environment - were “flawed” at
19 the recent (October 2018) Environmental Law Conference in Yosemite. This admission rebuts the
20 politically shocking and legally invalid assertion that it is constitutional for CARB to implement
21 racially discriminatory measures (because CARB’s discriminatory objective is merely to force
22 minority Californians to either try to live in housing they cannot afford located nowhere near their
23 job, or migrate to another state).

24 341. The 2017 Scoping Plan is required to reduce California’s share of *global* GHG
25 emissions, but it completely ignores massive emission sources that are controversial within the
26 environmental community (e.g. managing California’s massive wildfire risks which result in
27 GHG emissions that dwarf CARB’s regulatory GHG reductions, based on what the non-partisan
28

1 Little Hoover Commission reported in February 2018 as a century of forest mismanagement
2 including clashes between environmental agencies).¹³⁸

3 342. The 2017 Scoping Plan also completely ignores other massive GHG emissions
4 attributed to the behavior of wealthier Californians (e.g., airplane rides, and consumption of
5 costly imported consumer products).¹³⁹ Instead, as summarized a Chapman University Research
6 Brief, CARB has administered California’s climate laws with actions such as the 2017 Scoping
7 Plan that drive up the fundamental costs of living for ordinary Californians—housing, electricity,
8 transportation—and thereby drive more people (and disproportionately minorities) into poverty,
9 and out of the state.¹⁴⁰

10 343. The 2017 Scoping Plan fails even the most rudimentary “rational basis”
11 constitutional test, and it is being implemented today by organizations and agencies including
12 CARB that are driving up housing costs and blocking housing projects today. To cause this much
13 pain and hardship to this many people, and to place the greatest burdens on those already
14 disparately harmed by the housing crisis, is unconscionable. It is also ongoing, illegal, and
15 unambiguously intentional, for CARB to impose these “flawed” GHG reduction metrics that
16 cause disparate harms to racial minorities living in California.

17 344. The foregoing paragraphs describe agency actions that are exacerbating the State’s
18 extreme poverty, homelessness and housing crisis while *increasing* global GHG emissions by
19 driving Californians to higher per capita GHG states.¹⁴¹

21 ¹³⁸ Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the*
22 *Sierra Nevada* (February 2018), available at <https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada>.

23 ¹³⁹ Bay Area Air Quality Management District and Cool Climate Network at UC Berkeley,
24 *Consumption-Based GHG Emissions Inventory: Prioritizing Climate Action for Different*
25 *Locations* (December 15, 2015), available at <https://escholarship.org/uc/item/2sn7m83z>

25 ¹⁴⁰ Friedman, Id., Summary at p. 7-9.

26 ¹⁴¹ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People*
27 *Move In*, The Sacramento Bee (Mar. 5, 2017), available at
28 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
Consider Moving Due to Rising Housing Costs, Poll Finds, Cal Watchdog (Sept. 21, 2017),
available at <https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising->

1 345. CARB’s new GHG Housing Measures, individually and collectively, on their face
2 and as applied, deprive Petitioners, including but not limited to RODRIGUEZ, MURILLO and
3 PEREZ, and other historically-disadvantaged minorities, of the fundamental right to live in
4 communities that are free from arbitrary, government-imposed standards whose inevitable effect
5 is to perpetuate their exclusion from participation in the housing markets in or near the
6 communities in which they work. CARB’s new GHG Housing Measures, individually and
7 collectively, on their face and as applied, have a disparate adverse impact on Petitioners,
8 including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-
9 disadvantaged minorities, as compared to similarly-situated non-minorities who currently enjoy
10 affordable access to housing near their workplaces.

11 346. CARB’s new GHG Housing Measures, on their face and as applied to the sorely-
12 needed development of new, affordable housing, are arbitrary and not rationally related to the
13 furtherance of their purported regulatory goal of reducing overall GHG emissions.

14 **H. CARB’S GHG Housing Measures Are “Underground Regulations” and Ultra**
15 **Vires**

16 347. A regulation is defined as “every rule, regulation, order, or standard of general
17 application or the amendment, supplement, or revision of any rule, regulation,
18 order, or standard adopted by any state agency to implement, interpret, or make specific the law
19 enforced or administered by it, or to govern its procedure.” Gov. Code § 11342.600.

20 348. State agencies are required to adopt regulations following the procedures
21 established in the APA and are prohibited from issuing and enforcing underground regulations.
22 Gov. Code § 11340.5. Under the APA, an underground regulation is void.

23 349. Each of CARB’s new GHG Housing Measures are being implemented by CARB,
24 and other state and local agencies, without further rulemaking or compliance with the APA. The
25 GHG Housing Measures are underground regulations requiring APA compliance, and cannot be
26

27 housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions
28 Data, October 2017, available at <https://www.eia.gov/environment/emissions/state/>.

1 lawfully implemented absent authorizing Legislation or formal rulemaking (inclusive of
2 environmental and economic review as required by the APA).

3 350. CARB's new GHG Housing Measures infringe on areas reserved for other State
4 agencies in two ways:

5 A. Senate Bill ("SB") 97 directs OPR to develop CEQA significance thresholds via
6 the CEQA Guidelines. OPR's update does not include the Scoping Plan's
7 presumptive CEQA GHG threshold. CARB was expressly allowed by the
8 Legislature in SB 97 to adopt a CEQA significance threshold only in the context
9 of updates to the CEQA Guidelines, which must undergo a rigorous rulemaking
10 process. CARB has acted *ultra vires* and contrary to the express command of the
11 Legislature in adopting its recommended CEQA significance threshold in the
12 Scoping Plan.

13 B. California has adopted new building standards, which are designed to assure that
14 new building code requirements are cost effective (with payback to the
15 consumer). "Net zero" new home building standards were not included. CARB has
16 no Legislative authority to bypass and frustrate this consumer protection law by
17 using CEQA as a workaround to require "net zero".¹⁴²

18 351. In articulating and publishing its new GHG Housing Measures, CARB has not
19 complied with the APA's rulemaking procedures and requirements. As a consequence, CARB's
20 new GHG Housing Measures are unlawful underground regulations, and should be held to be
21 void and of no effect.

22 **FIRST CAUSE OF ACTION**

23 **(Fair Employment and Housing Act, Gov. Code § 12955 *et seq.*)**

24 352. Petitioners hereby re-allege and incorporate herein by reference the allegations
25 contained in paragraphs 1-351 above, as well as in paragraphs 358-458.

26 _____
27 ¹⁴² See generally California Department of Housing and Community Development, State Housing
28 Law Program Laws and Regulations, <http://www.hcd.ca.gov/building-standards/state-housing-law/state-housing-laws-regulations.shtml>.

1 concluded that the FHA is violated by facially neutral practices that have an unjustified
2 discriminatory effect on the basis of a protected characteristic, regardless of intent.

3 361. Pursuant to its authority under the FHA, HUD has duly promulgated and published
4 nationally-applicable federal regulations implementing the FHA's Discriminatory Effects
5 Standard at 24 C.F.R. Part 100 (*see* 78 Fed.Reg. 11460-01 (February 15, 2013)) ("HUD
6 Regulations"). These HUD Regulations continue to apply, and have the force and effect of law.

7 362. HUD Regulations provide, *inter alia*, that liability under the FHA may be
8 established "based on a practice's discriminatory effect . . . even if the practice was not motivated
9 by a discriminatory intent." 24 C.F.R. § 100.500.

10 363. HUD Regulations further provide that: "A practice has a discriminatory effect
11 where it actually or predictably results in a disparate impact on a group of persons or perpetuates
12 segregated housing patterns because of race, color, . . . or national origin."

13 364. CARB's GHG Housing Measures actually and predictably result in a disparate
14 impact on members of minority communities, including but not limited to Petitioners, and
15 perpetuates segregated housing patterns because of race, color, and/or national origin within the
16 meaning of the FHA and HUD Regulations.

17 365. Because of the discriminatory effect of CARB's GHG Housing Measures, CARB
18 has the burden of proving that these GHG Housing Measures do not violate the FHA as
19 interpreted and implemented through the HUD Regulations.

20 366. CARB has not met, and cannot meet, its burden of trying to justify the
21 discriminatory effect of its challenged GHG Housing Measures, which are not necessary to
22 achieve the stated goals, which could and should be pursued through other measures having a less
23 discriminatory effect.

24 367. Because CARB's GHG Housing Measures have an unjustified discriminatory
25 effect on members of minority communities, including Petitioners, they violate the FHA as
26 implemented through HUD Regulations. Consequently, CARB's GHG Housing Measures should
27 be declared unlawful and enjoined, and Petitioners are entitled to other and further relief pursuant
28 to 42 U.S.C. § 1983.

1 **THIRD CAUSE OF ACTION**

2 **(Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1)**

3 368. Petitioners hereby re-allege and incorporate herein by reference the allegations
4 contained in paragraphs 1-367 above, as well as paragraphs 373-448.

5 369. Petitioners have a right to be free of arbitrary State regulations that are imposed
6 without having first been presented to the public through duly-authorized rulemaking processes
7 by Legislatively-authorized State agencies.

8 370. CARB's new GHG Housing Measures, individually and collectively, will
9 inevitably cause serious harm to the ability of Petitioners and other members of disadvantaged
10 minority communities to gain access to affordable housing, and have a disproportionate adverse
11 impact on them.

12 371. CARB's new GHG Housing Measures are not rationally calculated to further the
13 State's legitimate interest in reducing GHG emissions, on their face or as applied to housing
14 projects in California. Instead, CARB's new GHG Housing Measures are both arbitrary and
15 counterproductive in terms of actually achieving their purported goals of GHG emission
16 reductions.

17 372. For these reasons, CARB's GHG Housing Measures have been issued in violation
18 of, and constitute substantive violations of, the Due Process Clauses of the California and United
19 States Constitutions. (Cal. Const. Art. 1, § 7; U.S. Const. Amd. 14, § 1,)

20 **FOURTH CAUSE OF ACTION**

21 **(Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1)**

22 373. Petitioners hereby re-allege and incorporate herein by reference the allegations
23 contained in paragraphs 1-372 above, as well as 382-458.

24 374. Non-discriminatory access to housing is a fundamental interest for purposes of
25 evaluating regulations under the equal protection provisions of the California Constitution. Art. I,
26 § 7 and Art. IV, § 16.
27
28

1 384. CARB did not write its Final EA in plain language so that members of the public
2 could readily understand the document.

3 385. CARB did not assess the “whole of the project” as required by CEQA. The GHG
4 Housing Measures are included in the 2017 Scoping Plan and thus the “project” for CEQA
5 purposes should have included potential direct and indirect impacts on the environment from the
6 four GHG Housing Measures. CARB did not include an analysis of the four GHG Housing
7 Measures in the EA.

8 386. CARB did not base its Final EA on an accurate, stable, and finite project
9 description. The EA did not include the four GHG Housing Measures in its project description.
10 For this reason CARB applied an unreasonable and unlawful “project” definition and undermined
11 CEQA’s informational and decision-making purposes. The project description was misleading,
12 incomplete, and impermissibly vague.

13 387. CARB did not properly identify the Project objectives in its EA.

14 388. CARB’s unlawful use of the “cumulative gap” methodology created multiple legal
15 deficiencies in the EA, including in the project description, project objectives, and impact
16 analysis. Had CARB used the appropriate project objective—reducing GHG 40% below the 1990
17 California GHG inventory by 2030—the estimated 1% of GHG reductions (1.79 tons per year)
18 achieved by the GHG Housing Measures would have been entirely unnecessary, and all disparate
19 and unlawful adverse civil rights, environmental, housing, homelessness, poverty, and
20 transportation consequences of the GHG Housing Measures could have been avoided.

21 389. At most, CARB could have clearly identified its “cumulative gap” methodology as
22 an alternative to the project that would have further reduced GHG emissions beyond the SB 32
23 statutory mandate, to further inform the public and decisionmakers of the comparative impacts
24 and consequences of SB 32’s legislated GHG reduction mandate, and the more substantial GHG
25 reductions sought by CARB staff. CARB’s failure to use the SB 32 statutory mandate of
26 achieving 40% GHG reduction from 1990 levels as of 2030 is a fatal legal flaw.

27 390. CARB also failed to adequately evaluate the direct, indirect, and cumulative
28 environmental impacts of the 2017 Scoping Plan in its Final EA, even after commenters identified

1 numerous review gaps in their comments on the Draft EA. As discussed above, CARB was fully
2 on notice of the scale and nature of the impacts associated with the GHG Housing Measures
3 based on CARB's review and approval of more than a dozen regional plans to intensify housing
4 densities near transit, and improve public transit, from all of California's most significant
5 population centers; each of these regional plans identified multiple unavoidable significant
6 adverse environmental impacts from implementation of current plans. The deficiencies in the
7 Final EA include but are not limited to the following:

- 8 • Aesthetic impacts such as changes to public or private views and character of existing
9 communities based on increased building intensities and population densities;
- 10 • Air quality impacts from increases in GHG, criteria pollutants, and toxic air
11 contaminant emissions due to longer commutes and forced congestion that will occur
12 from the implementation of the VMT limits in the 2017 Scoping Plan;
- 13 • Biological impacts from increased usage intensities in urban parks from substantial
14 infill population increases;
- 15 • Cultural impacts including adverse changes to historic buildings and districts from
16 increased building and population densities, and changes to culturally and religiously
17 significant resources within urbanized areas from increased building and population
18 densities;
- 19 • Urban agriculture impacts from the conversion of low intensity urban agricultural uses
20 to high intensity, higher density uses from increasing populations in urban areas,
21 including increasing the urban heat island GHG effect;
- 22 • Geology/soils impacts from building more structures and exposing more people to
23 earthquake fault lines and other geologic/soils hazards by intensifying land use in
24 urban areas;
- 25 • Hazards and hazardous materials impacts by locating more intense/dense housing and
26 other sensitive uses such as schools and senior care facilities near freeways, ports, and
27 stationary sources in urbanized areas;
- 28

- 1 • Hydrology and water quality impacts from increasing volumes and pollutant loads
- 2 from stormwater runoff from higher density/intensity uses in transit-served areas as
- 3 allowed by current stormwater standards;
- 4 • Noise impacts from substantial ongoing increases in construction noise from
- 5 increasing density and intensity of development in existing communities and ongoing
- 6 operational noise from more intensive uses of community amenities such as extended
- 7 nighttime hours for parks and fields;
- 8 • Population and housing impacts from substantially increasing both the population and
- 9 housing units in existing communities;
- 10 • Recreation and park impacts from increasing the population using natural preserve and
- 11 open space areas as well as recreational parks;
- 12 • Transportation/traffic impacts from substantial total increases in VMT in higher
- 13 density communities, increased VMT from rideshare/carshare services and future
- 14 predicted VMT increases from automated vehicles, notwithstanding predicted future
- 15 decrease in private car ownership;
- 16 • Traffic-gridlock related impacts and multi-modal congestion impacts including noise
- 17 increases and adverse transportation safety hazards in areas of dense multi-modal
- 18 activities;
- 19 • Public safety impacts due to impacts on first responders such as fire, police, and
- 20 paramedic services from congested and gridlocked urban streets; and
- 21 • Public utility and public service impacts from substantial increases in population and
- 22 housing/employment uses and demands on existing water, wastewater, electricity,
- 23 natural gas, emergency services, libraries and schools.

24 391. As stated above, although the Scoping Plan’s CEQA threshold is not binding on a
25 lead agency, it nevertheless has immediate evidentiary weight as the expert conclusion of the
26 state’s expert GHG agency. Thus, the Scoping Plan’s CEQA threshold is appropriately
27 justiciable, and should be vacated for the reasons set forth herein.

1 industry relationships that are equivalent in structure to the Regional Industry Modeling
2 System published by the Bureau of Economic Analysis.

3 (3) Can produce (to the extent possible) quantitative estimates of economic variables that
4 address or facilitate the quantitative or qualitative estimation of the following.

5 (A) The creation or elimination of jobs within the state;

6 (B) The creation of new businesses or the elimination of existing businesses within the
7 state;

8 (C) The competitive advantages or disadvantages for businesses currently doing business
9 within the state;

10 (D) The increase or decrease of investment in the state;

11 (E) The incentives for innovation in products, materials, or processes; and

12 (F) The benefits of the regulations, including but not limited to benefits to the health,
13 safety, and welfare of California residents, worker safety, and the state's environment and
14 quality of life, among any other benefits identified by the agency.”

15 399. DOF regulations require that DOF's "most current publicly available economic
16 and demographic projections, which may be found on the department's website, shall be used
17 unless the department approves the agency's written request to use a different projection for a
18 specific proposed major regulation." 1 C.C.R. § 2003(b).

19 400. DOF regulations also provide that: "An analysis of estimated changes in behavior
20 by businesses and/or individuals in response to the proposed major regulation shall be conducted
21 and, if feasible, an estimate made of the extent to which costs or benefits are retained within the
22 business and/or by individuals or passed on to others, including customers, employees, suppliers
23 and owners." 1 C.C.R. § 2003(f).

24 401. In grafting its new GHG Housing Measures onto the 2017 Scoping Plan, CARB
25 has failed to comply with the APA, including DOF regulations applicable to CARB.

26 402. More significantly, and consistent with the LAO's repeated findings that the
27 CARB analysis methodology fails to provide sufficiently detailed information about impacts to
28 individuals, households and businesses, CARB's 2017 Scoping Plan completely ignores the fact

1 that California has the greatest inequality in the United States, and that energy costs, loss of
2 energy-intensive jobs and housing costs related to Scoping Plan policies play a major role in that
3 unwanted outcome. To fulfill its statutory mandates, CARB must start by recognizing that, as
4 meticulously documented in a United Way Study, more than 30% of all California households
5 lack sufficient means to meet the real cost of living in the state.

6 403. In addition, as described above, by using the unlawful “cumulative gap”
7 methodology to calculate the GHG reductions it claims are needed in the 2017 Scoping Plan,
8 CARB improperly created inputs for the FA that render the entire document invalid.

9 404. In its present form, the Scoping Plan embodies multiple violations of the APA and
10 should be set aside as unlawful and void.

11 **SEVENTH CAUSE OF ACTION**

12 **(Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500**
13 ***et seq.*)**

14 405. Petitioners hereby re-allege and incorporate herein by reference the allegations
15 contained in paragraphs 1-404 above, as well as paragraphs 413-458.

16 406. The GWSA provides in pertinent part that, in promulgating GHG regulations,
17 CARB “shall do all of the following:

- 18 (1) Design the regulations, including distribution of emissions allowances where appropriate,
19 in a manner that is equitable, seeks to minimize costs and maximize the total benefits to
20 California, and encourages early action to reduce greenhouse gas emissions.
- 21 (2) Ensure that activities undertaken to comply with the regulations do not disproportionately
22 impact low-income communities.
- 23 (3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to
24 the implementation of this section receive appropriate credit for early voluntary
25 reductions.
- 26 (4) Ensure that activities undertaken pursuant to the regulations complement, and do not
27 interfere with, efforts to achieve and maintain federal and state ambient air quality
28 standards and to reduce toxic air contaminant emissions.

1 (5) Consider cost-effectiveness of these regulations.

2 (6) Consider overall societal benefits, including reductions in other air pollutants,
3 diversification of energy sources, and other benefits to the economy, environment, and
4 public health.”

5 407. In responses to Petitioners’ comments on the 2017 Scoping Plan, CARB has
6 acknowledged that Chapter 5 of the Scoping Plan (which sets out the new GHG Housing
7 Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB’s words,
8 “These recommendations in the ‘Enabling Local Action’ subchapter of the Scoping Plan are not
9 part of the proposed ‘project’ for purposes of CEQA review.”¹⁴³ Thus, CARB admits that it did
10 not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

11 408. CARB’s assertion that the new GHG Housing Measures set out in Chapter 5 of the
12 Scoping Plan do not constitute “major regulations” is belied by their content and the legal and
13 regulatory setting in which they were issued, as described above.

14 409. Each scoping plan update must also identify for each emissions reduction measure,
15 the range of projected GHG emission reductions that result from the measure, the range of
16 projected air pollution reductions that result from the measure, and the cost-effectiveness,
17 including avoided social costs, of the measure. H&S Code § 38562.7.

18 410. The 2017 Scoping Plan contains no such analysis for CARB’s new GHG Housing
19 Measures. The Plan lists potential emission reductions from the “Mobile Source Strategy” which
20 includes the VMT reduction requirements, but does not analyze proposed emission reductions,
21 projected air pollution reductions, or cost-effectiveness of the other measures.

22 411. CARB’s new GHG Housing Measures, as set out in its 2017 Scoping Plan, were
23 issued in violation of some or all of the specific statutory requirements set out in the GWSA, as
24 described above.

25
26
27 ¹⁴³ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
28 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

1 district is not taking reasonable efforts to achieve and maintain ambient air quality standards.
2 H&S Code § 41505.

3 420. Fresno County is part of the San Joaquin Valley Air Pollution Control District
4 (“SJVAPCD”). The SJVAPCD is currently nonattainment/severe for the CAAQS for ozone and
5 nonattainment for PM.

6 421. The vast majority of California is designated nonattainment for the CAAQS for
7 ozone and PM.

8 422. Nitrogen oxides, including NO₂, CO, and volatile organic compounds (“VOCs”)
9 are precursor pollutants for ozone, meaning they react in the atmosphere in the presence of
10 sunlight to form ozone.

11 423. PM is a complex mixture of extremely small particles and liquid droplets found in
12 the air which can cause serious health effects when inhaled, including asthma and other lung
13 issues and heart problems. Some particles are large enough to see while others are so small that
14 they can get into the bloodstream. PM is made up of PM₁₀ (inhalable particles with diameters 10
15 micrometers and smaller) and PM_{2.5} (fine inhalable particles with diameters 2.5 micrometers and
16 smaller).

17 424. PM emissions in California and in the SJVAPCD increased in 2016 as compared
18 to prior years.

19 425. As detailed above, the VMT reduction requirements in the 2017 Scoping Plan will
20 result in increased congestion in California.

21 426. Increasing congestion increases emissions of multiple pollutants including NO_x,
22 CO, and PM. This would increase ozone and inhibit California’s ability to meet the CAAQS for
23 ozone, NO₂, and PM, among others.

24 427. Because CARB intends to achieve the VMT reduction standard by intentionally
25 increasing congestion, which will increase emissions of criteria pollutants such as NO₂ and PM,
26 CARB is violating its statutory duty to ensure that every reasonable action is taken to
27 expeditiously achieve attainment of the CAAQS.
28

1 428. In addition to a responsibility under the CCAA to meet the CAAQS, CARB has a
2 statutory duty under the Health & Safety Code to ensure that California meets the National
3 Ambient Air Quality Standards (“NAAQS”) set by the EPA.

4 429. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions which
5 each air district must attain and maintain. EPA has set NAAQS for CO, lead, NO₂, ozone, PM,
6 and SO₂.

7 430. CARB is designated the air pollution control agency for all purposes set forth in
8 federal law. H&S Code § 39602. CARB is responsible for preparation of the state implementation
9 plan (“SIP”) required by the federal Clean Air Act (“CAA”) to show how California will attain
10 the NAAQS. CARB approves SIPs and sends them to EPA for approval under the CAA. H&S
11 Code § 40923.

12 431. While the local air districts have primary authority over nonmobile sources of air
13 emissions, adopt rules and regulations to achieve emissions reductions, and develop the SIPs to
14 attain the NAAQS (H&S Code § 39602.5), CARB is charged with coordinating efforts to attain
15 and maintain ambient air quality standards (H&S Code § 39003) and to comply with the CAA
16 (H&S Code § 39602).

17 432. CARB also must adopt rules and regulations to achieve the NAAQS required by
18 the CAA by the applicable attainment date and maintain the standards thereafter. H&S Code §
19 39602.5. CARB is thus responsible for ensuring that California meets the NAAQS.

20 433. SJVAPCD is nonattainment/extreme for the ozone NAAQS and nonattainment for
21 PM_{2.5}.

22 434. The vast majority of California is nonattainment for the ozone NAAQS and much
23 of California is nonattainment for PM₁₀.

24 435. It is unlawful for CARB to intentionally undermine California’s efforts to attain
25 and maintain the NAAQS by adopting measures in the 2017 Scoping Plan that will increase NO_x
26 and PM by intentionally increasing congestion in an attempt to lower VMT to purportedly
27 achieve GHG emission reductions.
28

1 **TENTH CAUSE OF ACTION**

2 **(Ultra Vires Agency Action, Code of Civil Proc. §1085)**

3 442. Petitioners hereby re-allege and incorporate herein by reference the allegations
4 contained in paragraphs 1-441 above.

5 443. In adopting the 2017 Scoping Plan, including the GHG Housing Measures, CARB
6 has acted beyond its statutorily delegated authority and contrary to law.

7 **CEQA Net Zero GHG Threshold**

8 444. The 2017 Scoping Plan would apply a CEQA net zero GHG emissions threshold
9 to all CEQA projects. CEQA applies to the “whole of a project”, which includes construction
10 activities, operation of new buildings, offsite electricity generation, waste management,
11 transportation fuel use, and a myriad of other activities.

12 445. This threshold is unlawful under *Newhall, supra*, 62 Cal.4th 204, and other current
13 California precedent affirming that compliance with law is generally an acceptable CEQA
14 standard. This includes, but is not limited to, using compliance with the cap-and-trade program as
15 appropriate CEQA mitigation for GHG and transportation impacts. *Association of Irrigated*
16 *Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708.

17 446. This threshold is also unlawful under OPR’s GHG CEQA rulemaking package
18 which stated that there was not a CEQA threshold requiring no net increase in GHG emissions
19 (i.e., no one molecule rule). *See* “Final Statement of Reasons for Regulatory Action”,
20 Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse
21 Gas Emissions Pursuant to SB 97, Dec. 2009, p. 25 ([n]otably, section 15064.4(b)(1) is not
22 intended to imply a zero net emissions threshold of significance. As case law makes clear, there is
23 no “one molecule rule” in CEQA. (CBE, *supra*, 103 Cal.App.4th 120”).

24 **Regulating In An Attempt to Achieve the 2050 GHG Emission Reduction Goal**

25 447. CARB also acted ultra vires by attempting to mandate GHG Housing Measures
26 that purportedly would help California achieve the 2050 GHG reduction goal in Executive Order
27 S-3-05.

28

1 448. CARB has no Legislative authority to regulate towards achieving the 2050 goal, a
2 GHG emission reduction target which has not been codified and which the Legislature has
3 repeatedly refused to adopt. Mandating actions in an attempt to reach the 2050 goal is outside
4 CARB’s statutory authority under the GWSA which only contains GHG emission reduction
5 standards for 2020 and 2030.

6 449. The Legislative Analyst’s Office has stated that, based on discussions with
7 Legislative Counsel, it is unlikely that CARB has authority to adopt and enforce regulations to
8 achieve more stringent GHG targets. LAO report, p. 7.

9 **VMT Reduction Requirements**

10 450. In addition, the VMT reduction standards mandated in the Scoping Plan are ultra
11 vires and beyond CARB’s statutory authority.

12 451. The Legislature rejected legislation as recently as 2017 requiring VMT
13 reductions/standards.

14 452. The only agency authorized to consider VMT under CEQA is OPR under SB 743.
15 OPR’s proposed SB 743 regulations are going through a formal rulemaking process now and
16 CARB cannot jump the gun and, with zero statutory authority, adopt VMT regulations in the
17 2017 Scoping Plan.

18 **SB 97 and OPR Promulgation of CEQA Guidelines**

19 453. Similarly, the only method by which the Legislature authorized OPR (with
20 CARB’s permissive but not mandatory cooperation) to adopt new CEQA significance thresholds
21 is via updates to the CEQA Guidelines.

22 454. OPR has not included CARB’s new GHG Housing Measures in its proposed new
23 Guidelines, and CARB has no authority to make an “end run” around the rulemaking process
24 established by the Legislature.

25 **New Building Code Requirements**

26 455. The Legislature has enacted new consumer protection requirements, including new
27 building standards, designed to assure that new building code requirements are cost effective.
28

1 CARB’s “net zero” new home building standard was not included in these new building
2 standards.

3 456. CARB has no Legislative authority to impose new “net zero” building standards.

4 457. CARB’s new “net zero” building standards are contrary to, and will substantially
5 frustrate, the Legislature’s purpose in adopting new building code requirements.

6 458. CARB’s decision to adopt the 2017 Scoping Plan and the GHG Housing Measures
7 within it was also fraught with procedural defects, including violations of the APA, CEQA, and
8 GWSA, as explained above. These procedural defects are further actions that are *ultra vires* and
9 were taken contrary to law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE Petitioners THE TWO HUNDRED, including LETICIA RODRIGUEZ,
12 TERESA MURILLO and EUGENIA PEREZ, request relief from this Court as follows:

13 A. For a declaration, pursuant to Code of Civil Procedure § 1060, that the following
14 GHG regulations and standards, as set out in CARB’s Scoping Plan, are unlawful, void, and of no
15 force or effect:

- 16 • The Vehicle Miles Traveled (“VMT”) mandate.
- 17 • The Net Zero CEQA threshold
- 18 • The CO2 per capita targets for local climate action plans for 2030 and 2050

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- The “Vibrant Communities” policies in Appendix C.

B. For a writ of mandate or peremptory writ issued under the seal of this Court pursuant to Code of Civil Procedure § 1094.5 or in the alternative § 1085, directing Respondents to set aside the foregoing provisions of the Scoping Plan and to refrain from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

C. For permanent injunctions restraining Respondents from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

D. For an award of their fees and costs, including reasonably attorneys’ fees and expert costs, as authorized by Code of Civil Procedure § 1021.5, and 42 U.S. Code section 1988.

E. That this Court retain continuing jurisdiction over this matter until such time as the Court has determined that CARB has fully and properly complied with its Orders.

F. For such other and further relief as may be just and appropriate.

Dated November 21, 2018

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 

Jennifer L. Hernandez
Charles L. Coleman III
Marne S. Sussman
David I. Holtzman

Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, LETICIA RODRIGUEZ,
TERESA MURILLO, GINA PEREZ, *et al.*

VERIFICATION

1
2 I, Jennifer L. Hernandez, am one of the attorneys for, and am a member of, THE TWO
3 HUNDRED, an unincorporated association, Plaintiffs/Petitioners in this action. I am authorized
4 to make this verification on behalf of THE TWO HUNDRED and its members named herein. I
5 have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF
6 MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the
7 contents thereof. I am informed and believe and on that ground allege that the matters stated
8 therein are true. I verify the foregoing Petition and Complaint for the reason that
9 Plaintiffs/Petitioners named in the Petition/Complaint are not present in the county where my
10 office is located.

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

13 Executed this 21st day of November, 2018, at San Francisco, California.

14
15 
16 _____
17 JENNIFER L. HERNANDEZ
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December 3, 2018

CHAIRWOMEN INMAN AND NICHOLS, AND MEMBERS OF THE CALIFORNIA TRANSPORTATION COMMISSION AND CALIFORNIA AIR RESOURCES BOARD

Re: CARB 2018 Progress Report on California's Sustainable Communities and Climate
Protection Act

Dear Chairwomen and Members:

We are honored to represent The 200, a distinguished group of California's civil rights leaders who have spent their entire careers – with some careers spanning more than 50 years – fighting racial discrimination by public agencies blind to the disparate harm to minority communities caused by the policy preferences advanced by the political elite of their day.

The 200 formed to respond to California's extreme poverty, homelessness, and housing crisis with a simple objective: homeownership must be attainable for California's minority workers and families. Homeownership has been recognized as the most effective means of entering and remaining in the middle class, but for decades minority communities were “redlined” – by discriminatory lending, insurance, zoning, and other government-imposed or sanctioned barriers – and denied access to the better health, education, economic security, and welfare benefits that derive from home ownership.

The California Air Resources Board (CARB) is the latest in a long line of public agencies to use purportedly race-neutral goals to unlawfully discriminate against California's minority communities. The 200 has filed a civil rights lawsuit against four anti-housing measures in CARB's 2017 Scoping Plan, including its expansion of CEQA, its mandated reduction in vehicle miles travelled (VMT), and its “Vibrant Communities Appendix C” which includes multiple new barriers to building housing that California's minority workers can actually afford to buy. A copy of that lawsuit, which includes a detailed description of CARB's discriminatory conduct, is included as Attachment A to this letter. That lawsuit seeks to compel CARB to rescind the four challenged housing measures, and to halt implementation of any Scoping Plan action not expressly required by legislation or existing regulations until a comprehensive environmental and economic assessment is completing that documents the cost and environmental consequences of Scoping Plan measures on existing Californians.

December 3, 2018

Page 2

The 200 filed a second lawsuit against several of the other state agencies that comprise the “Vibrant Communities” implementing agencies (referenced in Footnote 9 of the above-referenced CARB report) declined to disclose documents responsive to our Public Records Act request, claiming that such documents would be too “controversial” and should thus be concealed under the deliberative process privilege, to compel disclosure of the withheld documents. A copy of this lawsuit is included as Attachment B to this letter.

CARB has distorted and mismanaged California’s climate mandates into a regressive regime that has and will continue to worsen the state’s poverty, homelessness, and housing crises. More than 1,000,000 Californians have moved out of California because of high housing costs, and most of them – our children, our grandchildren, and our treasured teachers and valued craftsmen – move to states like Texas, Nevada and Arizona, all of which have much higher per capita greenhouse gas emissions than California. With its unique brand of math and metrics, CARB has managed to achieve the twin objectives of harming our young minority workforce while actually increasing global GHG emissions. A one-page summary of the GHG “math” behind CARB’s proposed agenda to engage in still more study of how and where to build critically needed housing and mandate reductions in VMT is included as Attachment C, and a detailed study of California’s GHG reduction programs in relation to the GHG reduction progress made by other countries and states, as well as a focused examination on the disparate racial and regional impacts of CARB’s GHG reduction programs, is included as Attachment D.

Because this is a joint meeting of the California Transportation Commission and the California Air Resources Board, we address our comments to each agency below:

California Transportation Commission.

We first take this opportunity to commend the staff of the California Transportation Commission, which timely and completely responded to our California Public Records Act (CPRA) request. We have not named CTC as a party to our CPRA lawsuit, but regret to report that CalSTA is a party based on that agency’s decision to conceal responsive documents, including the fact that these issues were considered at the highest level of state government and consideration of potential legislation. Neither of these reasons is a lawful basis for concealing public records.

We next want to commend CTC for its work in managing California’s complex transportation systems in compliance with your agency’s statutory obligations, including support for voter-approved transportation projects and funding priorities, and for your tradition of working collaboratively with and respecting the legal obligations of the state’s regional transportation authorities, as well as cities and counties.

California Air Resources Board.

First, CARB's 2018 Progress Report is a wish list of power over local land use generally, and mandating reductions in VMT in particular, that CARB sought, but did not receive, from the Legislature.

Second, the Report also demonstrates CARB's ongoing and intentional discrimination against California's minority communities.

The detailed reasons for both of these conclusions are set forth in the attachments to this letter, such as The 200's lawsuit against CARB, and are not repeated here.

Four points warrant highlighting for the combined attention of CTC/CARB.

1. CARB Has Zero Legal Authority to Mandate Reductions In Vehicle Miles Travelled (VMT), and Its Efforts to Do So Are Both Unlawful and Discriminatory

CARB and its environmental (open space and species protection, and more recently climate) allies have long sought legislative authority to mandate reductions in VMT. There is zero evidence, available anywhere in the world and anywhere in history, that a growing population with more jobs can ever be accommodated while reducing VMT. On the contrary, there is ample evidence, including in reports submitted to CARB by climate advocacy organizations like NextGen, that for lower income and rural workers – who are disproportionately minorities – public transit is not a practicable option, and cleaner automobiles – electric and fuel efficient cars, and equitable replacement of the state's oldest and most polluting cars – is the "right" climate solution for California's majority-minority workforce.

In sharp contrast to CARB's invented VMT reduction mandate "metric" dominating this SB 150 report, the Legislature has repeatedly, and expressly, rejected imposing a VMT mandate on California communities:

- The earliest versions of SB 375 included a VMT reduction mandate, which was quickly deleted in subsequent versions of that bill. SB 375 requires GHG reductions, not VMT reductions.
- The first versions of SB 743 also included a VMT reduction mandate, which was likewise deleted. Through the CEQA Guidelines, a different state agency was directed to develop a metric other than traffic delay in high quality transit-served areas – and one such possible metric was VMT. The CEQA Guidelines have in fact not been amended, and the Legislature did not direct that separate agency to adopt a VMT at all, or any alternative metric, outside such transit-served areas.

- The first version of SB 150, the Legislation directing CARB to develop this report, likewise started with a mandated VMT reduction that was separate and apart from CARB's GHG reduction mandate. VMT was again rejected in the enacted version of SB 150.
- In fact, SB 1014 is only Legislation requiring consideration of VMT, and it establishes a framework for evaluating GHG per VMT (with electric and more fuel-efficient cars having lower GHG per VMT), for app-based ride companies like Uber and Lyft. Neither this bill, nor any other, authorizes any California agency to mandate reductions in VMT.
- Similarly, the Legislature has repeatedly rebuffed "Vibrant Communities" top-down state land use mandates like imposing statewide urban growth boundaries, or directing one or more state agencies (other than the Coastal Commission) to assume responsibility for permitting local land use and transportation plans statewide. CARB does have an assigned role in reviewing regional Sustainable Communities Strategies under SB 375, and has as part of that statutory role itself declined to impose a VMT reduction target that is independent of a GHG reduction target just a few months ago, in March of 2018 – four months after approving the 2017 Scoping Plan CARB now cites as the basis for requiring a VMT reduction mandate. The SB 375 Target Update process included extensive and collaborative studies that showed, among other conclusions, why VMT was not a reliable or necessary metric for achieving GHG reduction targets. The SB 375 Target Update also included numerous studies, and scores of comments from stakeholders, explaining why VMT reductions were not feasible with a growing population and jobs base. (The 200 spoke in support of the updated GHG reduction SB 375 targets at the CARB meeting approving these standards, in March of 2018.)

It is not surprising that the Legislature has declined to mandate VMT reductions, or otherwise enshrine CARB or any other state agency as a new statewide Coastal Commission in charge of local land use and transportation approvals in California's complex and diverse communities.

Simply put, those who drive the farthest are priced out of more proximate homes, and are disproportionately minorities. Many live in poverty or near-poverty, and have – as NextGen reported to CARB – no option to driving to their jobs. NextGen urged CARB to reorient its electric car incentives that had disproportionately favored wealthy Tesla buyers in Marin and other coastal enclaves, who live closer to work – and in any event are wealthy enough to have food delivered and children shuttled by drivers who aren't part of their household. NextGen advocated incentives for getting more electric cars and infrastructure into lower income areas, and for accelerating equitable retirement/replacement of the oldest and most polluting vehicles on the road. CARB has made some progress toward achieving these goals, but is insisting on ever-escalating VMT reductions in a concealed math exercise that defies common sense given our emphasis on electric vehicle fleets. This "CARB Math" is discussed further in Part 4 below.

2. CARB's Transportation Vision is Infeasible, and Discriminatory

CARB's fixation on reducing VMT makes the act of being in a car for a mile – even in an electric car or a carpool – an assault on California's climate leadership. CARB wants to achieve its VMT reduction mandate by making people walk or bike, or ride a bus (or for a tiny fraction of California commuters, ride a ferry or rail).

CARB's Report shows that transit ridership is generally down in California regions, and transportation mode shifts continue to rapidly evolve. Electric scooters and bikes have become a viable business model in some of California's densest communities, while app-based and on-demand carpooling, rideshare, and driver options have emerged as a popular and effective (for at least some trips, some of the time) transportation option. None of these transportation options existed or had been deployed at scale when SB 375 was enacted and therein decreed that quality transit service meant four buses, operating at 15 minute intervals, on fixed routes during peak hours (with similar prescriptive mandates for weekend bus service).

Deployment of partially and eventually more fully automated vehicles, technology improvements that lower costs and increase ranges for electric vehicles, public private partnerships between transit agencies and hundreds of new transportation service and technology companies, and other evolutions in transportation, continue at a remarkable pace. Hostile to all VMT, however, CARB is attempting to lock in land use and transportation patterns for the next century with technology that existed two centuries ago – fixed-route buses, trains and boats.

Fixed route bus lines – especially the four-bus (and typically six or more bus driver shifts) routes required to provide the required SB 375 frequency of bus ridership – cost transit agencies (and taxpayers) millions of dollars to maintain. On-demand ride services, including carpool and other multi-passenger systems, provide more nimble, fast, and far less costly transportation options for those who cannot “walk or bike” between home and work. Transit agencies have begun using these evolving transportation services, including both agency-run services and public-private partnership voucher-based systems, with often excellent, effective, and equitable transportation service results; however, this actual and cost-effective transportation mode does not equate to a VMT reduction and has been openly and repeatedly scorned by CARB staff.

Rail (light and heavy) and ferry service have also expanded, but California's notoriously burdensome procedural requirements have typically resulted in a 20-year delay (and hundreds of millions of cost increases) in actually delivering substantial new transportation infrastructure. CARB's Report enthusiastically endorses yet another “study” of the daily transportation catastrophe suffered by our increasingly (and disproportionately minority) number of “supercommuters,” while doing absolutely nothing to expedite the time or reduce the cost in delivering effective transportation solutions to today's suffering workers.

California's existing land use patterns, with or without evolving into greater density, also make fixed route transit systems exceptionally burdensome and impractical. Again as CARB well

knows, several studies have confirmed that riding transit takes nearly twice as long as a point-to-point car trip (single occupancy, carpool, or app-based car service). This is not to deny the critical role buses, and fixed rail and ferry service, play as effective transit solutions for some jobs for some residents some of the time. However, 6,000 times more jobs are accessible in a 30-minute commute by car than bus in the LA region, and that existing land use dispersal is a reality, and in a region with a growing population and jobs base that means more VMT.

CARB is a state air quality agency: it is not responsible for making transportation, housing, or employment solutions work for any people anywhere in California. CARB is clearly blind to the needs of working Californians in minority communities, although it periodically gives a nod to the poor and homeless with offers of modest direct funding for limited programs.

CARB ignores, however, the role that the automobile plays for working Californians. As noted by the University of Southern California's most experienced land use law professor, George Lefcoe, "Automobiles are the survival mechanism for low-income people." Numerous other studies, including poverty and housing segregation studies completed by the Obama administration and non-partisan think tanks like the Brookings Institute, confirm that families with a car have a much better future: cars make it easier to hold a job that pays for housing and other needs, cars make it easier to keep kids in school and get medical attention, and this housing, employment, health and educational security means a level of financial stability that families without cars simply cannot match – not in California, and not nationally.

If the Legislature wants to mandate VMT reductions, then it can sort through scores of racial, class, job type, regional, and transportation alternative considerations. Nearly 40% of our economy is linked to Port-related trade and transportation: is this sector slashed even if electric trucks become viable? A Stanford study confirmed that construction workers spend the highest percentage of their incomes on transportation: driving trucks to and from construction job sites, to and from locations and during work hours and with equipment that is simply not consistent with fixed route public transit – so are construction workers uniquely harmed, or do they get a total pass, from CARB's VMT reduction mandate? For urgently needed housing projects, CARB and other agencies have suggested imposing substantial and in-perpetuity new "VMT mitigation" fees – thousands of dollars per unit of housing, to be paid by new renters or homeowners every year, to help subsidize school buses and bike path construction as new CEQA mitigation mandates. Those without housing – disproportionately minorities – will pay even more for housing along with these remarkable new annual, in perpetuity new housing fees – conferring yet another fiscal windfall for the state's generally whiter, wealthier and older homeowners and piling on more housing fees for housing on top of the country club initiation equivalent of \$150,000 per new housing unit already charged by some California agencies. Imposing extortionate fees and regulatory obstacles on housing is a proven winner for those seeking to block housing based on class or race: is inventing new VMT fees to impose on California's 3 million missing homes a policy choice made by our elected officials (or voters)?

CARB cannot, based on undisclosed math, impose a VMT reduction – or a disguised VMT reduction in the form of a VMT fee as noted in the Vibrant Communities Appendix - on any California agency, project or person based on any statutory authority granted to CARB by the Legislature. CARB's repeated attempts to do so, with failed legislation and its own abandoned effort to impose a VMT reduction mandate in the SB 375 Target Updates finally approved without that mandate in March of 2018, are unlawful and discriminatory.

3. CARB's Housing Vision is Infeasible, and Discriminatory

The Report also notes that most regions have fallen behind in housing production, and is particularly critical of the continued construction of single family homes – anywhere. However, just as CARB pretends that its VMT reduction mandate is based on non-existent legal authority, CARB pretends its housing vision is based on a high density housing economic fantasy.

As one of CARB's own advisors have documented, and has been well documented in numerous other studies, high density housing units cost 300-500% more to build than small-lot single family, duplex, quadplex and townhome housing units. California's new high density transit-oriented housing units cost far in excess of what middle income families can afford to rent or buy. Even 100% affordable housing units, built in the less costly mid-density (4-6 stories) rather than most costly high density (above 6 stories) range, cost in excess of \$500,000 per unit in Los Angeles, and \$700,000 per unit in San Francisco. As experts from the non-partisan Legislative Analyst Office and others have repeatedly noted, there is no way that public funding will pay for a 3 million home shortage where 40% of Californians need to make a monthly choice between paying for food and medicine. There is no option – none – to reducing the cost of housing to levels that are actually affordable to middle income families if California is serious about solving our housing crisis.

CARB also knows from its own experts that lower density housing – smaller single family homes, duplexes/quadplexes and townhomes – is the only available type of housing that has the level of substantially lower production costs that make this housing affordable.

In the most comprehensive examination of what it would take to build just under 2 million new homes entirely within existing urban areas that are actually affordable (e.g., small single family/duplex/quad/townhomes) to those earning normal salaries, scholars at UC Berkeley (one of whom was on the Report's advisory group) concluded that “tens if not hundreds of thousands” of single family homes would need to be demolished. Given our current shortfall of 3 million homes, CARB's infill-only, transit vision of California's climate future will require razing thousands of single family homes.

CARB's demand for the most costly form of urban housing - high density transit oriented housing units - isn't just infeasible for California's aspiring minority homeowners (and renters). Other studies have demonstrated that these high cost, dense new housing projects can displace low and middle income families (especially renters) who actually use transit but are forced to

relocate to more distant locations with less costly housing, where public transit is not as viable as it was from their more centrally-located original neighborhoods. Simply put, new residents of chic new high density housing urban projects near transit, who are able to afford \$1 million condos or pay \$5000 per month in rent, don't take the bus. In the Bay Area, and as documented in yet another comprehensive new study, the housing crisis has resulted in a racial diaspora, as African American and Latino populations have shrunk – substantially – in the region's wealthiest five counties closest to jobs, while these minority populations have grown substantially in the Central Valley and more distant East Bay counties. About 190,000 daily commuters enter the Bay Area from outside the 9-county region, and over 210,000 commute from the East Bay to Silicon Valley or San Francisco. CARB's prescription – to require even higher densities in costly urbanized areas, and prohibit lower density small "starter" homes and townhomes – could not be more perfectly tailored to worsen the housing options for our hard working minority families.

There is not a single Legislator who voted to approve CARB's new land use vision, or the related proposal in "Vibrant Communities" to impose a new "ecosystem services" tax on urban residents to pay for the open space lands they do not use or inhabit.

There is not a single Legislator who has proposed or voted to spend at least \$500,000 per apartment to build 40% of the needed 3 million new housing units for the lower income Californians that United Way describes as unable to meet normal monthly expenses (1,200,000 new homes at \$500,000 per home is \$600,000,000,000 – that's billion).

There is not a single Legislator who has proposed or voted to end home ownership as a pathway to the middle class for Californians who work hard to earn median and above-median incomes.

Instead, the Legislature enacted SB 375 to ask each region to reduce GHG from the land use and transportation sectors – and directed CARB to establish GHG (not VMT) reduction targets. Regions, informed by cities and counties, have in turn spent tens of millions of dollars doing two (mostly completed) rounds of SB 375 plans, which CARB has in turn reviewed and approved.

Under SB 375, each regional transportation agency has carefully weighed density and transportation choices, and disclosed the substantial environmental impact tradeoffs between density and to make lower density and more financially feasible housing within the footprint of existing communities our only housing solution. Each Sustainable Communities Strategy, prepared by each region and approved by CARB, endorses far more transit and supports more density – but also documents scores of significant unavoidable impacts to the existing environment in affected communities that has created political and voter backlash against new housing. If CARB wants to pronounce SB 375 a failure, as indicated in the Report, then it's time to rethink practical housing and transportation solutions for actual Californians – but as a state air quality agency, CARB has not been charged – and is clearly not qualified – to lead this complex undertaking.

Instead, CARB's proposed solution to today's urgent poverty, homeless and housing crisis can only be invented by bureaucrats with secure employment, and special interest advocates paid to participate in endless "process" instead of actual "progress." The Report's prescription is to develop yet another "plan" – even though CARB the latest round of SB 375 targets in March of 2018!

CARB completely ignores the simple and ongoing, but politically inconvenient truths, of what experts from around the state agreed would be required to make SB 375 successful:

- More public funding would be needed, especially for housing and infrastructure. Instead, Governor Brown eliminated redevelopment, which was by far the most effective financing tool then in existence – and itself not sufficient – to make SB 375 work. CARB proposes no financing solutions.
- CEQA reform would be needed, especially for existing communities where the vast majority of CEQA lawsuits are filed and threatened. The top target statewide of CEQA lawsuits is high density infill housing, and abuse for non-environmental objectives – sometimes for openly racist NIMBY "redlining" of the type long ago recognized as illegal and immoral – is likewise ignored by CARB, which has instead decided to impose even higher housing costs with its recommended expansions of CEQA. Governor Brown took office championing CEQA reform, only to throw in the towel a few years later because "unions use CEQA to leverage project labor agreements." Even housing that complies with every single local, regional, and state law, ordinance, and mandate, can get stalled out for years by CEQA studies prepared in defense of threatened lawsuits – and then held up for even longer by CEQA lawsuits.
- Land use reform would be needed, to reduce the time and cost required to get new projects approved and contain runaway fees that in some communities have now hit \$150,000 per single unit of housing (even a small apartment!). Here Governor Brown made a try with "by right" housing requiring only ministerial (non-CEQA) approvals, which failed to be endorsed by a single Legislator. The "housing package" approved in 2017 was important in recognizing and making incremental improvements, but all Legislators and the Governor conceded that far more was necessary to solve the housing crisis – and 2018 was effectively a time-out for the election. CARB in its Report at least acknowledges this problem, but its clear preference is a state agency takeover of land use approvals – a statewide equivalent of the Coastal Commission – with a leading role by, of course, CARB itself.

CARB's report demonstrates its total amnesia about what it would take for SB 375 to succeed, and its call for yet another "plan" with still more jargon about "action items" for future consideration, along with an ever-expanding mission creep of other policy preferences dear to some of CARB's allies (e.g., avoiding urban conversion of agricultural lands even within existing city limits, notwithstanding estimates that more than 500,000 acres of agricultural land

must be taken out of production to meet groundwater sustainability mandates), is yet another demonstration of the fundamental mismatch between an air agency and its environmentalist allies, and the housing and transportation needs of California's minority communities.

CARB did not, and should not, get legal authorization to forward its proposed "MAP" plan. This is an unlawful distraction from the urgent housing and transportation needs of the state, and the state's minority communities in particular.

4. CARB Climate Math

In these highly partisan times, too often those challenging anything CARB proposes have been pilloried as climate denier – or worse, Trumpites! However, enforcing hard-won civil rights protections, including equal access to housing and homeownership, have nothing to do with denying climate change – or criticizing California's commitment to climate leadership. But like other powerful bureaucrats in other times, CARB and its allies are advancing their own version of climate policies which are blind to the needs of our communities, while intentionally concealing its own inconvenient truths.

For example, one of CARB's most vexing habits is its refusal to "show its work" on math. Even third graders are trained that getting the answer right isn't enough: in math, you must show your work.

Scores of commenters have – for many years, and in many different proceedings - asked CARB, "How much GHG reduction do you need to get from VMT reductions to meet the AB 32 (and now SB 32) GHG reduction target?" CARB has adamantly and repeatedly declined to answer this question, and instead insisted that high density housing and reliance on public transit is absolutely necessary for California to meet its GHG reduction target. Even the most basic examination of CARB's math demonstrates that this is patently false, and a land use power grab that harms those most hurt by California's housing and poverty crisis.

From the earliest days of AB 32, CARB's own scientists questioned how much GHG reduction could be achieved from the land use sector, given how established land uses and transit modes established patterns that would take decades to change – if they could be changed at all. Lowering fossil fuel emissions from power plants and other manufacturing/refining facilities, increasing renewable power production, and reducing emissions from vehicles, were clear GHG "big" reduction opportunities. When pressed, CARB's scientists – and the Legislature – agreed that retrofitting older buildings with energy and water conservation features (e.g., LED lighting, insulation, more efficient HVAC systems, modern appliances, etc.) would result in the biggest GHG reductions from this sector. Ignoring science and the Legislature, CARB has never prioritized or committed meaningful funding levels needed to retrofit the vast majority of California's built environment – preferring instead to weigh in on sexier decisions about where new housing should be located that already must meet the most GHG efficient standards in the United States.

The revolution in transportation technology and services has also not been allowed to interfere with CARB's anti-VMT agenda, even as huge strides are made with electric and other clean transportation modes like electric bikes and scooters, and even with the advent of carshare and app-based ride services that reduce reliance on owned – and mostly parked – private cars. CARB does not even have an established methodology for calculating how many trips (or how much VMT) does not occur based on the exploding use of these new transportation technologies or services. These types of trips are not even counted in CARB-approved models – yet CARB remains adamant that VMT reductions are required.

Why does CARB refuse to convert its VMT reduction demand into GHG? Simply put, CARB refuses to accept that there very likely are far less intrusive, far less costly, and far less damaging to minority communities, ways to reduce GHG than mandating reductions in VMT.

CARB knows very well how to “rank” potential emission reduction strategies, and this transparent approach has a remarkably successful track record in the Clean Air Act. If CARB needs to get 10 tons, or 10,000 tons, of GHG reductions from VMT reductions, then other potential GHG reduction sources can be evaluated on the basis of relative environmental, equity, and economic consequences. As the Obama administration documented, tailpipe emissions from 1960's-era cars were reduced by nearly 99% as of 2016 – a remarkable regulatory success under the Clean Air Act that required a careful combination of technology-forcing regulations, accompanied by technical and economic analyses, that preserved the functionality and affordability of cars with technological advances in engines and fuels that were not conceivable when this regulatory effort began in the early 1970's.

CARB is clearly no fan of this Clean Air Act regulatory model, or the transparency and accountability that comes with “showing its math.” In fact, there is not a single location, in either the Report or in the 2017 Scoping Plan, where CARB “shows its math” by explaining how much GHG this desired new VMT reduction mandate will achieve.

Attachment 3 to this letter “shows the math” – which, shockingly – shows that building even two-thirds of the needed housing units will require the demolition of “tens if not hundreds of thousands” of single family homes, must be done in far less dense housing types (e.g., duplexes/quadplexes) than the high densities demanded by CARB because of the exceptionally high cost of high density housing, will mean that average new housing units will be about 800 square feet instead of about 2100 square feet (and will of course have no private back yard), and then – ready the drumroll – GHG from VMT will be reduced by less than 2 million metric tons per year, which is itself less than 1% of CARB's Scoping Plan target of reducing GHG by 260 tons per year by 2030. Since CARB agrees that the California economy produces about 1% of the world's GHG, CARB's VMT reduction/high density housing agenda will result in reducing GHG by less than 1% of what CARB believes is needed - which will have statistically zero effect in reducing the GHG emissions worldwide for this global pollutant.

To worsen California's housing and poverty crisis, and disparately harm California's minority communities, chasing 1% of 1% of global GHG is quite simply an outrageous regulatory abuse of the sincere support that Californians have for leading the world on climate change.

There are a myriad suite of options to get 1% - less than 2 MMT - of GHG out of the California GHG inventory. CARB can do what its scientists and the Legislature told it to do and retrofit existing buildings (and save struggling residents money on power and water bills), or it can reduce what the Little Hoover Commission called "catastrophic" conditions in the 33% of California that is forested to avoid even a single forest fire, and generate stable levels of electricity from dead forest vegetation when it is dark and not windy (England's base load replacement for coal as a carbon neutral power production source), or it can equitably retire the oldest and dirtiest cars that have the highest GHG and other emissions in California's vehicle (which are most often owned and absolutely relied on by low income workers and their families), or it can choose to "lead the world" in developing and deploying new production methods that produce consumer products with less GHG and avoid GHG emissions from ocean-crossing exporters (and provide middle income job opportunities to Californians). These are all "win-win" strategies that reduce GHG and achieve other very important goals for California, and actually help rather than harm California's minority communities. Instead, CARB and its Vibrant Community state agency allies appear intent on using climate to make California look like and be as expensive and exclusive as Manhattan in NYC.

We urge CTC and all other California agencies and stakeholders to demand "math transparency" by CARB.

Stop CARB's Voter Disenfranchisement

Finally, we note that CARB missed its statutory deadline of September 2018 for publishing this report – thereby conveniently avoiding accountability to the majority of California voters who dutifully supported the state leaders by rejecting Measure 6 and paying higher fuel taxes to repair and maintain existing roadway infrastructure, while directing substantial future spending on transit instead of road expansions. CARB, now free of voter oversight or accountability, attacks our transportation agencies for spending money on road maintenance – by far the biggest existing transportation system infrastructure – even while voters have decided that the vast majority of new transportation projects funded by the gasoline tax will be transit and pedestrian/bicycle projects. CARB's conflation of maintenance funding with new project funding intentionally distorts California's commitment to direct most new money away from roads, and is another example of "CARB math."

CARB also provided less than 7 days, inclusive of a weekend and right after the Thanksgiving holiday, and with zero advance notice, for review and comment on this remarkable new Report. If there was a more effective way to suppress input from other state, regional and local agencies – and virtually every other California person and enterprise since all of us are dependent on

December 3, 2018

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either housing or transportation – we would need to travel to a totalitarian country or dictatorship rather than a democracy to find it. This is, however, typical of CARB: for example, its “Vibrant Communities” appendix was released after the Legislative session without notice and with only a few days for comments, and the resulting hailstorm of criticism was entirely ignored by CARB and its aligned agencies. It is also the case that CARB will intone that its desired next step – its “MAP Plan” for taking over housing and transportation decisionmaking – assuming the CARB Board allows staff to further squander taxpayer dollars and obstruct progress in solving the housing crisis or spending voter-approved housing and transportation dollars in the current housing emergency, was merely the inevitable outcome of this Report – which was, after all, the subject of a public notice and comment, and Board hearing, process.

CARB is an air agency, and it has been directed to reduce GHG. It should do so based on the tried and true transparency requirements of the Clean Air Act. There is no question that the CARB Board, and a properly managed staff, can find other opportunities achieving 1% of California’s SB 32 GHG reduction goal.

In conclusion, we strongly oppose CARB’s continued planning and work to mandate VMT reductions unaffordable-by-design high density housing. Global climate change creates no excuse for violating the civil rights of Californians.

Sincerely yours,

HOLLAND & KNIGHT LLP



Jennifer L. Hernandez
Equity Partner

JLH:mlm



February 22, 2019

via email: 2020PEIR@scag.ca.gov

Mr. Roland Ok
Senior Regional Planner
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, California 90017

Subject: Comments on the Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (Southern California Association of Governments 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear Mr. Ok:

The City of Irvine appreciates the opportunity to provide comments on the Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for Connect SoCal, the Southern California Association of Governments' 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).

The City of Irvine respectfully requests the following clarifications and considerations during the preparation of the PEIR.

1. Alternative Planning Strategy: Page 5 of the NOP identifies the year 2020 and year 2035 regional greenhouse gas emission reductions targets that the SCAG Sustainable Communities Strategy (SCS) must achieve through a combination of land use, housing, and transportation strategies. The NOP further states that if the SCS is not capable of meeting the regional targets, SCAG must then prepare a separate "Alternative Planning Strategy" (APS) that is capable of meeting the regional greenhouse gas emission reduction targets.

The City of Irvine recommends language in the PEIR that clearly identifies that an Alternative Planning Strategy, if developed, is statutorily not subject to CEQA provisions (as clarified by SCAG staff at the January 17, 2019 SCAG Technical Working Group meeting), and would therefore not be addressed or analyzed in the Connect SoCal Program EIR.

2. Comparative Analysis of the Connect SoCal Preferred Plan and the PEIR Alternatives: To enable the reader to clearly understand the distinct differences in strategy and policy between the Preferred Plan and the PEIR Alternatives, the City of Irvine recommends that the PEIR include a comparative table matrix that highlights the key similarities and differences between the components of the Preferred Plan and PEIR Alternatives. The matrix should also include the amount of greenhouse gas emission reductions achieved by the Preferred Plan and the PEIR Alternatives. Examples of the comparative components could include:

- Land Use
- Growth Scenario
- Open Space Conservation
- Transportation Network
- Public Transit
- Non-Motorized Transportation
- Local/Regional Pricing
- Transportation Demand Management
- Vehicle Technology/Innovation
- Greenhouse Gas Emission Reduction (automobiles and light-duty trucks)

Within the land use component, the PEIR matrix (as recommended above) should specify if the Preferred Plan and each of the PEIR Alternatives:

- Does or does not maintain each jurisdiction's control totals for population, housing, and employment;
- Does or does not maintain individual county control totals for population, housing, and employment;
- Does or does not maintain the regional control totals for population, housing, and employment.

3. Additional New PEIR Alternative: The NOP states on page 7 that the growth scenario included in the No Project Alternative and all the PEIR alternatives would include the same **regional** totals for population, housing, and employment. However, while regional totals for population, housing, and employment are maintained, there could be alternatives that redistribute growth in a manner where a jurisdictional total could be greater than the original input provided by the local jurisdictions.

The City of Irvine recommends that an additional PEIR Alternative be developed and analyzed that maintains local jurisdictional control totals in

population, housing, and employment, but shifted in intensity or location within the jurisdiction. This new PEIR Alternative would provide local jurisdictions and stakeholders with an assessment of the degree to which local growth would need to be intensified or relocated within its jurisdiction to strive to achieve the State required regional greenhouse gas emissions reduction targets and allow local jurisdictions the opportunity to assess the degree to which such an alternative meets community goals and objectives. The addition of the proposed new PEIR Alternative would also allow for the PEIR to include an assessment of the environmental impacts of this Alternative, if the full range of impacts exceeds that of the Intensified Land Use Alternative.

4. Local Jurisdiction Review of TAZ-Level Population, Housing, and Employment Datasets: As all PEIR Alternatives are developed, there could be distinct differences in growth forecast numbers for population, housing, and employment at the local jurisdiction level and traffic analysis zone level, from that submitted by local jurisdictions as part of the Connect SoCal Local Input process.

The City of Irvine recommends that any shifts in growth that differ from Local Input, are actively coordinated and communicated between SCAG and the applicable local jurisdictions, to ensure that any proposed redistribution of growth are, in fact, reasonable, achievable, and do not require any General Plan or zoning amendments.

Sincerely,



Pete Carmichael
Director of Community Development

cc: Timothy Gehrich, Deputy Director of Community Development
Kerwin Lau, Manager of Planning Services
Steve Holtz, Manager of Neighborhood Services
Bill Jacobs, Principal Planner
Melissa Dugan, Supervising Transportation Analyst
Marika Poynter, Senior Planner



City of Mission Viejo

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Council Member

Trish Kelley
Council Member

Edward Sachs
Council Member

Electronic Transmittal: 2020PEIR@scag.ca.gov

February 20, 2019

Mr. Roland Ok
Senior Regional Planner
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

Subject: City of Mission Viejo Comments: SCAG Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020 – 2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear Mr. Ok,

The City of Mission Viejo appreciates the opportunity to provide comments on the Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for SCAG's 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), referred to as Connect SoCal, or the Plan.

The City of Mission Viejo respectfully requests the following clarifications and considerations, to enable the Connect SoCal PEIR to provide a clear and full consideration of environmental factors that have the potential to generate significant impacts.

The City of Mission Viejo comments are as follows:

- 1) Alternative Planning Strategy: Page 5 of the NOP identifies the Year 2020 and Year 2035 regional greenhouse gas emissions reduction targets that the SCAG Sustainable Communities Strategy (SCS) must achieve, through a combination of land use, housing and transportation strategies. The NOP further states that if the SCS is not capable of meeting the regional targets, that SCAG must then prepare a separate "Alternative Planning Strategy" that is capable of meeting the regional greenhouse gas emission reduction targets.

The City of Mission Viejo recommends language in the PEIR that clearly identifies that an Alternative Planning Strategy, if developed, is statutorily not subject to CEQA provisions (as clarified by SCAG staff at the January 17, 2019 SCAG Technical Working Group meeting), and would therefore not be addressed nor analyzed in the Connect SoCal Program EIR.

2) Comparative Analysis of the Connect SoCal Preferred Plan and the PEIR Alternatives:

To enable the reader to clearly understand the distinct differences in strategy and policy between the Preferred Plan and the PEIR Alternatives, the City of Mission Viejo recommends that the PEIR include a comparative table matrix that highlights the key similarities and differences among the components of the Preferred Plan and PEIR Alternatives, and the amount of greenhouse gas emissions reductions that the Preferred Plan and each of the PEIR Alternatives would achieve. Examples of the comparative components could include:

- Land Use
- Growth Scenario
- Open Space Conservation
- Transportation Network
- Public Transit
- Non-Motorized Transportation
- Local/Regional Pricing
- TDM
- TSM
- Vehicle Technology/Innovation
- Greenhouse Gas Emissions Reduction (automobiles and light-duty trucks)

Within the land use component, the PEIR matrix (as recommended above) should specify if the Preferred Plan and each of the PEIR Alternatives:

- does or does not maintain each jurisdiction's control totals for population, housing and employment;
- does or does not maintain individual county control totals for population, housing and employment;
- does or does not maintains the regional control totals for population, housing and employment.

3. Additional New PEIR Alternative: The NOP (page 7) states that the growth scenario included in the No Project Alternative and all the PEIR alternatives, would include the same **regional** totals for population, housing and employment. However, while regional totals for population, housing and employment are maintained, there could be alternatives where the growth scenario re-distributes growth such that jurisdictional totals could be greater than the original input provided by the local jurisdictions.

The City of Mission Viejo recommends that an additional PEIR Alternative be developed -- above and beyond the No Project, Local Input, and Intensified Land Use Alternatives -- if the 2020 Local Input Alternative is quantified to not be capable of achieving the region's greenhouse gas emissions reduction target, and if the Preferred Plan and the PEIR Intensified Land Use Alternative both shift land use growth away from county unincorporated areas and instead re-directs some of the unincorporated county growth into individual local jurisdiction growth priority areas, and through such shifts, causes an

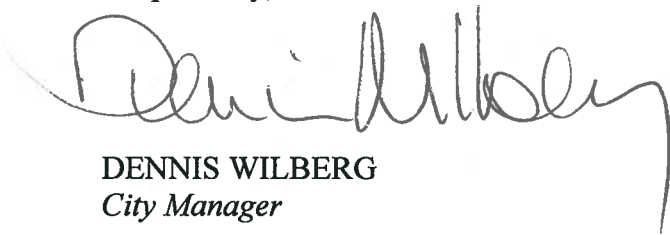
increase in growth above and beyond the jurisdictional totals in population, housing and employment and correspondingly reduces unincorporated county totals in population, housing and employment, in order to maintain countywide control totals.

The proposed new PEIR Alternative would analyze the degree to which local jurisdictional control totals in population, housing and employment could be maintained, but be shifted in intensity or location within the jurisdiction. This new PEIR Alternative would provide local jurisdictions and stakeholders with an assessment of the degree to which local growth would need to be intensified or re-located, to strive to achieve regional greenhouse gas emissions reductions targets, and allow local jurisdictions the opportunity to assess the degree to which such an alternative meets community goals and objectives. The addition of the proposed new PEIR Alternative would also allow for the PEIR to include an assessment of the environmental impacts of this Alternative, if the full range of impacts exceeds that of the Intensified Land Use Alternative.

4. Local Jurisdiction Review of TAZ-Level Population, Housing and Employment Datasets:
As all PEIR Alternatives are developed, there could be distinct differences in growth forecast numbers for population, housing and employment at the local jurisdiction level and traffic analysis zone level, from that submitted by local jurisdictions as part of the 2020 RTP/SCS Local Input process.

The City of Mission Viejo recommends that any shifts in growth that differ from Local Input, are actively coordinated and communicated between SCAG and applicable local jurisdictions, to ensure that any proposed re-distributions of growth are, in fact, reasonable, achievable and do not require any General Plan or zoning amendments, to effect.

Respectfully,



DENNIS WILBERG
City Manager

- c: City of Mission Viejo City Council
Keith Rattay, Assistant City Manager/Director of Public Services
Elaine Lister, Director of Community Development
Mark Chagnon, Director of Public Works
Larry Longenecker, Planning & Economic Development Manager
Rich Schlesinger, City Engineer
Philip Nitollama, Traffic/Transportation Engineer
Gail Shiomoto-Lohr, GSL Associates
Marnie O'Brien Primmer, OCCOG Executive Director
Marika Poynter, OCCOG TAC Chair

Anita Au

From: Claudia Manrique <claudiam@moval.org>
Sent: Friday, February 22, 2019 3:35 PM
To: 2020 RTP/SCS PEIR
Cc: Nevins, Patty
Subject: PEIR Comments

Roland:

Moreno Valley wishes to be placed on the notification list for the Connect SoCal Plan PEIR.

Thank you.

Sincerely,

Claudia Manrique
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City of Moreno Valley
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February 12, 2019

Ping Chang
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, CA 90017

RE: SCH#2019011061 Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy),
Ventura, Los Angeles, Orange, San Bernardino, Riverside and Imperial Counties.

Dear Mr. Chang:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:

Steven.Quinn@nahc.ca.gov.

Sincerely,



for

Steven Quinn

Associate Governmental Program Analyst

cc: State Clearinghouse



November 26, 2018

RE: CEQA Principles to Combat Lawsuit Abuses

On behalf of more than 180 business organizations that represent 400,000 employers with over 3.5 million employees in LA County we are commemorating our tenth anniversary with a mission to lift one million people out of poverty in the next decade. One of the many opportunities to lift and prevent poverty are providing solutions that end litigation abuse of the California Environmental Quality Act (CEQA).

These lawsuits drive up the costs of building new housing or transportation infrastructure exacerbating our housing crisis, where the production of new housing in the region has been significantly reduced. Coupling this reduction with the cost of litigation further drives up the cost of housing which prohibits public service and private sector occupations and professionals the ability to afford owning a home, which is essential for building generational wealth, incubating a stronger, vibrant and more resilient economy.

Since 2013, the Los Angeles region accounts for;

- 38% of all CEQA lawsuits statewide.
- 40% of these lawsuits dealt with residential development and transportation infrastructure.
- Over 70% these CEQA lawsuits are targeted at stopping infill, multi-family, transit-oriented housing the very housing needed according to CARB that we need to invest in to support our environmental goals
- Nearly 80% of these lawsuits are targeted in wealthier and healthier parts of the State,

BizFed solutions fall under four themes that create the necessary reforms needed to improve compliance with CEQA and streamline the process;

- (1) Prohibit anonymous CEQA lawsuits allowing petitioners to conceal their identities and economic interests;
- (2) Prohibit duplicative CEQA lawsuits allowing parties to repeatedly sue over the same plan, or projects implementing a plan, for which CEQA compliance has already been completed;
- (3) **Establish a "mend it, not end it" approach of directing corrections to any deficient** environmental study rather than vacating project approvals; and
- (4) Prohibit CEQA lawsuits against voter-approved infrastructure projects, and against projects receiving voter-approved approved funding (e.g., for homeless housing).

Abuse of CEQA for non-environmental purposes by business competitors, NIMBYs opposed to change, and certain construction trade unions, has been well documented, and includes both threatened and filed CEQA lawsuits. CEQA fundamentally is biased in favor of stopping changes to the status quo. **CEQA's** status quo preservation bias has a disparate effect on minority communities, as well as younger Californians such as millennials, who are most urgently in need of more housing and transportation, infrastructure.

These CEQA modifications are necessary to comply with law, and to address the housing and poverty crisis, and expedite completion of transportation and other critical infrastructure projects that have already had at least one completed round of CEQA compliance as well as voter and initial agency approvals. No state agency should hide within a silo of vague legalese to promote increased litigation risks and delays and do further harm to hard working minority and millennial families suffering from **California's housing, poverty** and transportation crises. In contrast, during the last session we witnessed bipartisan support for CEQA exemptions to construct new sports and entertainment facilities which are good projects to stimulating jobs creation by reducing lawsuit abuse, we believe such exemptions for development are consistent with the solutions we have provided in this letter.

Business is what makes our economy work and CEQA guidelines should reward instead of impede that progress to help our economy and our environment thrive. Litigation abuse is one of the unattended consequences that negatively affects our economy because it introduces uncertainty with CEQA instead of compliance.

Sincerely,

Tracy Hernandez, BizFed Los Angeles County,
Founding CEO
Hilary Norton, BizFed Chair Fixing Angelenos
Stuck in Traffic (FAST)
Lois Henry, Central Valley Business Federation
Associated Builders and Contractors, Central
California Chapter
Building Owners and Managers Association
Building Industry Association of Southern
California, LA/Ventrua Chapter
California Small Business Alliance
Construction Industry Air Quality Coalition
Construction Industry Coalition on Water Quality
Foreign Trade Association
Harbor Association of Industry and Commerce

Harbor Trucking Association
Hollywood Chamber of Commerce
NAIOP/Commercial Real Estate Association
National Association of Royalty Owners
Orange County Business Council
Redondo Beach Chamber of Commerce
South Bay Association of Chambers of Commerce
Torrance Area Chamber of Commerce

February 22, 2019

Roland Ok
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, CA 90017

SUBJECT: "Connect SoCal" Scoping Phase Comments

On behalf of BizFed, a grassroots alliance of more than 180 business organizations that represent 400,000 employers with over 3.5 million employees in LA County, we have strong concerns of CARB's statutory over reach by imposing flawed Vehicle Miles Travelled (VMT) reduction targets as a strategy for greenhouse gas (GHG) reduction. This would ignore the local input of many stakeholders in previous Regional Transportation Plan (RTP)/Sustainable Community Strategies (SCS) as we start the EIR for the 2020-2045 RTP/SCS.

CARB has no statutory authority to impose a VMT reduction target in an SCS and doing so violates the SB 375 requirement that an SCS must provide for a robust economy and **growing population**. In SCAG's two prior RTP/SCS in 2012 and 2016, SCAG met required GHG reduction targets based on local input for land use planning and full respect for voter-approved and funded transportation projects and transportation infrastructure required by longstanding laws requiring efficient transportation and goods movement.

These voter approved transportation projects are usually funded in the form of sales taxes which can be volatile to outside triggers such as an arbitrary GHG reduction target based on VMT reduction assumptions that cannot be delivered in the real world. If these assumptions are to be delivered, we may see a dramatic reduction in goods movement infrastructure **critical to the state's economy**. BizFed wants to ensure that sales tax revenues remain strong for the successful delivery of these voter supported and approved projects. This nexus is vital to the five of the six counties in the SCAG region who are delivering critical transportation infrastructure projects through sales taxes. Imposing GHG reductions through poor VMT metrics without prioritizing the value of certain trips to our economy could be devastating.

The most aggressive GHG reduction based on VMT reductions in the SCAG region called for a 10% decrease in overall regional VMT, which the region has not met and shows no indication of being able to meet. **While we support California's climate leadership**, the state emits less than 1% of global GHG. In contrast, California ranks top in the United States for poverty and homelessness – both of which are attributable directly to the housing supply shortage, high housing prices that are nearly three times above the national average and **longer commutes where working families are "driving until they qualify" for housing that they can rent or buy**.

Given the realities of the current economic conditions, we believe **CARB staff's** current target of reducing VMT by 19.5% is unattainable. SCAG should not continue to spend taxpayer dollars on infeasible plans, when there has been zero progress made in achieving key reforms that prior SCS plans identified as being necessary to even be able to achieve prior lower GHG reduction targets that the business community has been actively advocated for such as redevelopment funding and CEQA reforms against lawsuit abuses.

We very much respect and appreciate the major efforts of SCAG to assure that SB 375 can be implemented consistent with its statutory protections for a healthy economy and growing population.

We urge SCAG to reject CARB staff's decision to unilaterally reject its own Board vote, and the Legislature's repeated refusal to impose a VMT reduction target as part of its climate or air quality statutes or regulations.

Sincerely,



Steve Bullock
BizFed Chair
Cerrell Associates



David Fleming
BizFed Founding Chair



Tracy Hernandez
BizFed Founding CEO
IMPOWER, Inc.

BizFed Association Members

Action Apartment Association
AIA - Los Angeles
Alhambra Chamber
American Beverage Association
American Hotel & Lodging Association
Antelope Valley Board of Trade
Angeles Emeralds
Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
Arcadia Association of Realtors
AREAA North Los Angeles SFV SCV
Asian Business Association
Association of Independent Commercial Producers
Azusa Chamber
Beverly Hills Bar Association
Beverly Hills Chamber
Beverly Hills / Greater LA Association of Realtors
BNI 4SUCCESS
Burbank Association of Realtors
Building Industry Association, LA / Ventura Counties
Building Owners & Managers Association, Greater LA
Business & Industry Council for Emergency Planning & Preparedness
CalAsian Chamber
California Apartment Association, Los Angeles
California Asphalt Pavement Association
California Business Roundtable
California Cannabis Industry Association
California Construction Industry and Materials Association
California Contract Cities Association
California Fashion Association
California Gaming Association
California Grocers Association
California Hotel & Lodging Association
California Independent Oil Marketers
California Independent Petroleum Association
California Life Sciences Association
California Metals Coalition
California Restaurant Association
California Small Business Alliance
California Sportfishing League
California Trucking Association
CAL Innovates
Carson Chamber of Commerce
Carson Dominguez Employers Alliance
CDC Small Business Finance
Central City Association
Century City Chamber of Commerce
Cerritos Chamber
Citrus Valley Association of Realtors
Commerce Industrial Council/Chamber of Commerce
Construction Industry Air and Water Quality Coalitions
Consumer Healthcare Products Association
Council on Trade and Investment for Filipino Americans
Covina Chamber of Commerce
Culver City Chamber of Commerce

Downey Association of Realtors
Downtown Long Beach Alliance
El Monte/South El Monte Chamber
Employers Group
Engineering Contractor's Association
F.A.S.T.-Fixing Angelenos Stuck in Traffic
FilmLA
Foreign Trade Association
FuturePorts
Gardena Valley Chamber of Commerce
Gateway to LA
Glendale Association of Realtors
Glendale Chamber
Glendora Chamber
Greater Antelope Valley AOR
Greater Lakewood Chamber
Greater Los Angeles African American Chamber
Greater Los Angeles New Car Dealers Association
Harbor Trucking Association
Historic Core Bid
Hollywood Chamber
Hong Kong Trade Development Council
Hospital Association of Southern California
Hotel Association of Los Angeles
Independent Cities Association
Industry Manufacturers Council
International Warehouse Logistics Association
Investing in Place
Irwindale Chamber
Japan Business Association of Southern California
La Canada Flintridge Chamber
LAX Coastal Area Chamber
League of California Cities
Long Beach Area Chamber
Los Angeles Area Chamber
Los Angeles Cleantech Incubator
Los Angeles County Bicycle Coalition
Los Angeles County Medical Association
Los Angeles County Waste Management Association
Los Angeles Gateway Chamber of Commerce
Los Angeles Gay & Lesbian Chamber of Commerce
Los Angeles Latino Chamber
Los Angeles Parking Association
Maple Business Council
Motion Picture Association of America
MoveLA
NAIOP Southern California Chapter
National Association of Royalty Owners
National Association of Tobacco Outlets
National Association of Women Business Owners
National Association of Women Business Owners, LA
National Hispanic Medical Association
National Latina Business Women's Association
Netherlands-America Foundation
Orange County Business Council
Pacific Merchant Shipping Association
Pacific Palisades Chamber

Panorama City Chamber
Paramount Chamber of Commerce
Pasadena Chamber
Pasadena-Foothills Association of Realtors
PhRMA
Planned Parenthood Southern California Affiliates
Pomona Chamber
Rancho Southeast Association of Realtors
Recording Industry Association of America
Regional Black Chamber - San Fernando Valley
Regional San Gabriel Valley Chamber
Rosemead Chamber
San Gabriel Chamber
San Gabriel Valley Civic Alliance
San Gabriel Valley Economic Partnership
Santa Clarita Valley Chamber
Santa Clarita Valley Economic Development Corp.
San Pedro Peninsula Chamber
Santa Monica Chamber
Santa Monica Junior Chamber
Sherman Oaks Chamber of Commerce
South Bay Association of Chambers
South Bay Association of Realtors
Southern California Contractors Association
Southern California Golf Association
Southern California Grantmakers
Southern California Minority Supplier Development Council Inc.
Southern California Water Coalition
Southland Regional Association of Realtors
The Young Professionals at the Petroleum Club
Torrance Area Chamber
Town Hall Los Angeles
Tri-Counties Association of Realtors
United Chambers San Fernando Valley
United States-Mexico Chamber
Unmanned Autonomous Vehicle Systems Association
US Resiliency Council
Valley Economic Alliance
Valley Economic Development Corp.
Valley Industry & Commerce Association
Vernon Chamber
Vietnamese American Chamber
Warner Center Association
West Hollywood Chamber
West Los Angeles Chamber
West San Gabriel Valley Association of Realtors
West Valley/Warner Center Chamber
Western Manufactured Housing Association
Western States Petroleum Association
Westside Council of Chambers
Westwood Village Rotary Club
Wilmington Chamber
World Trade Center
Young Professionals in Energy - LA Chapter

CALIFORNIA COASTAL COMMISSION

South Coast District Office
301 E. Ocean Blvd, Suite 300
Long Beach, CA, 90802
(562) 590-5071



February 21, 2019

Ping Chang
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

**RE: Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Community Strategy
Comments on Notice of Preparation of Environmental Impact Report (SCH # 2019011061)**

Dear Mr. Chang:

The above referenced Notice of Preparation of an Environmental Impact Report (EIR) for a four year update to the Regional Transportation Plan and Sustainable Communities Strategy (Plan) for the Southern California Association of Governments planning area was received by Coastal Commission staff on via the State Clearinghouse on January 30, 2019. We appreciate the opportunity to comment on the environmental review process for the Regional Plan update. One of the primary tenets of the Coastal Act is to protect and enhance coastal resources and public access to the coast, which requires well-planned residential, commercial, and public infrastructure and an interconnected public transportation system. Several of the policy objective categories of the Plan, including Biological Resources and Open Space Preservation, Hydrology and Water Resources, Recreation, and Population and Housing, create an opportunity to enhance Southern California's transportation system, provide housing and jobs within urban areas well served by the transportation system, and protect coastal resources in a manner that is supportive of the Coastal Act. This update provides an opportunity to enhance those sections of the Plan, considering current infrastructure, planned future infrastructure, and environmental conditions including sea level rise. Given the Coastal Commission's mandate to protect coastal resources through planning and regulation of the use of land and water within the Coastal Zone, staff are providing the following comments and topics that should be analyzed in the EIR.

1) Coastal Transportation Corridor Improvements. Major transportation corridors within the Coastal Zone are Interstate 5 from the southern Orange County line to San Clemente, Pacific Coast Highway (SR 1) from San Clemente to Oxnard, and US 101 through Ventura County. These coastal transportation corridors bisect or are located directly adjacent to sensitive marine resources including coastal lagoon systems, maritime chaparral and coastal sage scrub, and the Pacific Ocean. Impacts to these resources are restricted by Coastal Act policies. Except for specific instances, fill of a wetland or other coastal waters is prohibited (Section 30233), and marine resources (Section 30230), water quality (Section 30231), and environmentally sensitive habitat areas (Section 3024) often associated with the coastal environment are protected. Many of these coastal systems and habitat areas have already significantly deteriorated due to historical transportation infrastructure and residential development. Future transportation improvements in the Coastal Zone (e.g. the regional projects list in the Plan) should seek to upgrade existing infrastructure and reduce impacts to the natural environment. Strategies include development of new highways and bridges with less fill of coastal waters and less coverage of natural habitat than current infrastructure, relocation of highways and other public infrastructure that are threatened by erosion and storm damage, and habitat restoration in areas which have previously been degraded by transportation

infrastructure (e.g. lagoon systems adjacent to Pacific Coast Highway). Please analyze the Plan scenarios for their capacity to avoid adverse impacts to coastal resources and restore and enhance the natural environment.

2) Sea Level Rise. Coastal Act Section 30253 requires that new development minimize risks to life and property from hazards and to assure stability and structural integrity without the use of a shoreline protective device. Thus, understanding the potential impacts of climate change and sea level rise is of critical importance when beginning long-range planning efforts so as to ensure that land use decisions and development projects are not designed in a way that will put investments at risk from coastal hazards. Given the proximity of significant portions of the County's key regional infrastructure to the coast (e.g. highways, airports, power plants), it is imperative that transportation and land use plans carefully anticipate the effects of sea level rise and associated hazards. Ensuring that new coastal infrastructure is designed to adapt to the effects of sea level rise throughout the expected life of the infrastructure is a principal concern of the Coastal Commission. Please review the Commission's Sea Level Rise Policy Guidance (<https://www.coastal.ca.gov/climate/slrguidance.html>), which was based on two reports – the Ocean Protection Council's April 2017 *Rising Seas in California: An Update of Sea-Level Rise Science* and its 2018 *State Sea-Level Rise Guidance*. The 2016 RTP/SCS references climate change and sea level rise (e.g. the 2012 National Research Council Report, *Sea Level Rise for the Coasts of California, Oregon, and Washington*), but 2016 RTP/SCS does not make clear that sea level rise conditions must be modeled for the entirety of the expected life of new infrastructure projects, which in the case of rail and highway bridges is considered to be 100 years. The updated Plan should include policies requiring regional sea level rise planning and coordination. The Plan should also include regional maps showing various sea level rise scenarios (including a severe scenario) and policies requiring new projects in the Coastal Zone undergo specific sea level rise analysis of tidal and fluvial hydraulics as applied to the local area and in the context of storm surge, wave run-up, erosion, and other variables.

If the Plan references key pieces of existing and planned infrastructure that may be temporarily flooded or perpetually inundated by water in the next 75 to 100 years, then the EIR should analyze potential adaptation measures that minimize adverse impacts to coastal resources and enhance public access to the coast. The EIR should analyze whether existing and planned infrastructure will need to be protected from coastal hazards, such as flooding and erosion. Such protection often includes seawalls and revetments, which adversely affect public access because they block access to the beach, accelerate erosion, and result in the loss of public recreational areas. The Plan should anticipate such impacts and prioritize projects which avoid the impacts (e.g. relocation or elevation of vulnerable segments of highways and rail). Additionally, the EIR should analyze options for relocation of vulnerable infrastructure away from hazardous conditions.

3) Public Access and Recreation. A fundamental pillar of the Coastal Act is the protection and provision of public access to and along the coast. Coastal Act sections 30210 and 30212 require that maximum opportunities for public access and recreation be provided in new development projects, consistent with public safety, private property rights, and natural resource protection. Additionally, Section 30252 dictates that new development should maintain and enhance public access through such actions as facilitating transit service, providing non-automobile options, and providing adequate parking.

Accordingly, the EIR should evaluate the Plan scenarios for consistency with the above-mentioned policies. In particular, there should be an analysis of how the Plan would maximize access to the coast (including beaches, parks, and open spaces), including options for public transit, non-motorized vehicles, and pedestrian routes throughout the region. This analysis should identify options to facilitate access to beaches and coastal areas from the inland portions of the region, as well as options for enhancing connections to public transit, the California Coastal Trail, and other visitor-serving recreational opportunities. Improvements to coastal access routes may be planned as coordinated projects which enhance vehicle flow and safety, increase bicycle capacity, increase pedestrian capacity, and restore the natural environment. One area where such a coordinated approach should be analyzed is along Pacific Coast Highway in Orange County and Los Angeles County – this corridor is already heavily utilized by coastal visitors and portions of the corridor are likely to be part of the California Coastal Trail. Bicycle and pedestrian facilities are particularly lacking along Pacific Coast Highway in Northern Los Angeles County, Malibu, and Southern Ventura County.

Importantly, the EIR should also analyze the potential negative impacts to public access and recreation that could arise from the various transportation and land use scenarios identified in the Plan. Scenarios that would lead to additional traffic along critical coastal highways should be analyzed for their potential impacts to public access and recreation, and potential impacts to the natural environment. A transportation capacity analysis of existing and planned transportation infrastructure should be performed for not only peak commuter periods (e.g. morning rush hour) but for peak recreational periods (e.g. a summer weekend with high demand by beach users). Transportation projects which increase capacity to reach the coast by modes other than private automobiles should be prioritized.

4) Concentration of Development. Coastal Act Section 30250 generally requires that new development within the Coastal Zone be located within, contiguous with, or in close proximity to existing developed areas. Coastal Act Section 30253 requires new development to be sited in a manner that will minimize energy consumption and vehicle miles travelled. In this way, the Coastal Act encourages smart growth patterns that recognize a strong urban-rural boundary to ensure protection of coastal resources. Accordingly, the EIR should analyze the extent to which various Plan scenarios, as well as the broader goals of the Sustainable Communities Strategy, would be consistent with Coastal Act goal to concentrate development and reduce vehicle miles travelled. Based on the summary in the scoping notice, the Intensified Land Use Alternative appears to be consistent with Coastal Act policies, to the extent that it prioritizes development in urban areas and around high quality transit corridors, rather than in rural and exurban areas which tends to adversely impact natural habitat and increase vehicle miles travelled.

Finally, the Plan's greenhouse gas emissions targets must be consistent with the Executive Order B-30-15 goal of reducing California's GHG emissions to 40 percent below 1990 levels by 2030 and the Executive Order S-3-05 goal of reducing California's GHG emissions to 80 percent below 1990 levels by 2050. While the 2016 RTP/SCS prioritized investment in transit and active transportation more than any previous RTP, it does not appear to have reduced vehicle miles traveled consistent with Coastal Act Section 30253. The EIR for the Plan update should include additional analysis of transportation and land use scenarios which are most protective of sensitive coastal and environmental resources while at the same time achieving the Plan objectives of improving the transportation system, increasing housing and allowing people to live closer to where they work and play. While there may be existing constraints that

Connect SoCal 2020-2045 RTP/SCS
Coastal Commission Staff Comments on NOP
Page 4 of 4

make the Intensified Land Use scenario difficult to implement today, the RTP/SCS is a long-range planning document and there will likely be changes in policy and funding for transit and housing within its planning horizon – especially if SCAG advocates for such changes. As such, SCAG should place a greater emphasis on the prioritization of public transit and active transportation projects, with increased housing density around such high quality transit areas, and include analysis of such projects in the EIR.

Thank you for the opportunity to comment on the environmental review for the update to the Regional Transportation Plan and Sustainable Communities Strategy. We look forward to future collaboration on improvements to the transportation system and land use synchronization within Southern California, and appreciate the commitment within the current (2016) RTP/SCS to preserve and enhance coastal resources. Coastal Commission staff request notification of any future activity associated with this project or related projects. Please contact me at (562) 590-5071 with any questions.

Sincerely,



Zach Rehm

Senior Transportation Program Analysts

Cc: Tami Grove, Statewide Development and Transportation Program Manager
Steve Hudson, South Central Coast (Ventura County) and South Coast (LA County) District Director
Karl Schwing, South Coast (Orange County) District Director

DEPARTMENT OF TRANSPORTATION**DISTRICT 12**

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www.dot.ca.gov*Making Conservation
a California Way of Life.*

February 22, 2019

Mr. Rowland Ok
Southern California Association of Governments
900 Wilshire Boulevard Suite 1700
Los Angeles, CA 90017

File: IGR/CEQA
SCH#: N/A
DOC#: 12-MULTIPLE-2019-00099

Dear Mr. Ok,

Thank you for including the California Department of Transportation (Caltrans) in the review of the Regional Transportation Plan (RTP) for the proposed Connect SoCal 2020 Regional Transportation Plan/Sustainable Communities Strategy (SCS) Update. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

Connect SoCal is Southern California's Association of Government's (SCAG) 2020 update to their long-range visioning plan. This long-range plan is a collective vision for the region's future needs with input from multiple stakeholders. This plan balances future mobility and housing needs with economic, environmental and equity goals. The long-range plan spans the Southern California region, including Ventura, Los Angeles, Orange, San Bernardino, Riverside, and Imperial Counties. Caltrans is a responsible agency and has the following comments:

Transportation Planning:

1. The RTP/SCS should draw from the [California Transportation Plan](#) (CTP) 2040 and be consistent with the goals set in the CTP as it provides safety, economic, accessibility, and environmental objectives for the California Transportation System. The CTP integrates a number of long-range transportation plans including the California Freight Mobility Plan, State Rail Plan, Transit Strategic Plan, etc. The CTP would be an important resource and framework for the RTP/SCS.
2. The criteria for project selection into the RTP/SCS should be consistent for all projects and agencies independent of funding status, in order to address the region's transportation needs and issues.
3. Climate change possesses an immediate concern and threat to the State's transportation network. California Senate Bill 379 requires all cities and counties to include climate adaptation and resiliency strategies to be included into their general plans. Multiple local and regional agencies have adopted Climate Action Plans (CAP) to address SB 379. Caltrans has conducted a Statewide Vulnerability Assessment in order to identify areas and communities of immediate concern. The RTP/SCS should review local and regional

CAPs and the [Vulnerability Assessment](#) for Orange County and coordinate with Caltrans to implement improvements against climate change.

4. Caltrans recognizes the drawbacks of an auto-centric transportation system and has pushed to support multimodal transportation. As such, Caltrans has implemented [Complete Streets](#) aspects in all appropriate Caltrans projects. Complete Streets incorporate design features that provide safe mobility for all users of the road including: pedestrians, bicyclists, transit users, freight, and motorists. Implementation of Complete Streets throughout the region would improve safety, air quality, and congestion reduction.
5. In commitment to a multimodal transportation system, Caltrans provides support to local agencies in their active transportation program from the early project planning and development phase through construction and maintenance. The RTP/SCS should include policies that coordinate with Caltrans and other partners to foster growth of bicycle networks and improvement of safety of pedestrians and bicyclists, such as [Vision Zero](#).
6. Transportation needs are closely integrated to land use. Caltrans, in coordination with the US Environmental Protection Agency, the Governor's Office of Planning and Research (OPR), and the California Department of Housing and Community Development developed the [Smart Mobility Framework](#) in order to bridge transportation and land use. The framework provides guidance on how well plans, programs, and projects meet a definition of "smart mobility". It can be used by both Caltrans and partner agencies to transform transportation decisions.
7. The RTP should prioritize system and service improvements that serve places with good regional accessibility, higher densities of population and jobs, and mixed land uses, or improvements that support evolution of these characteristics. The RTP/SCS should advocate for the creation of secure funding sources for both transit capital improvements and operations in these areas, considering the extremely significant role of transit in the future, to increase the number of High-Quality Transportation Areas. This would coincide with the goals set by SB 743, which focuses on the creation of transit-oriented infill projects.
8. The California Air Resources Board's (ARB) [SB 150 Report](#) indicates that the RTP/SCS housing goals, particularly those for low income housing, are not being achieved. Developing and utilizing policies favorable to housing construction and coordination with local land-use authorities would work towards fixing the State's housing needs. The RTP/SCS should focus on a supply of housing and provide economic development in areas that allows people of all incomes and abilities to live within a reasonable distance of jobs, schools, shopping, and other important destinations, in order to reduce vehicle miles traveled (VMT).

9. California Natural Resources Agency recently adopted new CEQA Guidelines, which include SB 743. Caltrans will work with OPR, ARB, regional and local transportation entities and other interested parties to develop and implement the Department's method for implementing SB 743 in CEQA review of projects on the State Highway System. Under the directive of SB 743 Caltrans is moving forward to utilizing VMT as the primary metric to analyze traffic impacts, replacing LOS. The RTP/SCS should provide policies that include VMT reduction strategies. This would aid in meeting many of the State's air quality improvement and GHG reduction goals set by policies such as AB 32.
10. Caltrans District 12 have conducted multiple Managed Lanes studies as an option to mitigate future congestion and satisfy transportation needs. Please review and incorporate the [Managed Lanes Feasibility Study](#) and the [Managed Lanes Network Study](#) to the RTP/SCS update.
11. The RTP/SCS should also address how the SCAG region works to achieve an inter-regional network for longer-distance travel and freight movement. Connecting towns, cities, and regions to each other, business centers to major intermodal freight transfer points, and commuters to national and international destinations outside of the SCAG region in a sustainable and efficient manner, should be an important objective.
12. The RTP should discuss ease of access and possible improvements to municipal and regional airports as they are an integral part to the transportation network.

Please continue to keep us informed of this project and any future developments that could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to contact Scott Shelley at (657) 328-6164 or Scott.Shelley@dot.ca.gov.

Sincerely,



SCOTT SHELLEY
Branch Chief, Regional-IGR-Transit Planning
District 12



February 22, 2019

Sent via email and FedEx

Roland Ok
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900 Wilshire Blvd, Suite 1700
Los Angeles, California 90017
2020PEIR@scag.ca.gov

Re: Notice of Preparation of a Program Environmental Impact Report for Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (State Clearing House Number 2019011061)

Dear Mr. Ok:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the Notice of Preparation (“NOP”) of a Program Environmental Impact Report (“PEIR”) for Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”). The Center has reviewed the NOP closely and provides these comments for consideration by SCAG as it prepares the PEIR for the RTP/SCS.

As the NOP acknowledges, SCAG covers a large portion of the state and will impact approximately 49 percent of California’s population. The RTP/SCS is intended to serve as a foundational document for land use planning across six counties (Imperial, Los Angeles, Orange, San Bernardino and Ventura) and impact approximately 20 million people. Additionally, Southern California is a biodiversity hotspot with many endemic species and unique habitats, and it is home to the most impacted mountain lion populations in California. The health of these populations and ecosystems are intertwined with human well-being. To truly “connect” SoCal and promote “sustainable” communities, land use policy needs to facilitate a more holistic approach that addresses human transportation and development needs, the needs of wildlife and habitats that are fragmented by transportation infrastructure and development, and how we can make human and natural communities more resilient to climate change. Because of the broad scope and significant, long-range impact of the RTP/SCS, the Center urges SCAG to carefully and thoroughly consider the potential environmental impacts on the community and wildlife, including those raised in these comments, when preparing the PEIR and RTP/SCS.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.4 million members and online activists throughout California and the

United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Southern California.

I. SCAG Must Adopt an Ambitious, Aggressive RTP/SCS to Meet SB 375 GHG Emission Reduction Mandates and Reverse the Trend of Increasing Vehicle Travel

Over 10 years ago, the California Legislature adopted the Sustainable Communities and Climate Protection Action of 2008, known as SB 375, to integrate transportation, land use and housing decision-making to reduce overall greenhouse gas (“GHG”) emissions. The California Air Resources Board (CARB) has repeatedly noted the important role SB 375 GHG emission reduction targets are to the state’s overall strategy to meet its climate change targets. (See California Air Resources Board. November 2017. California’s 2017 Climate Change Scoping Plan: The Strategy for Achieving California’s 2030 Greenhouse Gas Target at 101 [“CARB 2017 Scoping Plan”].) While Metropolitan Planning Organizations (“MPO”) like SCAG have adopted RTP/SCS in the subsequent decade, it is clear that previous RTP/SCS have not gone far enough to adequately address California’s GHG emission reduction targets.

In a November 2018 report, CARB completed an in-depth analysis showing California is not on track to meet the greenhouse gas reductions under SB 375. (CARB, 2018 Progress Report: California’s Sustainable Communities and Climate Protection Act [November 2018] [“CARB 2018 Progress Report”].) This is largely because emissions from passenger vehicle travel per capita are *increasing* under the state’s regional SCSs and RTPs, rather than decreasing as SB 375 intended. (*Id.* at 4, 22-28.) Therefore, greater reductions in the transportation sector are essential to meet California’s climate goals. ***The key takeaway from CARB’s report is that more needs to be done and the Center hopes SCAG follows that message when preparing its PEIR and RTP/SCS.*** (*Id.* at 3-5.)

A. Climate Change is a Catastrophic and Pressing Threat to California

A strong, international scientific consensus has established that human-caused climate change is causing widespread harms to human society and natural systems, and climate change threats are becoming increasingly dangerous. In a 2018 *Special Report on Global Warming of 1.5°C* from the Intergovernmental Panel on Climate Change (IPCC), the leading international scientific body for the assessment of climate change describes the devastating harms that would occur at 2°C warming, highlighting the necessity of limiting warming to 1.5°C to avoid catastrophic impacts to people and life on Earth (IPCC 2018). The report provides overwhelming evidence that climate hazards are more urgent and more severe than previously thought, and that aggressive reductions in emissions within the next decade are essential to avoid the most devastating climate change harms.

The impacts of climate change will be felt by humans and wildlife. In addition to warming, many other aspects of global climate are changing, primarily in response to human activities. Thousands of studies conducted by researchers around the world have documented

changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor (USGCRP 2017). In California, climate change will transform our climate, resulting in such impacts as increased temperatures and wildfires, and a reduction in snowpack and precipitation levels and water availability.

In response to inadequate action on the national level, California has taken steps through legislation and regulation to fight climate change and reduce statewide GHG emissions. Enforcement and compliance with these steps is essential to help stabilize the climate and avoid catastrophic impacts to our environment. California has a mandate under AB 32 to reach 1990 levels of GHG emissions by the year 2020, equivalent to approximately a 15 percent reduction from a business-as-usual projection. (Health & Saf. Code § 38550.) Based on the warning of the Intergovernmental panel on Climate Change and leading climate scientists, Governor Brown issued an executive order in April 2015 requiring GHG emission reduction 40 percent below 1990 levels by 2030. (Executive Order B-30-15 (2015).) The Executive Order is in line with a previous Executive Order mandating the state reduce emission levels to 80 percent below 1990 levels by 2050 in order to minimize significant climate change impacts. (Executive Order S-3-05 (2005).) That Executive Order's goal has now been incorporated into California's 2017 Scoping Plan update—its plan to achieve greenhouse gas emissions reductions. Thus, the 2017 Scoping Plan update set out strategies for putting the State on a path to toward the 2050 climate goal to reduce GHG emissions by 80 percent below 1990 levels. (See CARB 2017 Scoping Plan.) More recently, Governor Brown signed a new executive order to put California on the track to go carbon neutral by 2045. (Executive Order B-55-18 (2018).) The Legislature also passed S.B. 100 which requires renewables to account for 60 percent of electricity sales in 2030.

B. CARB's 2018 Progress Report Lays Out Clear Deficiencies in Previous RTP/SCS and Provides a Path Forward

As the NOP acknowledges, SCAG's RTP/SCS will provide detailed land use, housing and transportation strategies for the region. Those strategies can significant impacts on the community, as CARB noted in its 2018 Progress Report:

growth patterns have a profound impact on both the health of individuals and the environment. Where jobs are located and homes are built, and what roads, bike lanes, and transit connect them, create the fabric of life. How regions grow impacts where people can afford to live, how long it takes to get to work, how people travel, who has easy access to well-paying jobs and educational opportunities, the air people breathe, whether it is easy to spend time outdoors and with friends, social cohesion and civic engagement, and ultimately, how long people live.

(CARB Progress Report 2018 at 6.) In the report, CARB goes on to note that “to meet the potential of SB 375 will require state, regional, and local agency staff and elected officials to make more significant changes across multiple systems that address the interconnected

relationship of land use, housing, economic and workforce development, transportation investments, and travel choices.” (*Id.*) While SCAG, like other MPOs, has failed to meet this potential previous RTP/SCS, it has the opportunity to do so now. The Center urges SCAG to do all it can to review and adopt the best practices suggested by CARB when drafting its PEIR and RTP/SCS. This includes the following general principles:

- Providing viable travel alternatives to individual passenger vehicles
- Providing housing choices for all income levels in neighborhoods with access to sustainable transportation choices and economic opportunities
- Building self-sustaining neighborhood that are accessible to and near daily needs

C. SCAG Should Mandate A Robust Range of Mitigation Measures to Meet SB 375 GHG Emissions Reduction Targets

SCAG has made clear that it intends to use the PEIR as a first-tier CEQA document and provide “program wide mitigation measures” that adequately address and reduce GHG emissions from passenger vehicles resulting from land use, housing and transportation planning in the region. (NOP at 2, 7 [*citing* CEQA Guidelines Sec. 15168; SB 375 (2008)].) Therefore the PEIR and associated RTP/SCS must fully comply with CEQA’s strict mandates for mitigation.

Mitigation of a project’s environmental impacts is one of the “most important” functions of CEQA and it is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.” (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41; Pub. Res. Code § 21002.) As the California Attorney General has noted, programmatic plans to reduce GHG emissions pursuant to CEQA Guidelines section 15183.5 must “[i]dentify a set of specific, enforceable measures that, collectively, will achieve the emissions targets....” (California Attorney General’s Office). Therefore, SCAG must include a robust range of mitigation measures that are concrete and fully enforceable as required by CEQA to address the likely significant GHG emissions that will result from the RTP/SCS. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 445 [“A ‘mitigation measure’ is a suggestion or change that would reduce or minimize significant adverse impacts on the environment caused by the project as proposed.”]); *Preserve Wild Santee v. City of Santee* (2012) 210 CA 4th 260, 281 [mitigation measures that are so undefined that their effectiveness is impossible to determine are legally inadequate].)

When feasible, SCAG should mandate adoption of on-site mitigation measures or avoid GHG emissions through changes in project design, as suggested by (Office of Planning and Research, Discussion Draft: CEQA and Climate Change (2018) at 16.) Only if on-site mitigation measures are infeasible, should SCAG consider local and regional mitigation measures. (*Id.* at 17.) Potential mitigation measures for SCAG to consider include but are not limited to:

- Electric vehicle charging facilities;
- Projects to facilitate and increase use of carpooling, vanpooling and ridesharing;

- Measures to increase use of public transit, increase public transit route and times of operation;
- Use of energy efficient lighting technology;
- Funding for purchase of alternative fuel buses;
- Use of less GHG-intensive construction materials than cement and asphalt;
- Measures to reduce idling time;
- Use of alternative fuel vehicles;
- Road dust reduction strategies;
- Availability for transit vouchers;
- Investment in bike path construction, improvement and storage facilities;

The Center hopes SCAG will, at a minimum, adopt these and other mitigation measures to meet its GHG emission reduction targets. However, just encouraging more zero-emission vehicles or taking small measures to encourage more public transit will not be enough. “CARB’s 2030 Scoping Plan Update identifies additional VMT reduction beyond that included in the SB 375 targets as necessary to achieve a statewide target of 40 percent below 1990 level emissions by 2030. Even greater reductions will be needed to achieve the new carbon neutrality goal by 2045.” (CARB 2018 Progress Report at 27, citing CARB 2017 Scoping Plan and Executive Order B-55-18. September 2018.) What is more, CARB points out that “[e]ven if the share of new car sales that are ZEVs grows nearly 10-fold from today, California would still need to reduce VMT per capita 25 percent to achieve the necessary reductions for 2030.” (*Id.* at 28.)

Put simply, California will not achieve the necessary greenhouse gas emissions reductions to meet mandates for 2030 and beyond without significant changes to how communities and transportation systems are planned, funded and built. (CARB Progress Report 2018 at 27.) Instead fundamental changes in land use planning by local and regional land use agencies must occur. RTP/SCS by MPO’s like SCAG have the potential to guide these fundamental changes in land use and transportation planning. Specifically, CARB discouraged the approval of large, exurban developments with limited public transit, jobs and commercial centers. As noted above, ***SCAG’s RTP/SCS must prioritize infill, transit-oriented development while discouraging sprawl or greenfield development far from existing population and employment centers.*** The Center hopes will seize this opportunity when drafting its RTP/SCS to take one of the largest regions of California on a different, more sustainable path that truly addresses the climate crisis facing our state.

II. The Goals of the RTP/SCS Should Include Maintaining and Enhancing Wildlife Movement and Habitat Connectivity

In planning SCAG’s long-range vision to balance future mobility and housing needs with economic, environmental, and public health goals, it is essential to consider the impacts of transportation infrastructure and development on the region’s natural landscapes. While Southern California is a popular area for people to live and work, it is also a biodiversity hotspot with many endemic species and unique habitats, and it is home to the most impacted mountain lion populations in California. To truly forge sustainable communities resilient to climate change,

wildlife movement and habitat connectivity should be an integral factor in land use planning and policy. Impacts to these resources should be adequately assessed in the PEIR.

A. Avoidance and Minimization of Impacts to Wildlife Movement and Habitat Connectivity Must be Prioritized.

The PEIR should prioritize avoiding and minimizing impacts of the RTP/SCS on wildlife movement and habitat connectivity. Roads and traffic create barriers that lead to habitat loss and fragmentation, which harms wildlife and people. As barriers to wildlife movement and the cause of injuries and mortalities due to wildlife vehicle collisions, roads and traffic can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, and landscapes (Mitsch and Wilson 1996; Trombulak and Frissell 2000; van der Ree et al. 2011; Haddad et al. 2015; Marsh and Jaeger 2015; Ceia-Hasse et al. 2018). For example, habitat fragmentation from roads and traffic has been shown to cause mortalities and harmful genetic isolation in mountain lions in southern California (Riley et al. 2006, 2014, Vickers et al. 2015), increase local extinction risk in amphibians and reptiles (Cushman 2006; Brehme et al. 2018), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al. 2010; Loss et al. 2014; Kantola et al. 2019), and alter pollinator behavior and degrade habitats (Trombulak and Frissell 2000; Goverde et al. 2002; Aguilar et al. 2008). In addition, wildlife vehicle collisions pose a major public safety and economic threat. Over the last three years (2015-2017) it is estimated that 7,000 to 23,000 wildlife vehicle collisions (with large mammals) have occurred annually on California roads (Shilling et al. 2017; Shilling et al. 2018, State Farm Insurance Company 2016, 2018). These crashes result in human loss of life, injuries, emotional trauma, and property damages that can add up to \$300-600 million per year. Thus, avoiding and minimizing impacts of transportation projects and development on wildlife movement and habitat connectivity would help preserve biodiversity and ecosystem health while protecting human health and safety.

B. The PEIR Should Adequately Assess the Impacts of the RTP/SCS on Functional Connectivity.

The PEIR should ensure that effective, functional wildlife corridors that support multiple species movement are preserved. These should include continuous, intact habitats (not fragmented by roads or other anthropogenic features) that are wide enough to overcome edge effects, dominated by native vegetation, and have equal or higher habitat quality than core habitat patches (Bennett et al. 1994; Brooker et al. 1999; Forman 1995; Tilman et al 1997; Hilty et al 2006). Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency have been found to be biologically significant up to 300 meters (~1000 feet) away from development in terrestrial systems (Environmental Law Institute 2003).

C. The RTP/SCS Should Consider the Impacts of Climate Change and Should Incorporate Climate Adaptation Strategies for Wildlife Movement and Habitat Connectivity

The PEIR should consider the impacts of climate change on wildlife movement and habitat connectivity in the design and implementation of projects and any mitigation. Climate change is increasing stress on species and ecosystems, causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes, and increasing species extinction risk (Warren et al. 2011). A 2016 analysis found that climate-related local extinctions are already widespread and have occurred in hundreds of species, including almost half of the 976 species surveyed (Wiens 2016). A separate study estimated that nearly half of terrestrial non-flying threatened mammals and nearly one-quarter of threatened birds may have already been negatively impacted by climate change in at least part of their distribution (Pacifi et al. 2017). A 2016 meta-analysis reported that climate change is already impacting 82 percent of key ecological processes that form the foundation of healthy ecosystems and on which humans depend for basic needs (Scheffers et al. 2016). Genes are changing, species' physiology and physical features such as body size are changing, species are moving to try to keep pace with suitable climate space, species are shifting their timing of breeding and migration, and entire ecosystems are under stress (Parmesan and Yohe 2003; Root et al. 2003; Parmesan 2006; Chen et al. 2011; Maclean and Wilson 2011; Warren et al. 2011; Cahill et al. 2012).

As SCAG is aware, state agencies must take climate change into account in their planning and investment decisions, see Public Resources Code §§ 71150-55 (Climate Change and Climate Adaptation). The law specifically mandates that all state agencies “take into account the current and future impacts of climate change when planning, designing, building, operating, maintaining and investing in state infrastructure.” Public Res. Code § 71155. Thus, the RTP/SCS must also climate change and adaptation into account. There are many tools available for incorporating climate adaptation in planning. In 2018, the California Natural Resources Agency updated the Climate Adaptation Strategy¹ which recognizes the critical role infrastructure and mitigation planning have in meeting climate adaptation goals. Indeed, several of the key principles relate directly to infrastructure planning and emphasize the need for coordination (California Natural Resources Agency 2018):

- Principle 5: Prioritize natural infrastructure solutions build climate preparedness, reduce greenhouse gas emissions, and produce other multiple benefits.
- Principle 6: Promote collaborative adaptation processes with federal, local and regional government partners.
- Principle 7: Increase investment in climate change vulnerability assessments of critical built infrastructure systems.

¹Information available at <http://resources.ca.gov/climate/safeguarding/> and <http://cal-adapt.org/>

D. The PEIR Should Ensure the RTP/SCS Promotes Wildlife Corridor Redundancy to Improve Functional and Resilient Connectivity.

To minimize project impacts to wildlife connectivity, the RTP/SCS should incorporate wildlife corridor redundancy (*i.e.* the availability of alternative pathways for movement) in project plans and mitigation. Corridor redundancy is important in regional connectivity plans because it allows for improved functional connectivity and resilience. Compared to a single pathway, multiple connections between habitat patches increase the probability of movement across landscapes by a wider variety of species, and they provide more habitat for low-mobility species while still allowing for their dispersal (Olson and Burnett 2008; Pinto and Keitt 2008; Mcrae et al. 2012). In addition, corridor redundancy provides resilience to uncertainty, impacts of climate change, and extreme events, like flooding or wildfires, by providing alternate escape routes or refugia for animals seeking safety (Mcrae et al. 2008; Olson and Burnett 2008; Pinto and Keitt 2008; Mcrae et al. 2012; Cushman et al. 2013).

E. The PEIR Should Ensure Adequate Mitigation Measures for Impacts to Wildlife Movement and Habitat Connectivity.

If impacts to wildlife movement and habitat connectivity are unavoidable, the PEIR should ensure that impacts are mitigated using the best available science to maintain and/or enhance wildlife connectivity. When appropriately implemented, wildlife crossing infrastructure has been shown to improve wildlife permeability and reduce wildlife vehicle collisions (Dodd Jr et al. 2004; Bissonette and Rosa 2012; Dodd et al. 2012; Sawyer et al. 2012; Sawaya et al. 2014; Kintsch et al. 2018). Wildlife crossing infrastructure design and implementation should be prepared and conducted in consultation with the California Department of Fish and Wildlife (CDFW) and other stakeholders, including federal and state agencies, academic institutions, non-governmental agencies, local experts and the public. Local and regional wildlife movement, habitat connectivity, and wildlife vehicle collision data should be collected and analyzed in the project area before projects are approved and budgets are set (Lesbarrères and Fahrig 2012; Shilling et al. 2018). New and renovated roads and developments should be designed with wildlife connectivity in mind – it is easier to plan a new road to avoid or minimize impacts to wildlife connectivity than it is to retroactively build wildlife crossings.

To provide appropriate mitigation for habitat connectivity and wildlife movement, the effectiveness of wildlife crossing infrastructure planning, design, and strategies should be thoroughly and systematically evaluated to determine which strategies work better than others and how they can be improved. Any mitigation involving crossing infrastructure should include the long-term monitoring and maintenance of crossing infrastructure as well as the use of appropriate metrics that adequately reflect effectiveness, such as species passage rates and counts of wildlife vehicle collision occurrences. The data and evaluations should inform future mitigation strategies and be made available to the public.

Mitigation via conservation easements should be in-kind within the project area or as close as possible within an ecologically meaningful unit, such as a watershed. Easements should be established and appropriately funded in perpetuity.

III. The PEIR Should Adequately Assess the Impacts of the RTP/SCS on Public Health and the Economy

The PEIR should adequately assess how the RTP/SCS impacts public health and safety and the economy. According to Caltrans, Californians seek more opportunities for walking, biking, or using public transit (Caltrans 2016), yet most transportation infrastructure efforts are focused on building and expanding more roads to accommodate (and facilitate) more cars. According to a 2017 analysis by INRIX, Los Angeles is the most congested city in the US; residents spend over 100 hours a year stuck in traffic, which is estimated to cost the city's economy over \$19 billion (Mccarthy 2018). Long commutes cause increased stress levels and leave little to no time to exercise or spend time with families or communities, which can lead to mental and physical health impacts, reduced quality of life, and shorter life spans (Ewing et al. 2003; Leyden 2003; Frumkin et al. 2004). In addition, emissions from road transportation contribute to poor air quality that can lead to serious health effects, including respiratory and cardiovascular disease, compromised birth outcomes, and premature death (Lin et al. 2002; Andersen et al. 2011; Caiazzo et al. 2013; Chen et al. 2017). A recent study found that emissions from road transportation cause 53,000 premature deaths annually in the US, and California has about 12,000 early deaths every year due to air pollution from road transportation and commercial/residential sources (Caiazzo et al. 2013). Thus, roads and other transportation infrastructure should be made safer for drivers and communities where there are roads. Major cities around the world are acknowledging the detrimental effects of roads and traffic on people, and they are shifting their land use design focus from cars to human health and well-being (Conniff 2018). By reducing the amount of new roads and promoting design oriented towards pedestrians, cyclists, and transit instead of cars, SCAG has the opportunity to facilitate the implementation of transportation infrastructure that improves public health and safety and preserves wildlife connectivity.

IV. The PEIR Should Use the Best Available Science to Identify Wildfire Risk and Impacts of More Frequent Fires Due to Human Activities and Land Use

The Center is encouraged to see that SCAG has added wildfire as an environmental factor within the scope of the environmental analysis to be considered in the PEIR. The PEIR should adequately assess the risk and impacts of increased wildfire ignitions on public health and safety as well as on biological resources. Wildfire is a natural and necessary part of California's ecosystems. Forests, shrublands, and grasslands are adapted to fire and need fire to rejuvenate, although different habitats rely on different fire frequencies. In addition, climate change is leading to hotter, drier conditions that make fires more likely to burn, and people are starting more fires in more places throughout the year. In Southern California, sprawl developments with low/intermediate densities extending into chaparral and sage scrub habitats that are prone to fire have led to more frequent wildfires caused by human ignitions, like arson, improperly disposed cigarette butts, debris burning, fireworks, campfires, or sparks from cars or equipment (Keeley et al. 1999; Keeley and Fotheringham 2003; Syphard et al. 2007; Syphard et al. 2012; Bistinas et al. 2013; Balch et al. 2017; Radeloff et al. 2018). Human-caused fires account for 97% of all fires in Mediterranean California, which includes the SCAG region (Balch et al. 2017), and homes filled with petroleum-based products, such as wood interiors, paint, and furniture, provide additional fuel for the fires to burn longer and spread farther.

Much of the SCAG region is dominated by chaparral and sage scrub, native California habitats that rely on wildfires to persist. These habitats are adapted to infrequent (every 30 to 150 years), large, high-intensity crown fire regimes (Keeley and Fotheringham 2001), and if these regimes are disrupted, the habitats become degraded (Keeley 2005; Keeley 2006; Syphard et al. 2018). When fires occur too frequently, type conversion occurs and the native shrublands are replaced by non-native grasses and forbs that burn more frequently and more easily, ultimately eliminating native habitats and biodiversity while increasing fire threat over time (Keeley 2005; Keeley 2006; Syphard et al. 2009; Safford and Van de Water 2014; Syphard et al. 2018). We can no longer dismiss California's natural fire regime and the direct relationship between urban sprawl, roads, and deadly wildfires. The devastating environmental, health, social, and economic costs of poorly-planned, leapfrog developments in high fire-prone areas cannot be sustained (see Yap 2018).

The Center urges SCAG to protect human lives, property, and native biodiversity, by reforming growth strategies to focus on avoiding the placement of developments and roads in high fire threat areas. After the deadly and destructive Camp and Woolsey Fires in 2018, retired Cal Fire Director Ken Pimlott recommended that home construction in high fire-prone areas should be banned, stating that "we owe it" to homeowners, firefighters, and communities to make better local land use planning decisions to keep people safe and make communities more resilient (Thompson 2018). Urban planning and design should focus on infill development in urban core areas, where wildfire threat is lower and people have access to jobs, public transit, and community.

Existing communities in fire-risk areas should be incentivized to complete retrofits with features that have been shown to reduce the risk of destruction due to wildfires, such as ember-resistant vents, fire-resistant roofs, 100 feet of surrounding defensible space, rain gutter guards, and external sprinklers with an independent water source (Quarles et al. 2010; Syphard et al. 2014; California Chaparral Institute 2018). However, although these fire-resistant structural features are important, fire safety education and enforcement for home and property owners are vital for these safety measures to be effective. Proper maintenance and upkeep of the structural fire-resistant features and the immediate surroundings (*e.g.*, removing leaf litter from gutters and roofing; removing flammable materials like wood fences, overhanging tree branches, or trash cans away from the home) are required to reduce the chances of the structures burning. In addition, education about how to prevent fire ignitions in existing communities in high fire-prone areas would further reduce fire risk.

V. Conclusion

Thank you for the opportunity to submit comments on the Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy). Please add the Center to your notice list for all future updates to the PEIR and RTP/SCS. We look forward to working with SCAG to foster land use policy and growth patterns that promote wildlife movement and habitat connectivity and move towards the State's climate change goals. Please do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "Aruna Prabhala". The signature is fluid and cursive, with the first name "Aruna" written in a larger, more prominent script than the last name "Prabhala".

Aruna Prabhala
Urban Wildlands Program Director & Staff Attorney
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February 22, 2019

Mr. Ping Chang
Southern California Association of Governments
Lead Agency
900 Wilshire Blvd., Suite 1700
Los Angeles, CA 90017
2020PEIR@scag.ca.gov

Subject: Comments on the Notice of Preparation of a Draft Programmatic Environmental Impact Report for the Connect SoCal Project; SCH# 2019011061; Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties

Dear Mr. Chang:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) for the Connect SoCal Draft Programmatic Environmental Impact Report (DPEIR) prepared by the Southern California Association of Governments (SCAG) pursuant to the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW's Role

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including Lake and Streambed Alteration (LSA) regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" (see Fish & Game Code, § 2050) of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & Game Code,

§1900 et seq.), CDFW recommends the project proponent obtain appropriate authorization under the Fish and Game Code.

Project Location: The Project will cover a six-county region including the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

Project Description/Objective: The Connect SoCal Project is also known as the 2020 Regional Transportation Plan and Sustainable Communities Strategy (Plan). This Plan is a regional planning document that is updated every four years pursuant to federal and state planning requirements (2016 version is now being updated). A DPEIR will be prepared and focus on the region's goals and policies for meeting current and future mobility needs, that will allow a coordinated transportation system. The DPEIR will identify needs and issues, recommended actions, and a list of projects needed to implement Connect SoCal.

There are three alternatives being looked at under the DPEIR:

- 1) A no project alternative;
- 2) 2020 Local Input Alternative. This alternative incorporates general plans to produce growth estimates and only uses policies and strategies incorporated into local jurisdictional plans; and,
- 3) Intensified Land Use Alternative. This alternative would use aggressive land use development patterns to maximize growth around high quality transit areas.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist SCAG (Lead Agency) in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW also recommends that SCAG include in the DPEIR measures or revisions below in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

General Comments

- 1) Project Description and Alternatives: To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DPEIR:
 - a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
 - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.

- 2) LSA: As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a LSA Agreement (Agreement) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of an Agreement for a project that is subject to CEQA will require related environmental compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document prepared by the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the DPEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.¹
- a) The Project area supports aquatic, riparian, and wetland habitats; therefore, a preliminary jurisdictional delineation of the streams and their associated riparian habitats should be included in the DPEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service (USFWS) wetland definition adopted by the CDFW.² Some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' section 404 permit and Regional Water Quality Control Board section 401 Certification.
 - b) In areas of the Project site which may support ephemeral streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of ephemeral channels and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately-sized vegetated buffer areas adjoining ephemeral drainages.
 - c) Project-related changes in drainage patterns, runoff, and sedimentation should be included and evaluated in the DPEIR.
- 3) Wetlands Resources: CDFW, as described in Fish & Game Code section 703(a), is guided by the Fish and Game Commission's policies. The Wetlands Resources policy (<http://www.fgc.ca.gov/policy/>) of the Fish and Game Commission "...seek[s] to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California. Further, it is the policy of the Fish and Game Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."
- a) The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources

¹ A notification package for a LSA may be obtained by accessing the CDFW's web site at www.wildlife.ca.gov/habcon/1600.

² Cowardin, Lewis M., et al. 1970. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, the Project must include mitigation measures to assure a "no net loss" of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks, which preserve the riparian and aquatic values and functions for the benefit to on-site and off-site wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DPEIR and these measures should compensate for the loss of function and value.

- b) The Fish and Game Commission's Water policy guides CDFW on the quantity and quality of the waters of this state that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage and support programs to maintain or restore a high quality of the waters of this state; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish and G. Code, § 5650).
- 4) CESA: CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or State-listed rare plant species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish and G. Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.
- 5) Biological Baseline Assessment: To provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species, and sensitive habitats, the DPEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)];
 - b) A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <http://www.dfg.ca.gov/habcon/plant/>);
 - c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment³. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
 - d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the project. CDFW's California Natural Diversity Data Base (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp;
 - e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California SSC and California Fully Protected Species (Fish and Game Code §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare or threatened species (see CEQA Guidelines § 15380). Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the USFWS; and,
 - f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.
- 6) Biological Direct, Indirect, and Cumulative Impacts: To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DPEIR:

³Sawyer, J. O., Keeler-Wolf, T., and Evens J.M. 2008. A manual of California Vegetation, 2nd ed. ISBN 978-0-943460-49-9.

- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the project site. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
 - b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish and G .Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DPEIR;
 - c) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DPEIR; and,
 - d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 7) Avoidance, Minimization, and Mitigation for Sensitive Plants: The DPEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts. CDFW considers these communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3 and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation*.
- 8) Compensatory Mitigation: The DPEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

- 9) Long-term Management of Mitigation Lands: For proposed preservation and/or restoration, the DPEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands.
- 10) Nesting Birds: CDFW recommends that measures be taken to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.
- 11) Translocation/Salvage of Plants and Animal Species: Translocation and transplantation is the process of moving an individual from the Project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 12) Moving out of Harm's Way: The proposed Project is anticipated to result in clearing of natural habitats that support many species of indigenous wildlife. To avoid direct mortality, we recommend that a qualified biological monitor approved by CDFW be on-site prior to and during ground and habitat disturbing activities to move out of harm's way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss. If the project requires species to be removed, disturbed, or otherwise handled, we recommend that the DPEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.
- 13) Wildlife Movement and Connectivity: The project area supports significant biological resources and is located adjacent to a regional wildlife movement corridor. The project area contains habitat connections and supports movement across the broader landscape, sustaining both transitory and permanent wildlife populations. On-site features that

contribute to habitat connectivity should be evaluated and maintained. Aspects of the Project that could create physical barriers to wildlife movement, including direct or indirect project-related activities, should be identified and addressed in the DPEIR. Indirect impacts from lighting, noise, dust, and increased human activity may displace wildlife in the general Project area.

14) Revegetation/Restoration Plan: Plans for restoration and re-vegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

- a) CDFW recommends that local on-site propagules from the Project area and nearby vicinity be collected and used for restoration purposes. On-site seed collection should be initiated in the near future to accumulate sufficient propagule material for subsequent use in future years. On-site vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate.
- b) Restoration objectives should include providing special habitat elements where feasible to benefit key wildlife species. These physical and biological features can include (for example) retention of woody material, logs, snags, rocks and brush piles (see Mayer and Laudenslayer, 1988⁴).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP for the Connect SoCal DPEIR. If you have any questions or comments regarding this letter, please contact Kelly Schmoker-Stanphill, Senior Environmental Scientist (Specialist), at (626) 335-9092 or by email at Kelly.schmoker@wildlife.ca.gov.

Sincerely,



FOR
Erinn Wilson
Environmental Program Manager I

⁴Mayer, K. E. and W. F. Laudenslayer, Jr. 1988. Editors: A guide to wildlife habitats of California. State California, The Resources Agency, Department of Forestry and Fire Protection, Sacramento, CA.

cc: CDFW
Victoria Tang – Los Alamitos
Andrew Valand – Los Alamitos
Kelly Schmoker – Glendora
Jeffrey Humble- Los Alamitos

Scott Morgan (State Clearinghouse)

Ping Chang, Southern California Association of Governments (chang@scag.ca.gov)



CALIFORNIA
NATIVE PLANT SOCIETY

February 22, 2019

Southern California Association of Governments

Attn: Roland Ok

900 Wilshire Blvd., Ste. 1700

Los Angeles, CA 90017

Submitted via email to: 2020PEIR@scag.ca.gov

RE: Response to the Notice of Preparation for Connect SoCal, the Southern California Association of Government's 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy

Dear Mr. Ok,

Thank you very much for the opportunity to provide scoping comments on the Southern California Association of Government's (SCAG) Programmatic Environmental Impact Report (PEIR) for Connect SoCal: the region's 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy.

The California Native Plant Society ("CNPS") is a non-profit environmental organization with 10,000 members in 35 Chapters across California and Baja California, Mexico. CNPS's mission is to protect California's native plant heritage and preserve it for future generations through the application of science, research, education, and conservation. CNPS works closely with decision-makers, scientists, and local planners to advocate for well-informed policies, regulations, and land management practices.

SCAG continues to play an important role in planning how and where development occurs in Southern California. SCAG is mandated by federal and state laws to produce an RTP/SCS, which dictates how the "region will address its transportation and land use challenges and opportunities in order to achieve its regional emissions standards and Greenhouse Gas (GHG) reduction targets."

At the scoping meetings on February 13, 2019, SCAG staff stated multiple times that the organization has no authority over the permitting/evaluation of individual projects, as this is under the purview of cities and counties. In this context, SCAG essentially claims to play no role in the implementation of a whole host of projects that are both damaging to the environment and local communities. We challenge

SCAG to be a little more creative, and not to downplay its role in guiding where future housing is built in Southern California. The multi-agency body that advises SCAG is intended to inform, advise, and otherwise assist in regional land use. The collective voice of these entities does in fact and by default empower SCAG in decision making. Local decision makers do ultimately have the final authority over projects under their jurisdiction. Nonetheless, many large development projects would not be possible without the building of new roads or the expansion of existing infrastructure. New highway construction, for example, often requires federal funding, and projects cannot receive this funding unless they appear on the project list in an RTP.

Likewise, as detailed in a recent report by the Air Resources Board¹, it will be challenging for California to meet its ambitious greenhouse gas (GHG) emission goals going forward. This is mostly because all of the low hanging fruit for GHG reduction has already been picked. In the coming decades, the state will fail to meet its goals if it does not curb the emissions that result from personal vehicle travel. Organizations like SCAG must exercise their authority and leadership to guide future growth in ways that do not obscure goals that are mandated by state laws including SB-32, AB-32, and SB-375.

As an organization, CNPS is not opposed to the construction of new housing. We favor policies and decisions that support the construction of new, affordable housing that is located close to mass transportation infrastructure, is respectful of existing communities, close to jobs, and that does not endanger precious and irreplaceable ecosystems.

With these thoughts in mind, we provide the following scoping comments to the forthcoming Connect SoCal PEIR:

1. The analysis of the Connect SoCal's impacts to biological resources should include all current data on sensitive biological resources. These data include, but are not limited to, the California Natural Diversity Database², CNPS Inventory of Rare, Threatened, or Endangered Plants³, and the California Department of Fish and Wildlife's Sensitive Natural Communities List⁴.
2. There are many areas that have been set aside for the conservation of plants, animals and habitats in Southern California. In many cases, these areas represent a significant investment public of the public's limited resources. In most cases, the conserved lands are intended to preserve and improve Southern California's natural heritage in perpetuity. These protected areas, and the public investment they represent, are not available as sites for transportation corridors, transportation infrastructure, and new development. The avoidance of impacts to these conservation lands should underlie all growth forecasts

¹ CARB, 2018 Status Report, November 2018

² CNDDB

³ CNPS Inventory

⁴ CDFW Natural Communities

and projects that are highlighted in Connect SoCal. Among other critical ecosystem services, they provide the watersheds and carbon sequestration lands that southern California requires to meet the challenges of the 21st Century.

All set aside lands must be subject to perpetual covenant of conservation easements that have funded monitoring and land management requirements. The holder of each easement must be an organization or agency, in long standing with the conservation community and capacity to effectively manage the property over decades.

3. Connect SoCal should be consistent with existing and ongoing plans that endeavor to balance development with conservation. These plans include, but are not limited to:

- Natural Community Conservation Plans⁵
- Habitat Conservation Plans⁶
- Region Conservation Investment Strategies⁷ (e.g. Antelope Valley, San Bernardino County)
- Regional Conservation Assessments

4. CNPS is creating a statewide map of Important Plant Areas (IPAs)⁸. This data-driven effort identifies areas in California that should be prioritized for conservation actions. In Southern California, we have held workshops in the Mojave/Sonoran Desert and will be holding workshops covering the remainder of the region in the coming year. The data collected in these workshops will be incorporated into a model that will be used to delineate IPAs. Given that Connect SoCal will be produced in the same timeframe as our IPA map for the region we encourage SCAG to incorporate IPAs into the PEIR.

5. SCAG should reevaluate the assumptions underlying the growth models used in Connect SoCal, and confirm that these assumptions are reasonable. Based on this assessment changes should be incorporated into the growth models. Not doing this risks SCAG ending up a situation similar to conundrum that is being faced currently by the San Diego Association of Governments (SANDAG). SANDAG's director⁹ recently had to admit that the organization cannot meet state GHG reduction goals given its current transportation plans. Consequently, SANDAG will have to scrap its current RTP/SCS and start over from scratch. This will delay the release of their RTP/SCS until 2022 or possibly later.

6. The baseline GHG reduction analysis should include a detailed accounting of carbon sequestration in natural habitats. The SCAG region both emits and sequesters greenhouse gases. The sequestration of carbon by existing vegetation is critical to the region's GHG reduction goals. Most of this carbon is

⁵ [NCCP](#)

⁶ [CDFW Habitat Conservation Planning](#)

⁷ [CDFW Regional Conservation Planning](#)

⁸ [CNPS IPA Program](#)

⁹ [Voice of San Diego, Climate Change and Transportation, February 14, 2019](#)

sequestered in woody vegetation, particularly in montane forests. However, a not insignificant amount of carbon is also sequestered by other habitats including chaparral, desert scrub, grasslands, coastal sage scrub, riparian and wetland ecosystems, naturally-occurring water bodies, and soils. At the same time, carbon sequestration in these habitats may be eliminated by conversion to development and when vegetation is burned during wildfires. Much of the vegetation in the region has been mapped and quantified using Lidar. The PEIR should analyze how much carbon is currently stored in standing vegetation in the plan area. Additionally, the amount of carbon that is sequestered annually should be analyzed alongside the amount that will be lost to development under Connect SoCal's growth models.

All projects should incorporate green building standards, with associated environmental review analyzing GHG emissions potential for proposed construction, buildings, impervious surfaces prior to approval. Climate science indicates that 47-49% of carbon emissions is generated by the built environment and associated heating or cooling functions.

7. The PEIR should analyze assumptions about the water that will be available for future development to ensure that growth projections are in sync with water supplies. We are especially concerned about the potential impacts of the anticipated rationing of water from the Colorado River¹⁰. It is becoming increasingly likely that a drought emergency will be declared on this water supply in 2019 or 2020. The pending water rationing in Nevada and Arizona will undoubtedly affect the water supply in Southern California due to ongoing negotiations. This tenuous water supply will likely be relied upon by future development projects. Growth forecasts such as the ones used in SCAG models generally assume ample water will be available, as is often the case with "business as usual" models. The above example from the Colorado River illustrates that population growth forecasts should also prepare for a future in which water supplies are scarce.

8. The projects' mitigation funds should be pooled and used to purchase privately owned lands that have good natural values, and/or to help restore already-preserved lands. An example is Orange County's Measure M2. This Freeway Environmental Mitigation Program allocates funds to acquire land and fund habitat restoration projects in exchange for streamlined project approvals for 13 freeway improvement projects. Acquired properties are purchased and permanently preserved as open space. Funded restoration projects restore preserved open space lands to their native habitat and include the removal of invasive plant species¹¹.

9. Transportation corridors and similar infrastructure should be landscaped with plants native to Southern California. . Use of these commercially available materials host long-term benefits of water savings, lowered maintenance costs, no need for chemical inputs of fertilization and pest control, serve

¹⁰ Voice of San Diego, Colorado River, January 14, 2019

¹¹ M2 Mitigation Program

as best source pollinators, and provide biotic continuity in the Wildland-Urban Interface. Since native plants are adapted to Southern California's climate, they need irrigation only during an initial 2-year establishment period. Little irrigation beyond natural rainfall is required once most native plants are established. Also, native plant landscaping often results in considerable cost savings over time, as a result of decreased water demands and lower maintenance costs. For more information on the benefits of native plant landscaping please see the ample information available from the CNPS Gardening Program¹².

10. We question some of the very fundamental assumptions about how growth should/will occur in Southern California, both location and type. While some strides have been made to locate new housing within urban boundaries, much of the housing growth in recent years has occurred on the periphery of existing urban areas. Some of these development projects threaten intact ecosystems. Still, other development projects (e.g. the Centennial¹³ and Paradise Valley¹⁴ Specific Plans) are located far from existing jobs and mass transportation infrastructure. In type, we question whether there is a single housing market. Rather, there appear to be multiple housing markets for luxury, median income, and affordable housing. While the development industry can readily produce profitable, high-end, single-family homes in subdivisions, these homes are so far out of the reach of most Californians and they do nothing to satisfy the demand for cheaper housing.¹⁵

In Connect SoCal, SCAG should study the true complexity of the housing markets in Southern California, exercise its leadership to encourage production of affordable housing and discourage leapfrog development and the production of surplus high end homes. Connect SoCal should find ways to incentivize builders to fulfill the demand for lower cost housing. One idea would be to exclude transportation projects from the PEIR if they fail to promote affordable housing and GHG reduction goals.

We could also like to point out that new home sales have decreased drastically in many Southern California markets¹⁶. We need to question the logic of lead agencies permitting construction of new cities when new homes are not even selling on the heels of ten years of economic growth. Is our current approach to building new housing consistent with the needs of the average Southern California resident? It is one thing to build a large number of new housing units, and an entirely different challenge to build housing where it is needed and at prices that average people can afford. In many ways, this will be the greatest challenge faced by Southern California counties and cities in the coming decades. We see Connect SoCal as an integral part of this solution.

¹² [CNPS Gardening Program](#)

¹³ [CNPS Website on Centennial](#)

¹⁴ [Article on Paradise Valley](#)

¹⁵ [Shelterforce Housing Article, February 19, 2019](#)

¹⁶ [LA Times Housing Article, January 29, 2019](#)

Lastly, we are concerned about the role that SCAG continues to play in promoting poorly-planned and often destructive development projects in Southern California. A most striking example of this was a quote from SCAG's then-director, Hasan Ikharta, about Los Angeles County's Centennial Specific Plan that appeared the Los Angeles Times in August 2018. In this article¹⁷, Ikharta essentially condones the construction of a new city 65 miles away from downtown Los Angeles with no planned mass transportation. He said "there will not be enough land and not enough cities around ... to accommodate more than half of the growth within transit-quality areas." Ikharta even emphasized that "it's not only physically impossible, it's also politically impossible." With that statement coming from SCAG it is no wonder that Southern California continues to destroy native habitats while at the same time failing to meet GHG reduction goals. If the leadership necessary to effect change is not going to come from SCAG, where will it come from?

Thank you once again for the opportunity to provide scoping comments on Connect SoCal. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Jensen', with a long horizontal flourish extending to the right.

Nick Jensen, PhD
Southern California Conservation Analyst
California Native Plant Society
2707 K Street, Suite 1
Sacramento, CA 95816
njensen@cnps.org

¹⁷ [LA Times, Centennial, August 26, 2018](#)



February 21, 2019

Sent via email to: 2020PEIR@scaq.ca.gov

Southern California Association of Governments (SCAG)
900 Wilshire Blvd, Suite 1700
Los Angeles, California 90017

RE: Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear SCAG:

Friends of Harbors, Beaches, and Parks (FHBP) is a regional non-profit organization that works to protect the natural lands, waterways, and beaches of Orange County. We received the Southern California Association of Governments' (SCAG) Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for the next Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).

FHBP has been engaged with land use, transportation, and housing issues and the associated impacts to natural lands (protected and unprotected) for last two RTP/SCS cycles. We appreciate the work done to date to advance conservation policies and look forward to continuing our role in this effort with this current iteration.

As it relates to biology and transportation and the impacts of the RTP/SCS, **we encourage a focus on advanced mitigation as a standard practice** or measure. The successes of the Orange County Transportation Authority (OCTA) and its comprehensive mitigation program show the extensive benefits that landscape-level mitigation programs could bring across the six-county-wide region. Notably, CalTrans has begun its own advanced mitigation effort on a statewide level to streamline permitting, reduce project costs, create better conservation outcomes, and reduce delays. We believe mitigation measures should focus on comprehensive programs with a net environmental benefit and improved project outcomes.

Additionally, as it relates to the land use analysis, FHBP participates regularly in the Natural and Farmlands Conservation Working Group under SCAG and **we encourage policies and mitigation measures that cover a wide spectrum of topics**. Too often a specific solution is offered in a geography that doesn't fit that model. For example, urban infill works in urban infill areas—not as easily or at all in suburban or rural areas. And, similarly, rural solutions may not work in suburban or urban areas. Ensuring a wide range of mitigation measures and policies that fit the spectrum of land uses and land areas is important.

Finally, to comply with AB 32 (Global Warming Solutions Act of 2006) and SB 375 (Sustainable Communities Act of 2008), **we encourage a focus of city-centered, transit-oriented, sustainable mixed-use development.** With the rise of wildland fire occurrences and losses of both life and property locally and throughout the state, more thoughtful land use and public safety planning needs to be a priority to ensure safe communities. As a co-benefit, city-centered development increases the opportunities for transit, pedestrian/bike-friendly streets, and access to basic amenities (groceries, banks, day care, etc.). Increased access to amenities reduces vehicle miles travelled and greenhouse gas emissions, which helps meet the greenhouse gas reduction goals established by the California Air Resources Board. Meeting the goals of AB 32 and SB 375 with more sustainable planning in the land use, housing, and circulation analyses should be a primary focus of the environmental document.

We look forward to reviewing the RTP/SCS in detail and providing additional comments at that time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Wellborn". The signature is fluid and cursive, with the first name "Michael" and last name "Wellborn" clearly distinguishable.

Michael Wellborn
President

Holland & Knight

400 S. Hope Street, 8th Floor | Los Angeles, CA 90071 | T 213.896.2400
Holland & Knight LLP | www.hklaw.com

Jennifer L. Hernandez
Jennifer.hernandez@hklaw.com

February 22, 2019

Via electronic mail to: 2020PEIR@scag.ca.gov

Southern California Association of Governments
Attn: Roland Ok, Senior Regional Planner

Re: **Scoping Comments of the Draft Program Environmental Impact Report (PEIR) For Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (“SCS”)**

Dear Members of the Board, Executive Officers, and Staff:

We represent The 200, an accomplished group of civil rights leaders from all regions of California. The 200 believes minority home ownership is the cornerstone for creating multi-generational economic security, helping students to go to college and seniors to remain independent. The 200 believes that solving the housing crisis, and the housing-induced homelessness and poverty crisis, requires a Marshall Plan for building enough homes available for purchase by California’s hard working minority families. The 200 supports public health and the environment, including protecting people from pollution and housing the poor, but these goals may only be equitably achieved if the all civil rights of minority communities are honored, including achieving the American (and California) dream that working families can own their own home.

Unfortunately, government agencies have for decades adopted and implemented racially discriminatory government policies and practices that harm minority home ownership. Four anti-housing measures in the California Air Resource Board’s 2017 Scoping Plan are the latest additions to this Hall of Shame, and The 200 has filed a civil rights lawsuit against CARB challenging these discriminatory measures – including CARB’s mandated reduction in Vehicles Miles Travelled (“VMT”). A copy of The 200 lawsuit petition is included as Attachment 1, and all arguments made therein against CARB’s Scoping Plan mandate that VMT must be reduced even for an increasingly electric and efficient fleet, are hereby restated and submitted as comments on the required scope of the environmental and economic analysis that must be completed by SCAG for the SCS. As described in detail in the lawsuit, and in a followup letter recently submitted on behalf of The 200 to CARB and the California Transportation Commission

(Attachment 2), minority families are disproportionately harmed by the housing crisis, and are forced to “drive until they qualify” for housing they can afford to rent or buy. Poverty and homelessness rates also disproportionately plague minority communities.

We urge SCAG to fully and completely address, in its Program EIR (“PEIR”) and accompanying economic analysis, both the feasibility and substantial and discriminatory adverse impacts caused by CARB’s ever-more strident and infeasible VMT reduction demands. These are described in greater detail in Attachment 1, and include but are not limited to:

Notwithstanding billions of dollars in transit system expansions, traditional transit services such as fixed bus routes have continued to lose ridership – and fixed rail options that take 20 years to complete include stations proximate to only a small fraction of the homes and residences in the SCAG region. Emerging transit solutions that are growing in popularity and available for today’s Californians, such as ride sharing and other app-based point-to-point public and private transit providers, do not reduce VMT. VMT is also a poor metric for greenhouse gas reductions, given California’s past achievements and future legal mandates and policy commitments to electric vehicles, and low emission fleets. SCAG’s air quality is far better now than it was with the far fewer cars, people, and VMT present in the region in the 1960’s – and President Obama’s EPA administration confirmed that today’s cars are more than 98% cleaner than the pre-Clean Air Act fleet of the 1960’s.

Unlike the Clean Air Act, however, which requires the systematic and transparent ranking of emission reduction measures by effectiveness and cost to consumers, CARB has at all times refused to engage in the same level of transparency and consumer accountability for its GHG reductions – and instead leaped to a VMT mandate that profoundly affects the health and welfare of the majority of Californians who now live in the SCAG region.

Again as cited in the lawsuit, poverty scholars from non-partisan organizations like the Brookings Institute have long affirmed that poor families with a car are better able to hold a job, keep their kids in school, and attain greater economic security than families forced to ride the bus. The 200 was supportive of efforts by SCAG staff and other regional transit agencies to dissuade CARB from mandating discriminatory VMT reductions in this next round of SCS targets, and instead establishing greenhouse gas (“GHG”) reduction targets.

The 200 does not oppose California’s commitment to be a climate leader. However, the entirety of the California economy – the fifth largest in the world – is responsible for less than 1% of global greenhouse gas emissions. As explained in the letter The 200 submitted to CARB and the California Transportation Commission (Attachment 2), this basic mathematical reality is critical to understand the level of increased housing, poverty and homelessness burdens that CARB is willing to inflict on Californians under the banner of addressing of global climate change:

- The only study, completed by a team at UC Berkeley, to quantify the expected benefits of confining all required new housing to existing urbanized areas acknowledged that it

would result in the demolition of “tens if not hundreds of thousands” of single family homes. The study assumed we needed only about two-thirds of the Governor’s housing target of 3.5 million new homes, which under the study’s methodology would result in the need to demolish hundreds of thousands of existing single family homes. The study also equates 2000 square foot homes with 800 square foot apartments, and assumes that new housing must be downsized from even traditional starter small homes into multi-family small units. SCAG’s environmental and economic analysis must identify with specificity, and evaluate all economic and environmental impacts of, this radical demolition agenda – which if past is prologue, will follow the path of destruction by some redevelopment agencies in targeting minority neighborhoods for demolition.

- The displacement of minority communities in high density transit neighborhoods that are upzoned to high densities such as towers has been well-documented in both the SCAG and Bay Area regions. Only the wealthy (or foreign and institutional investors) can afford to buy these high rise condos costing more than \$1 million, or rent high rise apartments costing more than \$4000 per month. Units in mid- and high rise buildings cost 3-6 times more to construct than small starter homes and town homes: the building type itself is simply unaffordable for average working families. Even more perversely, people wealthy enough to move into these units are certainly wealthy enough to own – and drive – a car. Lower income working families displaced by this development typology are forced to move to more distant locations, where transit solutions are nonexistent and car ownership and use is absolutely required to timely get to jobs and other destinations. This displacement is not color blind: numerous studies now confirm that minority residents are far more likely to be displaced, and forced to more distant suburbs and even out of the region entirely, when high density housing for the wealthy overruns their neighborhood. Nor can this displacement be addressed by directing taxpayer funding to the “missing middle” of workforce housing: with the cost of producing even affordable low income units now surpassing \$500,000 per unit in many SCAG markets, numerous experts from the public sector (e.g., the non-partisan) Legislative Analyst’s Office and academics have shown that we cannot even make public dollars stretch far enough to address the housing needs of the homeless and very low income families, let alone build housing for the pre-school teachers, first responders, and scores of other occupations forced into 2+ hour commutes each day. The PEIR and accompanying economic analysis must match the affordability of housing to SCAG’s growing population, and update the SCS to take into account the real prices, real costs, and real incomes of today.
- Poverty scholars have long confirmed that access to and use of a car is critical for low income families. It is entirely fanciful, if it wasn’t so tragic and discriminatory, to accept CARB’s doctrinal view that global climate change requires that parents take a two-bus ride with a fevered child to a doctor, or struggle with mid-day bus service gaps to pick up an injured child from school, or pay more than \$3000 per month in rent for a tenth story new transit village apartment instead of spending the same amount on a mortgage for a

starter home that enhances family wealth, health and welfare. It is equally uncontested that homeowner households accrue family wealth between 37-45 times higher than rental households. Also uncontested: far less than 10% of jobs are accessible by SCAG commuters in less than 60 minutes on public transit, so even those who do live near an express bus stop are unlikely to be able to get to their job or school – let alone their doctor or grocer – on some later bus stop, which is why fixed bus routes in particular have shown collapsing ridership in the SCAG region and nationally. In the midst of a revolution in transportation services and technology, CARB is demanding that the non-wealthy among us spend hours extra each day away from our families reliant on 19th century transit technology.

- CARB's fixation on discriminatory VMT mandates is unmoored from both global climate change or GHG reductions. CARB has itself acknowledged that the entire California economy contributes less than 1% of global greenhouse gas emissions ("GHG"). CARB's VMT reduction mandate, as quantified by the same UCB study given CARB's refusal to show its own math, will result in less than 1% of CARB's unlegislated goal of reducing GHG in California 80% by 2050. This VMT reduction mandate is absolutely not required, as the CARB Scoping Plan itself shows, to achieve California's legislated target of reducing GHG 40% by 2030. CARB's discriminatory fixation on VMT deprives minority Californians of home ownership and vehicular access that wealthy Californians have long taken for granted is not just bad policy, it is illegal discrimination. We urge SCAG to not collude with CARB in this illegal discrimination. There are scores of alternative measures that can easily result in greater GHG reductions in California that do not discriminate against California's minority communities, from reducing forest fires and increasing renewable energy produced from dead and dying trees, to regulating GHG emissions from imported luxury goods. SB 375 did not give CARB legal authority to mandate reductions in VMT, and all legislative proposals to mandate VMT reductions have been derailed by the Legislature. Given the proven infeasibility of VMT reductions in a growing population and economy, the CARB Board decided in March of 2017 (with support from The 200) to not mandate VMT reductions in the upcoming round of SCS updates. In a breathtaking and arrogant rejection of its own Board decision, CARB staff in December 2018 decreed that staff would solely credit SCAG and other transit authorities with GHG reductions caused by VMT reductions, and not count any other form of GHG reduction achieved in the region. This staff decree is the equivalent of the VMT reduction mandate that the CARB Board rejected, and is simply and completely unlawful.

In addition to the foregoing comments, and the many more detailed comments about the adverse and discriminatory environmental and economic impacts of CARB's VMT and other anti-housing Scoping Plan measures described in the two Attachments, we offer the following comments that are specific to the SCS PEIR and accompanying economic impact analysis:

- The California Environmental Quality Act (“CEQA”) Guidelines define “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account **economic**, environmental, **legal, social, and** technical factors.” (emphasis added). Neither the original or current SCS have resulted in adequate housing supplies that are affordable to hard working minority families, nor has it resulted in adequate transportation solutions for the SCAG population. In fact, the trajectory of VMT remains upward, in alignment with population and economic growth. Under CEQA, the PEIR must identify a reasonable range of “feasible” alternatives. Even the existing SCS, let alone an alternative that relies even more on unaffordable high density housing types that have already failed to make a dent in the region’s housing crisis, fails as a CEQA alternative because substantial evidence shows that it is in fact not “feasible.”
- Similarly, the SCS has been added to – and is linked for CEQA purposes to – the Regional Transportation Plan (“RTP”). SCAG has independent legal obligations under numerous other federal and state transportation and air quality laws to deliver transportation solutions for the region that actually work in practice. After 10 years of SB 375 implementation, and billions of dollars invested in conventional transit modes (bus and rail), ridership on these transit modes continues to decline in the midst of a revolution in transit modes and services. Greenhouse gas emission reductions – the legislated environmental objective of SB 375 – are not dependent on VMT reductions, especially as vehicular fleets are electrified and improved. Again, even the existing SCS, yet alone any higher density and anti-car alternative CARB would like to mandate pursuant to its December 2018 decree, have not in fact produced the level of transportation functionality demanded by SCAG’s other legal compliance obligations and are thus legally infeasible.
- Apart from the current list of alternatives failing to meet the CEQA criteria for feasibility, it is critical that the impacts analysis for all topics required to be addressed by CEQA – not just GHG – be given equal and full consideration in the PEIR. CEQA further requires that mitigation measures proposed to lessen or avoid significant adverse impacts, such as the scores of significant unavoidable adverse impacts that even the prior SCS PEIR acknowledged would result from SCS implementation, be “feasible” and meet legal criteria for effectiveness and enforceability. Illusory mitigation through reliance on unenforceable policies, unfunded aspirations, or legally unauthorized future commitments, are not lawful. For example, in some of the more recent discussions of imposing new CEQA mitigation mandates on project-level VMT impacts, it was suggested that new housing units be required to annually fund, in perpetuity, bus passes in perpetuity to offset VMT impacts. Examples provided, such as paying for LAUSD student bus passes, were estimated to cost in excess of \$6000 per unit of new housing per year – to be assessed for both rental and homeownership products. Given the overwhelming housing shortage and affordability crisis, as well as worst-in-nation poverty and homeless populations, ANY new mitigation obligations that even indirectly get passed along as new cost burdens to SCAG residents must be honestly described,

quantified, and assessed for feasibility given that more than 40% of today's California households cannot even afford to meet existing expense burdens.

In conclusion, we know that SCAG staff and Board members have been committed to a thorough and honest SCS process, and we commend SCAG for its leadership in attempting to work with CARB and, for example, dissuading the CARB Board from imposing VMT reduction mandates on the SCS. CARB staff, however, has not gotten the message – and while the rest of state and local governments are mobilized to solve the housing crisis and restore equity and economic mobility to all residents, CARB staff pursue the single silo goal of reducing GHG produced in California (and counting Californians who move to higher per capita GHG states like Texas and Nevada as a GHG “reduction” for California GHG accounting purposes) to extremes such as the 80% reduction by 2050 and VMT reduction mandates that have been expressly rejected by the Legislature.

The lawful foundation of this PEIR must begin with “feasible” alternatives, including the “no action” alternative – and be informed by the region's growing population, diverse and robust economy, and “feasible” housing and transportation options that can “feasibly” be implemented based on economic, legal and technical constraints. We are confident that adherence to these core legal mandates of CEQA (and NEPA) will require substantial revisions to the two “No Project” alternatives currently under consideration, and re-scoping of the PEIR with revised alternatives.

Please do not hesitate to contact us if you would like any further clarification on these issues. Also, please include us in stakeholder meetings and notices for the duration of this process.

Thank you for your time and consideration, and for your excellent work on behalf of the region.

Very truly yours,

HOLLAND & KNIGHT LLP



Jennifer L. Hernandez

cc: The 200 Leadership Council

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Attachments

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**
10 **UNLIMITED CIVIL JURISDICTION**

12 THE TWO HUNDRED, an unincorporated
13 association of civil rights leaders, including
LETICIA RODRIGUEZ, TERESA MURILLO,
14 and EUGENIA PEREZ,

15 Plaintiffs/Petitioners,

16 v.

17 CALIFORNIA AIR RESOURCES BOARD,
18 RICHARD COREY, in his Official Capacity, and
DOES 1-50,

19 Respondents/Defendants.
20
21
22
23
24

Case No. 18CECG01494

**FIRST AMENDED¹ VERIFIED
PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Code Civ. Proc. §§ 1085, 1094.5, 1060,
526; Gov. Code § 12955 *et seq.* (FEHA);
42 U.S.C. § 3601 *et seq.* (FHA); Cal.
Const. Art. I, § 7; Art. IV, § 16; U.S.
Const. Amd. 14, § 1; 42 U.S.C. § 1983;
Pub. Res. Code § 12000 *et seq.* (CEQA);
Gov. Code § 11346 *et seq.* (APA); H&S
Code § 38500 *et seq.* (GWSA); H&S
Code § 39000 *et seq.* (CCAA); Gov.
Code § 65088 *et seq.* (Congestion
Management Plan)]

25
26
27 ¹ Principal added and revised allegations are at ¶¶ 262-351 and 379 (pages 79-108, 112) below.
28 A full comparison between this First Amended Petition/Complaint and the original Petition/
Complaint, generated using Adobe Acrobat® Compare software, is attached as Exhibit 3.

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1 **I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

2 **A. California’s Greenhouse Gas Policies and Housing-Induced Poverty Crisis**

3 1. California’s reputation as a global climate leader is built on the state’s dual claims
4 of substantially reducing greenhouse gas (“GHG”) emissions while simultaneously enjoying a
5 thriving economy. Neither claim is true.

6 2. California has made far less progress in reducing GHG emissions than other states.
7 Since the effective date of California’s landmark GHG reduction law, the Global Warming
8 Solutions Act,² 41 states have reduced per capita GHG emissions by more than California

9 3. California’s lead climate agency, the California Air Resources Board (“CARB”),
10 has ignored California’s modest scale of GHG reductions, as well as the highly regressive costs
11 imposed on current state residents by CARB’s climate programs.

12 4. Others have been more forthcoming. Governor Jerry Brown acknowledged in 2017
13 that the state’s lauded cap-and-trade program, which the non-partisan state Legislative Analyst’s
14 Office (“LAO”) concluded would cost consumers between 24 cents and 73 cents more per gallon
15 of gasoline by 2031,³ actually “is not that important [for greenhouse gas reduction]. I know that.
16 I’m Mr. ‘It Ain’t That Much.’ It isn’t that much. Everybody here [in a European climate change
17 conference] is hype, hype to the skies.”⁴

18 5. Governor Brown’s acknowledgement was prompted by a report from Mother
19 Jones—not CARB—that high rainfall had resulted in more hydroelectric power generation from
20
21

22 _____
23 ² The Global Warming Solutions Act of 2006 (“GWSA”) is codified at Health and Safety Code
24 (“H&S Code”) § 38500 *et seq.* and became effective in 2007. The Act is often referred to as “AB
25 32”, the assembly bill number assigned to the legislation. AB 32 required California to reduce
26 GHG emissions from a “business as usual” scenario in 2020 to the state’s 1990 GHG emission
27 level. AB 32 was amended in 2017 by Senate Bill 32 by the same author. SB 32 established a
28 new GHG reduction mandate of 40% below California’s 1990 GHG levels by 2030.

³ LAO, Letter to Assembly Member Fong (Mar. 29, 2017), www.lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

⁴ Julie Cart, *Weather Helped California’s Greenhouse Gas Emissions Drop 5% Last Year*, CALMatters (Dec. 2, 2017), <https://timesofsandiego.com/tech/2017/12/02/weather-helped-californias-greenhouse-gas-emissions-drop-5-last-year/>.

1 existing dams than had occurred during the drought, and that this weather pattern resulted in a 5%
2 decrease in California’s GHG emissions.⁵

3 6. GHG emissions data from California’s wildfires are also telling. As reported by
4 the *San Francisco Chronicle* (again not CARB), GHG emissions from all California regulatory
5 efforts “inched down” statewide by 1.5 million metric tons (from total estimated emissions of 440
6 million metric tons),⁶ while just one wildfire near Fresno County (the Rough Fire) produced 6.8
7 million metric tons of GHGs, and other fires on just federally managed forest lands in California
8 emitted 16 million metric tons of GHGs.⁷

9 7. Reliance on statewide economic data for the false idea that California’s economy
10 is thriving conflates the remarkable stock market profits of San Francisco Bay Area technology
11 companies with disparate economic harms and losses suffered by Latino and African American
12 Californians statewide, and by white and Asian American Californians outside the Bay Area.

13 8. Since 2007, which included both the global recession and current sustained period
14 of economic recovery, California has had the highest poverty rate in the country—over 8 million
15 people living below the U.S. Census Bureau poverty line when housing costs are taken into
16 account.⁸ By another authoritative poverty methodology developed by the United Way of
17 California, which counts housing as well as other basic necessities like transportation and medical
18 costs (and then offsets these with state welfare and related poverty assistance programs), about
19 40% of Californians “do not have sufficient income to meet their basic cost of living.”⁹ The
20

21 ⁵ *Ibid.*

22 ⁶ California Air Resources Board, 2017 Edition California Greenhouse Gas Inventory for 2000-
2015 (June 2017), <https://www.arb.ca.gov/cc/inventory/data/data.htm>.

23 ⁷ David R Baker, *Huge wildfires can wipe out California’s greenhouse gas gains*, SF Chronicle,
24 (Nov. 21, 2017), <https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php>.

25 ⁸ Liana Fox, *The Supplemental Poverty Measure: 2016*, U.S. Census Bureau Report Number:
26 P60-261, Table A-5 (Sept. 21, 2017),
<https://www.census.gov/library/publications/2017/demo/p60-261.html>; Dan Walters, *Why does*
27 *California have the nation’s highest poverty level?*, CALMatters (Aug. 13, 2017),
<https://calmatters.org/articles/california-nations-highest-poverty-level/>.

28 ⁹ Betsy Block et al., *Struggling to Get By: The Real Cost Measure in California 2015*, United
Ways of California (2016), <https://www.unitedwaysca.org/realcost>.

1 Public Policy Institute of California used a methodology that also accounts for the cost of living
2 and independently concluded that about 40% of Californians live in poverty.¹⁰

3 9. Poverty is just one of several indicators of the deep economic distress affecting
4 California. California also has the highest homeless population, and the highest homelessness
5 rate, in the nation. According to the U.S. Department of Housing and Urban Development, about
6 25% of the nation's homeless, or about 135,000 individuals, are in California.¹¹

7 10. National homeownership rates have been recovering since the recession levels, but
8 California's rate has plunged to the second lowest in the country—with homeownership losses
9 steepest and most sustained for California's Latinos and African Americans.¹²

10 11. As shown in Figure 1, with the exception of white and Asian populations in the
11 five-county Bay Area, elsewhere in California—and for Latino and African American residents
12 statewide—incomes are comparable to national averages.

13 **Figure 1**

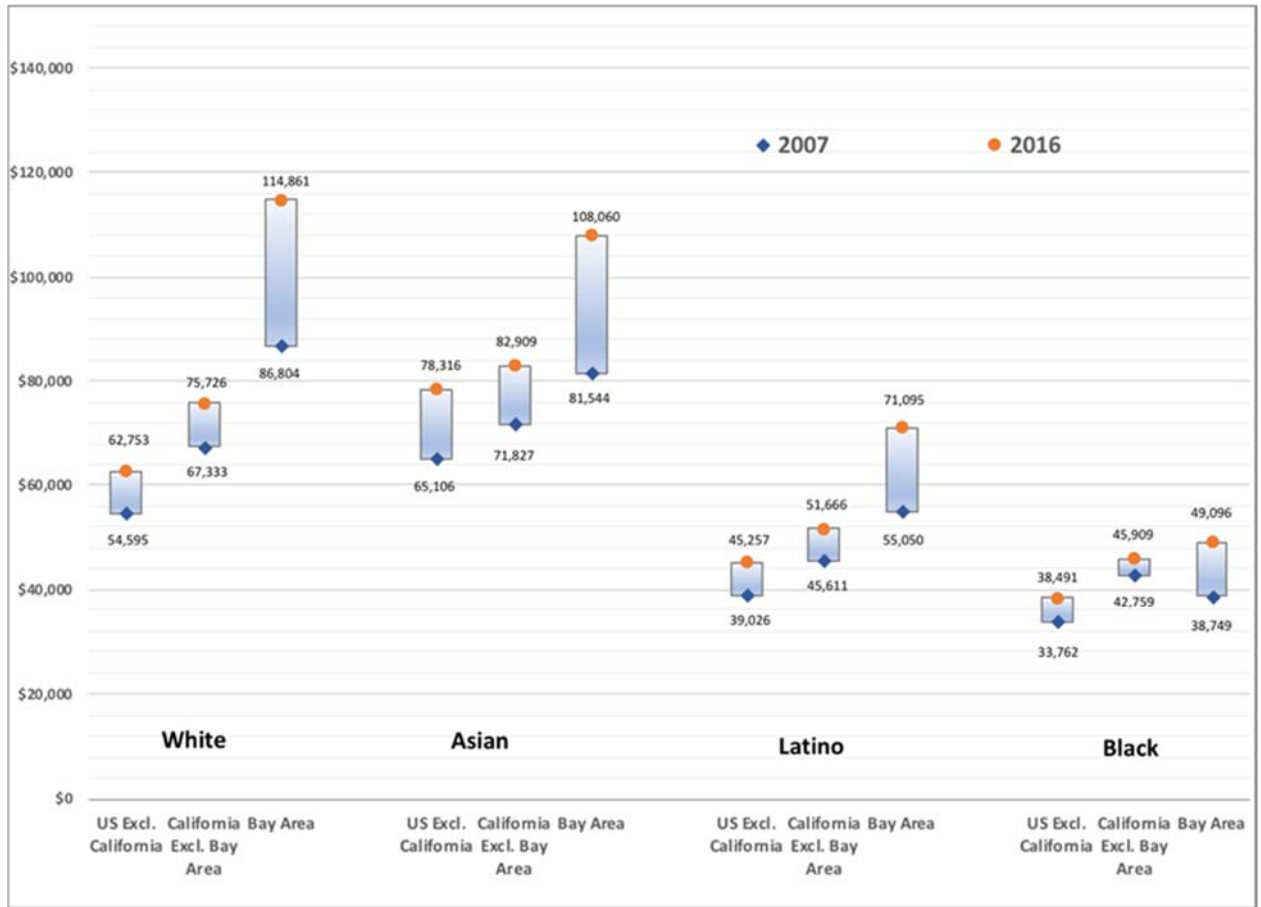
14 **Median Income in 2007 and 2017, White, Asian, Latino and Black Populations**
15 **Bay Area, California excluding the Bay Area, and U.S. excluding California**
16 **(nominal current dollars)¹³**

17
18
19 ¹⁰ Public Policy Institute of California, Poverty in California (Oct. 2017),
20 <http://www.ppic.org/publication/poverty-in-california/>.

21 ¹¹ U.S. Department of Housing and Urban Development, 2017 Annual Homeless Assessment
22 Report to Congress, <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>;
23 Kevin Fagan et al., *California's homelessness crisis expands to country*, SF Chronicle (Sept. 8,
24 2017), <https://www.sfchronicle.com/news/article/California-s-homelessness-crisis-moves-to-the-12182026.php>.

25 ¹² U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS), Table 16.
26 Homeownership Rates for the 75 Largest Metropolitan Statistical Areas: 2015 to 2017,
27 <https://www.census.gov/housing/hvs/data/ann17ind.html>. See also 2007 and 2016 American
28 Community Survey 1-Year Estimates, Table B25003 series (Tenure in Occupied housing units),
California, <https://factfinder.census.gov/>.

¹³ Median income estimated from household income distributions for 2007 and 2016 American
Community Survey 1-Year Estimates, Table B19001 series, <https://factfinder.census.gov/> (using
the estimation methodology described by the California Department of Finance at
http://www.dof.ca.gov/Forecasting/Demographics/Census_Data_Center_Network/documents/How_to_Recalculate_a_Median.pdf).



12. However, Californians pay far higher costs for basic necessities. A national survey of housing, food, medical and other costs conducted by the Council for Community & Economic Research showed that in 2017, California was the second most expensive state in the nation (after Hawaii), and had a cost of living index that was 41% higher than the national average.¹⁴ The LAO reported that “California’s home prices and rents are higher than just about anywhere else,” with average home prices 2.5 times more than the national average and rents 50% higher than the national average.¹⁵ Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)¹⁶ and about \$0.80 cents more per gallon of gas than the national average.¹⁷

¹⁴ The 2017 survey by the Council for Community & Economic Research was published by the Missouri Economic Research and Information Center, https://www.missourieconomy.org/indicators/cost_of_living/index.stm.

¹⁵ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015), <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

¹⁶ U.S. Energy Information Agency, Electric Power Annual, Table 2.10 (Dec. 2, 2017), <https://www.eia.gov/electricity/annual/> (showing average annual 2016 prices).

¹⁷ American Automobile Association, Regular Gas Prices, <http://gasprices.aaa.com/state-gas-price-averages/>, last visited April 25, 2018.

1 13. These high costs for two basic living expenses—electricity and transportation—are
2 highest for those who live in the state’s inland areas (and need more heating and cooling than the
3 temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded
4 is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.¹⁸

5 14. An estimated 138,000 commuters enter and exit the nine-county Bay Area
6 megaregion each day.¹⁹ These are workers who are forced to “drive until they qualify” for
7 housing they can afford to buy or rent.

8 15. San Joaquin County housing prices in cities nearest the Bay Area, such as
9 Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each
10 direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles
11 and 3 hour daily commutes).²⁰ The median housing price in Stockton is about \$286,000—still
12 double the national average of \$140,000—while the median housing price in San Jose is over
13 \$1,076,000 and in San Francisco is over \$1,341,000.²¹

14 16. California’s poverty, housing, transportation and homeless crisis have created a
15 perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat,
16 resulted in the “resegregation” of the Bay Area.²² Between 2000 and 2014, substantial African
17 American and Latino populations shifted from central cities on and near the Bay, like San
18 Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central
19 Valley communities like Stockton and Suisun City.²³ As reported:

20 _____
21 ¹⁸ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015),
22 <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

23 ¹⁹ Bay Area Council, Another Inconvenient Truth (Aug. 16, 2016),
24 www.bayareaeconomy.org/report/another-inconvenient-truth/.

25 ²⁰ Commute times from Google navigation, calculated April 25, 2018.

26 ²¹ Zillow, Stockton CA Home Prices & Home Values, <https://www.zillow.com/stockton-ca/home-values/>;
27 San Jose CA Home Prices and Home Values, <https://www.zillow.com/san-jose-ca/home-values/>;
28 San Francisco CA Home Prices and Home Values, <https://www.zillow.com/san-francisco-ca/home-values/>.

²² Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016),
<http://urbanhabitat.org/new-report-urban-habitat-reveals-growing-inequality-and-resegregation-bay-area-reflecting-divided>; see also LAO, Lower Income Households Moving to Inland California from Coast (Sept. 2015), <http://www.lao.ca.gov/LAOEconTax/Article/Detail/133>.

²³ *Id.* p. 10-11, Maps 5 and 6.

1 Low income communities of color are increasingly living at the
2 expanding edges of our region. . . . Those who do live closer to the
3 regional core find themselves unable to afford skyrocketing rents
4 and other necessities; many families are doubling or tripling up in
5 homes, or facing housing instability and homelessness.²⁴

6 17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation
7 for traffic congestion, flanking Washington DC (#2).²⁵ Yet California’s climate leaders have
8 decided to intentionally increase traffic congestion—to lengthen commute times and encourage
9 gridlock—to try to get more people to ride buses or take other form of public transit.²⁶ This
10 climate strategy has already failed, with public transit ridership—particularly by bus—continuing
11 to fall even as California has invested billions in public transit systems.²⁷

12 18. Vehicle miles travelled (“VMT”) by Californians forced to drive ever-greater
13 distances to homes they can afford have also increased by 15% between 2000 and 2015.²⁸ Serious

14 ²⁴ *Id.* p. 2.

15 ²⁵ INRIX Global Traffic Scorecard (2017), <http://inrix.com/scorecard/>.

16 ²⁶ Governor’s Office of Planning and Research (“OPR”), Updating Transportation Analysis in the
17 CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014),
18 http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf, p. 9 (stating that “research indicates that adding new traffic lanes in areas
19 subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet,
20 “DRAFT Policy Brief on Highway Capacity and Induced Travel,” (April 2014).) This is because
21 the new roadway capacity may allow increased speeds on the roadway, which then allows people
22 to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may
23 cause people to make trips that they would otherwise avoid because of congestion, or may make
24 driving a more attractive mode of travel”). In subsequent CEQA regulatory proposals, and in
25 pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the
26 substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature
27 in 2017 was structured to limit money for addressing congestion to \$250 million (less than 1% of
28 the \$2.88 billion anticipated to be generated by the new taxes). See Jim Miller, *California’s gas
tax increase is now law. What it costs you and what it fixes*. Sacramento Bee (April 28, 2017),
<http://www.sacbee.com/news/politics-government/capitol-alert/article147437054.html>.

²⁷ See, e.g., Bay Area Metropolitan Planning Commission, Transit Ridership Report (Sept. 2017),
<http://www.vitalsigns.mtc.ca.gov/transit-ridership> (showing transit ridership decline on a per
capita basis by 11% since 1990 with per capita bus boardings declining by 33%); see also
University of California Institute for Transportation Studies, Falling Transit Ridership: California
and Southern California (Jan. 2018),
https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf (showing Los Angeles
regional public transit decline).

²⁸ TRIP, California Transportation by the Numbers (Aug. 2016),
[https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p
df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf).

1 adverse health impacts to individual commuters,²⁹ as well as adverse economic impacts to drivers
2 and the California economy,³⁰ from excessive commutes have also worsened.

3 19. In 2016 and 2017, the combination of increased congestion and more VMT
4 reversed decades of air quality improvements in California, and caused increased emissions of
5 both GHG and other traditional air pollutants that cause smog and other adverse health effects,³¹
6 for which reductions have long been mandated under federal and state clean air laws.

7 20. In short, in the vast majority of California, and for the whole of its Latino and
8 African American populations, the story of California's "thriving" economy is built on CARB's
9 reliance on misleading statewide averages, which are distorted by the unprecedented
10 concentration of stock market wealth created by the Bay Area technology industry.

11 21. For most Californians, especially those who lost their home in the Great Recession
12 (with foreclosures disproportionately affecting minority homeowners),³² or who never owned a
13 home and are struggling with college loans or struggling to find a steady job that pays enough to
14 cover California's extraordinary living costs, CARB's assertion that California is a booming,
15 "clean and green" economy is a distant fiction.

16 **B. California's Historical Use of Environmental and Zoning Laws and**
17 **Regulations to Oppress and Marginalize Minority Communities**

18 22. The current plight of minority communities in California is the product of many
19 decades of institutional racism, perpetuated by school bureaucrats of the 1940's who defended the
20 "separate but equal" system, highway bureaucrats of the 1950's who targeted minority
21 neighborhoods for demolition to make way for freeway routes, urban planning bureaucrats in the
22

23 ²⁹ Carolyn Kylstra, *10 Things Your Commute Does to Your Body*, Time Magazine (Feb. 2014),
<http://time.com/9912/10-things-your-commute-does-to-your-body/>.

24 ³⁰ TRIP, California Transportation by the Numbers (Aug. 2016),
25 [https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf)
26 [df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf) (stating that traffic congestion is estimated to cost California \$28 billion, including lost time
for drivers and businesses, and wasted fuels).

27 ³¹ Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017),
<http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf>.

28 ³² Gillian White, *The Recession's Racial Slant*, Atlantic Magazine (June 24, 2015),
<https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>.

1 1960's who destroyed minority communities in pursuit of redevelopment, and those who enabled
2 decades of "redlining" practices by insurance and banking bureaucrats aimed at denying
3 minorities equal access to mortgages and home insurance.³³

4 23. Environmental regulators are no less susceptible to racism and bias than other
5 regulators. Members of The Two Hundred had to intervene when environmental regulators
6 threatened to block construction of the UC Merced campus, which is the only UC campus in the
7 Central Valley and serves the highest percentage of Latino students of any UC campus.³⁴

8 24. Members of The Two Hundred also had to intervene to require environmental
9 regulators to establish clear standards for the cleanup of contaminated property that blighted
10 many minority neighborhoods, where cleanup and redevelopment could not be financed without
11 the standards that virtually all other states had already adopted.³⁵

12 25. Racial bias in environmental advocacy organizations, including those that heavily
13 lobbied CARB in 2017 Scoping Plan proceedings, was also confirmed in an influential study
14 funded by major foundations that contribute to such organizations.³⁶

20 ³³ See Richard Rothstein, *Color of Law: A Forgotten History of How Our Government*
21 *Segregated America* (2017).

22 ³⁴ UC Merced's Latino undergraduates comprise 53% of the student population, compared to the
23 21% rate of Latino undergraduate enrollment for the UC system as a whole. University of
24 California System Enrollment (2017), [https://www.universityofcalifornia.edu/infocenter/fall-](https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance)
25 [enrollment-glance](https://www.ucmerced.edu/fast-facts); UC Merced Fast Facts 2017-2018, <https://www.ucmerced.edu/fast-facts>; see
26 also John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for
27 Environmental Equity (March 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/)
28 [fighting-environmental-equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

³⁵ John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for Environmental
Equity (Mar. 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/)
[environmental-equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

³⁶ Dorceta E. Taylor, Ph.D., *The State of Diversity in Environmental Organizations: Mainstream*
NOGs, Foundations & Government Agencies (July 2014), [http://vaipl.org/wp-](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf)
[content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf).

1 26. Additional studies have confirmed racial bias in environmental organizations, and
2 in media reports on environmental issues.³⁷ As the newest President of the Sierra Club Board of
3 Directors, African American Aaron Mair recently confirmed: “White privilege and racism within
4 the broader environmental movement is existent and pervasive.”³⁸

5 27. The simple fact is that vast areas of California, and disproportionately high
6 numbers of Latino and African American Californians, have fallen into poverty or out of
7 homeownership, and California’s climate policies guarantee that housing, transportation and
8 electricity prices will continue to rise while “gateway” jobs to the middle class for those without
9 college degrees, such as manufacturing and logistics, will continue to locate in other states.

10 **C. Four New GHG Housing Measures in CARB’s 2017 Scoping Plan Are**
11 **Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced**
12 **Poverty Crisis**

13 28. Defendant/Respondent CARB is the state agency directed by the Legislature to
14 implement SB 32, which requires the State to set a target to reduce its GHG emissions to forty
15 percent below 1990 levels by 2030 (“2030 Target”).

16 29. CARB adopts a “Scoping Plan” every five years, as described in the GWSA. The
17 most recent Scoping Plan sets out the GHG reduction measures that CARB finds will be required
18 to achieve the 2030 Target (“2017 Scoping Plan”). The 2017 Scoping Plan was approved in
19 December 2017.

20 30. The most staggering, unlawful, and racist components of the 2017 Scoping Plan
21 target new housing. The Plan includes four measures, challenged in this action, that increase the
22 cost and litigation risks of building housing, intentionally worsen congestion (including commute
23

24 ³⁷ See, e.g., Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company
25 (June 30, 2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>; Jedidiah Purdy,
26 *Environmentalism’s Racist History*, *The New Yorker* (Aug. 13, 2015),
27 <https://www.newyorker.com/news/news-desk/environmentalisms-racist-history>; Brentin Mock,
28 *The Green Movement Is Talking About Racism? It’s About Time*, *Outside Magazine* (Feb. 27,
2017), <https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins>.

³⁸ Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30,
2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>

1 times and vehicular emissions) for workers who already spend more than two hours on the road
2 instead of with their families, and further increase the cost of transportation fuels and electricity.

3 31. These newly-adopted measures (herein the “GHG Housing Measures”) are: (A)
4 The new VMT mandate; (B) The new “net zero” CEQA threshold; (C) The new CO2 per capita
5 targets for local climate action plans for 2030 and 2050; and (D) The “Vibrant Communities”
6 policies in Appendix C to the 2017 Scoping Plan, to the extent they incorporate the VMT, net
7 zero and new CO2 per capita targets.³⁹

8 32. The presumptive “net zero” GHG threshold requires offsetting GHG emissions for
9 all new projects including housing under CEQA, the “Vibrant Communities” measures include
10 limiting new housing to the boundaries of existing developed communities, and a mandate to
11 substantially reduce VMT even for electric vehicles by (among other means) intentionally
12 increasing congestion to induce greater reliance on buses and other transit modes.

13 33. The development of, and the measures included in, the 2017 Scoping Plan was
14 required to be informed by an environmental analysis (“EA”) pursuant to the California
15 Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) (“CEQA”), and an economic fiscal
16 analysis (“FA”) as mandated by both the GWSA and the Administrative Procedure Act, Gov.
17 Code § 11346 *et seq.* (“APA”).

18 34. However, in one of many examples of the lack of analysis in the 2017 Scoping
19 Plan and related documents, CARB does not disclose the GHG emission reductions it expects
20 from the GHG Housing Measures. The Scoping Plan also omits any economic analysis that
21 accounts for the cost of these measures on today’s Californians, and omits any environmental
22 analysis of the Plan’s effects on existing California communities and infrastructure.

23 35. CARB concluded that in 2017 California’s entire economy will emit 440 million
24 metric tons of GHGs per year, and that California will need to reduce emissions by 181.8 million
25

26 ³⁹ While CARB styled the GHG Housing Measures as “guidelines”, they are self-implementing
27 and unlawful underground regulations. All other components of the 2017 Scoping Plan will be
28 implemented as regulations, such as the Cap and Trade program and low carbon fuel standard,
and thus will undergo a formal rulemaking process. However, CARB refused to undertake the
same legislatively-mandated public process for the four GHG Housing Measures.

1 metric tons to meet the 2030 Target. Notwithstanding widespread reports, and public and agency
2 concern about the housing crisis, the homelessness crisis, the housing-induced poverty crisis, and
3 the transportation crisis (collectively referred to herein as the “housing crisis”), neither the 2017
4 Scoping Plan, nor the environmental or economic analyses, disclose how much of this 181.8
5 million metric ton GHG reduction must or even may be achieved by constructing the at least three
6 million new homes that experts,⁴⁰ and all candidates for Governor,⁴¹ agree California must
7 produce to resolve the current housing shortfall.

8 36. The core elements of the Scoping Plan related to housing call for new housing in
9 California’s existing communities (which comprise 4% of California’s lands), with smaller multi-
10 family units instead of single family homes located near public transit to reduce VMT. The 2017
11 Scoping Plan does not contemplate the need for any new regulations to implement this housing
12 regime. Instead, it includes expert agency conclusions about how CEQA, a 1970 environmental
13 law, must be implemented to achieve California’s statutory climate change mandates as well as
14 the unlegislated 2050 GHG reduction goal (80% reduction from 1990 GHG emissions by 2050)
15 included in various Executive Orders from California Governors.

16 37. The best available data on the actual GHG reductions that will be achieved by the
17 Scoping Plan’s GHG Housing Measures is the “Right Type, Right Place” report, prepared by a
18 multi-disciplinary team of housing and environmental law experts at the University of California,
19 Berkeley, that examined some of the consequences from the housing crisis solution embedded in
20 the 2017 Scoping Plan’s GHG Housing Measures (“UCB Study”).⁴²
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22

23 ⁴⁰ Jonathan Woetzel et al., Closing California’s Housing Gap, McKinsey Global Institute (Oct.
24 2016), <https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap>.

25 ⁴¹ Liam Dillon, *We asked the candidates how they planned to meet housing production goals. Here’s how they responded*, LA Times (March 6, 2018),
26 <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-asked-the-candidates-how-they-planned-1520382029-htlstory.html>.

27 ⁴² Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic
28 Impacts of Infill Residential Development through 2030, U.C. Berkeley Turner Center for
Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017),
<https://turnercenter.berkeley.edu/right-type-right-place>.

1 38. The UCB Study anticipates constructing only 1.9 million new homes, less than
2 two-thirds of California’s 3.5 million shortfall identified by other experts. The Study examines
3 the continuation of existing housing production, which is dominated by single family homes with
4 fewer than 1% of Californians living in high rise structures, and compares this with a changed
5 housing pattern that would confine new housing to the boundaries of existing cities and towns and
6 replace traditional single family homes with smaller apartments or condos (thereby equating
7 2,000 square foot homes with 800 square foot apartments).

8 39. The UCB Study concludes that high rise and even mid-rise (e.g., six story)
9 buildings are far more costly to build on a per unit basis than single family homes—three to five
10 time higher—and are thus infeasible in most markets for most Californians. The Study thus
11 recommends focusing on less costly housing units such as quadplexes (four units in two-story
12 buildings) and stacked flats (one or two units per floor, generally limited to four stories)—which
13 are still approximately 30% more costly than single family homes on a per unit basis.

14 40. The UCB Study then concludes that it would be possible for California to build all
15 1.9 million new homes in existing communities with these small multi-family structures, but to
16 confine all new units to the 4% of California that is already urbanized would require the
17 demolition of “tens, if not hundreds of thousands, of single family homes.” The Study does not
18 quantify the GHG emissions from such massive demolition activities, nor does it identify any
19 funding source or assess any non-GHG environmental, public service, infrastructure, historic
20 structure, school, traffic, or other impact associated with this new housing vision.

21 41. Unlike CARB’s 2017 Scoping Plan, the UCB Study does quantify the GHG
22 reductions to be achieved by remaking California’s existing communities and housing all
23 Californians harmed by the current housing crisis in small apartments. With this new housing
24 future, California will reduce annual GHG emissions by 1.79 million metric tons per year, less
25 than 1% of the 181.8 million metric tons required to meet the 2030 Target in SB 32.

26 42. The Scoping Plan’s new CEQA provisions, which have already been cited as
27 CEQA legal mandates by opponents to a Los Angeles County housing project called
28

1 “Northlake,”⁴³ would increase still further the cost of new housing (and thereby make it even less
2 affordable to California’s minority and other families). Since new housing—especially infill
3 housing—is already the top target of CEQA lawsuits statewide,⁴⁴ the GHG Housing Measures
4 will encourage even more anti-housing lawsuits, with attendant increases in project litigation
5 costs and construction delays, as well as vehement opposition from existing residents.

6 43. CEQA lawsuits also disproportionately target multi-family housing such as
7 apartments in existing urbanized “infill” locations. In a recent 3-year study of all CEQA lawsuits
8 filed statewide, the approximately 14,000 housing units challenged in the six county region
9 comprising the Southern California Association of Governments (“SCAG”), which includes Los
10 Angeles, Orange, San Bernadino, Ventura, Imperial, and Riverside counties and all cities within
11 those counties, SCAG determined that 98% of the challenged housing units were located in
12 existing urbanized areas, 70% were within areas designated for transit-oriented high density
13 development, and 78% were located in the whiter, wealthier and healthier areas of the region
14 (outside the portions of the regions with higher minority populations, poverty rates, pollution, and
15 health problems associated with adverse environmental conditions such as asthma).⁴⁵

16 44. CEQA lawsuit petitioners also have an unusually high success rate against the
17 cities and other government agencies responsible for CEQA compliance. A metastudy of
18 administrative agency challenges nationally showed that agencies win approximately 70% of such
19 cases. In contrast, three different law firm studies of CEQA reported appellate court opinions
20 showed that CEQA petitioners prevailed in almost 50% of such cases.⁴⁶

21 _____
22 ⁴³ Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

23 ⁴⁴ Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
24 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
[https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p
df](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf).

25 ⁴⁵ Jennifer Hernandez, David Friedman, Stephanie DeHerrera, In the Name of the Environment
26 Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), p. 31-34,
[https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws
uits.pdf](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf).

27 ⁴⁶ Jennifer Hernandez, Spencer Potter, Dan Golub, Joanna Meldrum, CEQA Judicial Outcomes:
28 Fifteen Years of Reported California Appellate and Supreme Court Decisions (2015), p. 3-4, 10,
<https://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf>.

1 45. As noted by senior CEQA practitioner William Fulton, “CEQA provides a way for
2 anybody who wants anything out of a public agency to get some leverage over the situation –
3 whether that's unions, environmentalists, businesses, developers, and even local governments
4 themselves.”⁴⁷

5 46. As the founder of California’s first law firm focused on filing CEQA lawsuit
6 petitions, E. Clement Shute, recently reported when accepting a lifetime environmental law firm
7 award from the California State Bar Environmental Section:

8 Moving to the bad and ugly side of CEQA, projects with merit that
9 serve valid public purposes and not be harmful to the environment
10 can be killed just by the passage of the time it takes to litigate a
CEQA case.

11 In the same vein, often just filing a CEQA lawsuit is the equivalent
12 of an injunction because lenders will not provide funding where
13 there is pending litigation. This is fundamentally unfair. There is no
need to show a high probability of success to secure an injunction
and no application of a bond requirement to offset damage to the
developer should he or she prevail.

14 CEQA has also been misused by people whose move is not
15 environmental protection but using the law as leverage for other
16 purposes. I have seen this happen where a party argues directly to
17 argue lack of CEQA compliance or where a party funds an unrelated
group to carry the fight. These, in my opinion, go to the bad or ugly
side of CEQA’s impact.⁴⁸

18 47. African American radio host and MBA, Eric L. Frazier, called this climate-based
19 CEQA housing regime “environmental apartheid” since whiter, wealthier and older homeowners
20 were less likely to be affected, while aspiring minority homeowners were likely to be denied
21 housing even longer based on community opposition to widespread density increases and
22 destruction of single family homes, bear even higher housing costs given the absence of funding
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27 ⁴⁷ William Fulton, Insight: Everyone wants to keep leverage under CEQA, California Planning &
Development Report (Sept. 30, 2014), <http://www.cp-dr.com/node/3585>.

28 ⁴⁸ E. Clement Shute, Jr., Reprise of Fireside Chat, Yosemite Environmental Law Conference, 25
Envtl Law News, 3 (2016).

1 sources to expand and replace undersized infrastructure and public services, and never be within
2 reach of purchasing a family home.⁴⁹

3 48. CARB’s 2017 Scoping Plan, and its required CEQA analysis, also provide no
4 assessment of alternatives for achieving the only 1% reduction in GHG emissions that the new
5 housing future will accomplish from other sectors or sources, which could avoid adverse impacts
6 to California’s minority communities, avoid increased housing costs and CEQA litigation risks,
7 and avoid impacting existing California communities by—for example—allowing urbanization of
8 even 1% more of California’s land.

9 49. CARB also ignores a history of success in reducing traditional pollutants from
10 cars, as required by the federal and state Clean Air Acts, while preserving the transportation
11 mobility of people and goods. U.S. Environmental Protection Agency (“EPA”) reported in 2016
12 that most auto tailpipe pollutants had declined by 98-99% in comparison to 1960’s cars, gasoline
13 got cleaner with the elimination of lead and reduction in sulfur, and even though it had not been
14 directly regulated, the primary GHG from cars (carbon dioxide) has risen nationally by less than
15 20% even as VMT nationally more than doubled as a co-benefit of mandatory reductions of
16 traditional pollutants.⁵⁰

17 50. In contrast to this success, CARB’s VMT reduction scheme and its ongoing efforts
18 to intentionally increase congestion are an assault on the transportation mobility of people, which
19 disparately harm minority workers who have been forced by the housing crisis to drive ever
20 greater distances to work.

21 51. CARB staff’s response to The Two Hundred’s December 2017 comment letter on
22 the 2017 Scoping Plan is plain evidence of the intentional concealment and willful omission of
23 the true impacts of the 2017 Scoping Plan and the GHG Housing Measures on California. CARB
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26 _____
27 ⁴⁹ Eric L. Frazier, The Power is Now, Facebook Live Broadcast (Feb. 28, 2018),
<https://thepowerisnow.com/events/event/jennifer-hernandez/>.

28 ⁵⁰ U.S. EPA, Historic Success of the Clean Air Act (2016), <https://www.epa.gov/air-pollution-transportation/accomplishments-and-success-air-pollution-transportation>.

1 staff said that GHG Housing Measures were in a separate chapter and thus not part of the 2017
2 Scoping Plan after all.⁵¹

3 52. California’s climate change policies, and specifically those policies that increase
4 the cost and delay or reduce the availability of housing, that increase the cost of transportation
5 fuels and intentionally worsen highway congestion to lengthen commute times, and further
6 increase electricity costs, have caused and will cause unconstitutional and unlawful disparate
7 impacts to California’s minority populations, which now comprise a plurality of the state’s
8 population. These impacts also disproportionately affect younger Californians including
9 millennials (the majority of whom are minorities), as well as workers without college degrees.

10 53. In short, in the midst of California’s unprecedented housing, homeless, poverty
11 and transportation crisis, CARB adopted a 2017 Scoping Plan which imposes still higher housing,
12 transportation and electricity costs on Californians. CARB did so without disclosing or assessing
13 the economic consequences or the significant adverse environmental consequences of its GHG
14 Housing Measures on California residents.

15 54. In doing so, CARB again affirmed its now-wanton and flagrant pattern of violating
16 CEQA—a pattern consistent with what an appellate court termed “ARB’s lack of good faith” in
17 correcting earlier CEQA violations as ordered by the courts.

18 55. The GHG Housing Measures have a demonstrably disproportionate adverse
19 impact on already-marginalized minority communities and individuals, including but not limited
20 to Petitioners LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, who are
21 Latina residents of Fresno County that are personally, directly and disproportionately adversely
22 affected by the affordable housing shortage and the future exacerbation of that shortage if the
23 GHG Housing Measures are allowed to remain in effect.

24 56. The Legislature has recognized the equal right to access to housing, *inter alia*, in
25 the California Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*) (“FEHA”). FEHA
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27 ⁵¹ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
28 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

1 § 12921(b) provides that: “The opportunity to seek, obtain, and hold housing without
2 discrimination because of race, color, . . . source of income . . . or any other basis prohibited by
3 Section 51 of the Civil Code is hereby recognized and declared to be a civil right.”

4 57. California’s housing crisis is particularly acute, and has long-lasting adverse
5 impacts. As the Director of the California Department of Housing and Community Development,
6 Ben Metcalf, recently reported: “Research has been unequivocal in supporting two undeniable
7 conclusions: Low-income households paying more than half their income in rent have profoundly
8 reduced expenditures on food, retirement, health care, and education compared with non-rent-
9 burdened households. And children growing up in neighborhoods of concentrated poverty are
10 more likely to have psychological distress and health problems.”⁵²

11 58. The 2017 Scoping Plan is also violative of the due process and equal protection
12 clauses of the California and U.S. Constitutions (Cal. Const. Art. I, § 7, U.S. Const., Amd. 14, §
13 1). Accordingly, Petitioners in this action seek declaratory and injunctive relief from these
14 violations pursuant to 42 U.S.C. § 1983. The GHG Housing Measures are thus unconstitutional
15 on their face and as applied to Petitioners.

16 59. While the unlawful and unconstitutional disparate impact of the GHG Housing
17 Measures on minority communities, including Petitioners, is the most egregious feature of the
18 regulations, there are numerous other flaws, *each* of which is fatal to the 2017 Scoping Plan and
19 the GHG Housing Measures. As detailed herein, these include violations of CEQA, the APA, the
20 GWSA, the California Health and Safety Code, including the California Clean Air Act (H&S
21 Code § 39607 *et seq.*) (“CCAA”), and the California Congestion Management Act (Gov. Code §
22 65088 *et seq.*). Moreover, CARB has acted in excess of its statutory authority (*ultra vires*).

23 60. The GHG Housing Measures are unlawful both procedurally (because they were
24 adopted in violation of numerous statutory requirements, including but not limited to CEQA) and
25 substantively (because they frustrate and violate a wide range of state and federal laws and
26 regulations prohibiting housing regulations that have an unjustified discriminatory effect).

27 _____
28 ⁵² Donna Kimura, Pop Quiz with Ben Metcalf, Affordable Housing Finance (July 8, 2016),
http://www.housingfinance.com/news/pop-quiz-with-ben-metcalf_o.

1 **III. PARTIES**

2 65. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based
3 unincorporated association of community leaders, opinion makers and advocates working in
4 California (including in Fresno County) and elsewhere on behalf of low income minorities who
5 are, and have been, affected by California’s housing crisis and increasing wealth gap.⁵³

6 66. The Two Hundred is committed to increasing the supply of housing, to reducing
7 the cost of housing to levels that are affordable to California’s hard working families, and to
8 restoring and enhancing home ownership by minorities so that minority communities can also
9 benefit from the family stability, enhanced educational attainment over multiple generations, and
10 improved family and individual health outcomes, that white homeowners have long taken for
11 granted. The Two Hundred includes civil rights advocates who each have four or more decades of
12 experience in protecting the civil rights of our communities against unlawful conduct by
13 government agencies as well as businesses.

14 67. The Two Hundred supports the quality of the California environment, and the need
15 to protect and improve public health in our communities.

16 68. The Two Hundred have for many decades watched with dismay decisions by
17 government bureaucrats that discriminate against and disproportionately harm minority
18 communities. The Two Hundred have battled against this discrimination for entire careers, which
19 for some members means working to combat discrimination for more than 50 years. In litigation
20 and political action, The Two Hundred have worked to force two government bureaucrats to
21 reform policies and programs that included blatant racial discrimination—by for example denying
22 minority veterans college and home loans and benefits that were available to white veterans, and
23 promoting housing segregation as well as preferentially demolishing homes in minority
24 communities.

25 69. The Two Hundred sued and lobbied and legislated to force federal and state
26 agencies to end redlining practices that denied loans and insurance to aspiring minority home
27

28 ⁵³ See www.the200leaders.org.

1 buyers and small businesses. The Two Hundred sued and lobbied to force regulators and private
2 companies to recognize their own civil rights violations, and end discriminatory services and
3 practices, in the banking, telecommunication, electricity, and insurance industries.

4 70. The Two Hundred have learned, the hard way, that California's purportedly
5 liberal, progressive environmental regulators and environmental advocacy group lobbyists are as
6 oblivious to the needs of minority communities, and are as supportive of ongoing racial
7 discrimination in their policies and practices, as many of their banking, utility and insurance
8 bureaucratic peers.

9 71. Several years ago, The Two Hundred waged a three year battle in Sacramento to
10 successfully overcome state environmental agency and environmental advocacy group opposition
11 to establishing clear rules for the cleanup of the polluted properties in communities of The Two
12 Hundred, and experienced first-hand the harm caused to those communities by the relationships
13 between regulators and environmentalists who financially benefited from cleanup delays and
14 disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules
15 for the cleanup and redevelopment of the polluted properties that blighted these communities.

16 72. THE TWO HUNDRED's members include, but are not limited to, members of and
17 advocates for minority communities in California, including the following:

- 18 • Joe Coto- Joe Coto is Chair of THE TWO HUNDRED. Mr. Coto is an American
19 educator, city council member, and Democratic politician. From 2004-2010, he
20 was a member of the California State Assembly, representing the 23rd Assembly
21 District. He served as Chair of the Assembly's Insurance committee, and held
22 positions on the Elections and Redistricting, Governmental Organization, and
23 Revenue and Taxation committees. He also served on the Special committee on
24 Urban Education. Coto served as Chair of the 26 member Latino Legislative
25 Caucus for a 2-year term, and as Vice Chair for a 2-year term..
- 26 • John Gamboa – John Gamboa is Vice-Chair of THE TWO HUNDRED. Mr.
27 Gamboa is the former Executive Director of the Greenlining Institute and has
28 experience in academia, the private sector and the non-profit sector. Prior to the

1 Greenlining Institute, he was Executive Director of Latino Issues Forum,
2 Communications Manager at U.C. Berkeley, Executive Director of Project
3 Participar, a citizenship program, and Marketing and Advertising Manager at
4 Pacific Bell. At the Greenlining Institute, Mr. Gamboa focuses on public policy
5 issues that promote economic development in urban and low-income areas, and in
6 developing future leaders within the country's minority youth. He has been active
7 in combating redlining and in providing a voice for the poor and underserved in
8 insurance, philanthropy, banking, housing, energy, higher education and
9 telecommunications. He has served on numerous boards and commissions.

- 10 • Cruz Reynoso – Cruz Reynoso, now retired, formerly served as Legal Counsel for
11 THE TWO HUNDRED. Mr. Reynoso has dedicated his life to public service
12 championing civil rights, immigration and refugee policy, government reform, and
13 legal services for the poor. Mr. Reynoso began his career in private practice then
14 moved to public service as the assistant director of the California Fair
15 Employment Practices Commission, the associate general counsel of the Equal
16 Employment Opportunity Commission, and head of the California Rural Legal
17 Assistance (CRLA). Mr. Reynoso was a faculty member at the University of New
18 Mexico School of Law and in 1976, he was appointed associate justice of the
19 California Courts of Appeal. In 1982, he became the first Latino to be appointed
20 an associate justice of the California Supreme Court. Mr. Reynoso later returned to
21 private practice, and resumed his teaching career by joining the UCLA School of
22 Law and then the UC Davis School of Law. Mr. Reynoso has served as Vice Chair
23 of the U.S. Commission on Civil Rights, was a member of the Select Commission
24 on Immigration and Human Rights, and received the Presidential Medal of
25 Freedom.

- 26 • José Antonio Ramirez – José Antonio Ramirez is a Council Member of THE TWO
27 HUNDRED. He has dedicated his life to public service, especially for the residents
28

1 of the Central Valley, seeking to improve economic vitality, strengthen community
2 life, and increase educational opportunities and housing affordability for all
3 Californians, including disadvantaged members of the Latino community. He
4 currently serves as President of Community Development Inc. and as City
5 Manager for the City of Livingston. He was previously Program Manager,
6 International Affairs Coordinator and Security Engineer and Emergency
7 Management Coordinator for the U.S. Bureau of Reclamation. He served on the
8 San Joaquin River Resource Management board, the Valley Water Alliance Board
9 and as Chairman of the Technical Review Boards for Merced and Fresno County.

- 10 • Herman Gallegos – Herman Gallegos is a Council Member of THE TWO
11 HUNDRED. He has provided active leadership in a wide variety of community,
12 corporate and philanthropic affairs spanning local, national and international
13 interests. As a pioneer civil rights activist in the early 1950s, Gallegos was a leader
14 in the formation of the Community Service Organization, a civil rights-advocacy
15 group organized to promote the empowerment and well-being of Latinos in
16 California. In 1965, while serving as a Consultant to the Ford Foundation’s
17 National Affairs Program, Gallegos, with Dr. Julian Samora and Dr. Ernesto
18 Galarza, made an assessment with recommendations on how the foundation might
19 initiate support to address the critical needs of the rapidly growing Latino
20 population in the U.S.. As a result, he was asked to organize a new conduit for
21 such funds—the Southwest Council of La Raza, now the National Council of La
22 Raza. Gallegos went on to become the council’s founding executive director.
23 Gallegos also served as CEO of several business firms, including the U. S. Human
24 Resources Corporation and Gallegos Institutional Investors Corporation. He
25 became one of the first Latinos elected to the boards of publicly traded
26 corporations and the boards of preeminent private and publicly supported
27 philanthropic organizations, such as the Rockefeller Foundation, The San
28 Francisco Foundation, The Poverello Fund and the California Endowment.

1 • Hyepin Im – Hyepin Im is a Council Member of THE TWO HUNDRED. She
2 currently serves as the Founder and President of Korean Churches for Community
3 Development (KCCD) whose mission is to help churches build capacity to do
4 economic development work. Under Ms. Im’s leadership, KCCD has implemented
5 a historic homeownership fair in the Korean community, a Home Buyer Center
6 Initiative with Freddie Mac, a national database and research study on Korean
7 American churches, and ongoing training programs. Previously, Ms. Im was a
8 venture capitalist for Renaissance Capital Partners, Sponsorship and Community
9 Gifts Manager for California Science Center, a Vice President with GTA
10 Consulting Company, and a Consultant and Auditor with Ernst & Young LLP. Ms.
11 Im serves on the Steering Committee of Churches United for Economic
12 Development, as Chair for the Asian Faith Commission for Assemblymember
13 Herb Wesson, and has served as the President of the Korean American Coalition,
14 is a member of the Pacific Council, was selected to be a German Marshall Fund
15 American Memorial Marshall Fellow, and most recently, was selected to take part
16 in the Harvard Divinity School Summer Leadership Institute.

17 • Don Perata – Don Perata is a Council Member of THE TWO HUNDRED. Mr.
18 Perata began his career in public service as a schoolteacher. He went on to serve
19 on the Alameda County Board of Supervisors (1986-1994) and the California State
20 Assembly (1996-1998). In 1998, he was elected to the California State Senate and
21 served as president pro tem of the Senate from 2004-2008. As president pro tem,
22 Mr. Perata oversaw the passage of AB 32, California’s cap and trade regulatory
23 scheme to reduce greenhouse gases. Mr. Perata has guided major legislation in
24 health care, in-home services, water development and conservation and cancer,
25 biomedical and renewable energy. Mr. Perata has broad experience in water,
26 infrastructure, energy, and environmental policies, both as an elected official and a
27 consultant. He is versed in the State Water Project, Bay Delta restoration,
28

1 renewable energy, imported water and water transfers, recycling, conservation,
2 groundwater regulation, local initiative, storage and desalination.

- 3 • Steven Figueroa – Steven Figueroa is a Council Member of THE TWO
4 HUNDRED. He was born in East L. A., with a long history in California. Working
5 on his first political campaign at age nine he learned that if you want change you
6 have to be involved. As an adult he was involved in the labor movement through
7 the California School Employees Association and later as a union shop steward at
8 the U.S.P.S. A father of three, Steven has been advocating for children with
9 disabilities for 30 years, beginning in 1985, for his own son, who is autistic. He
10 took the Hesperia School District to court for violating his disabled son’s rights
11 and prevailed. He advocates for disabled children throughout the United States,
12 focusing on California. Currently, he serves as president of the Inland Empire
13 Latino Coalition and sits on the advisory boards of California Hispanic Chambers
14 of Commerce, the National Latina Business Women Association Inland Empire
15 the Disability Rights and Legal Center Inland Empire, and as Executive Director
16 for Latin PBS. He previously served as the vice president of the Mexican
17 American Political Association Voter Registration & Education Corp.
- 18 • Sunne Wright McPeak – Sunne McPeak is a Council Member of THE TWO
19 HUNDRED. She is the President and CEO of the California Emerging Technology
20 Fund, a statewide non-profit whose mission is to close the Digital Divide by
21 accelerating the deployment and adoption of broadband. She previously served for
22 three years as Secretary of the California Business, Transportation and Housing
23 Agency where she oversaw the largest state Agency and was responsible for more
24 than 42,000 employees and a budget in excess of \$11 billion. Prior to that she
25 served for seven years as President and CEO of the Bay Area Council, as the
26 President and CEO of the Bay Area Economic Forum, and for fifteen years as a
27 member of the Contra Costa County Board of Supervisors. She has led numerous
28 statewide initiatives on a variety of issues ranging from water, to housing, to child

1 care, and served as President of the California State Association of Counties in
2 1984. She was named by the San Francisco League of Women Voters as “A
3 Woman Who Could Be President.” She also served on the Boards of Directors of
4 First Nationwide Bank and Simpson Manufacturing Company.

- 5 • George Dean – George Dean is a Council Member of THE TWO HUNDRED. Mr.
6 Dean has been President and Chief Executive Officer of the Greater Phoenix
7 Urban League since 1992. As such, he has brought a troubled affiliate back to
8 community visibility, responsiveness and sound fiscal accountability. Mr. Dean, a
9 former CEO of the Sacramento, California and Omaha, Nebraska affiliates boasts
10 more than 25 years as an Urban League staff member. His leadership focuses on
11 advocacy toward issues affecting the African-American and minority community,
12 education, training, job placement and economic development. Mr. Dean annually
13 raises more than 3 million dollars from major corporations, local municipalities
14 and state agencies for the advancement of minority enterprises, individuals,
15 families and non-profits. Mr. Dean is nationally recognized in the field of minority
16 issues and advancement, and affordable housing.

- 17 • Joey Quinto – Joey Quinto is a Council Member of THE TWO HUNDRED. Mr.
18 Quinto’s has made many contributions to the advancement of the API community.
19 He began his professional career as a mortgage banker. As a publisher, his weekly
20 newspaper advances the interests of the API community and addresses local,
21 consumer and business news, and community events. He is a member of several
22 organizations including the Los Angeles Minority Business Opportunity
23 Committee and The Greenlining Coalition. Mr. Quinto is the recipient of the
24 Award for Excellence in Journalism during the Fourth Annual Asian Pacific
25 Islander Heritage Awards in celebration of the Asian Pacific Islander American
26 Heritage Month. He was also listed among the Star Suppliers of the Year of the
27 Southern California Regional Purchasing Council, received the Minority Media
28

1 Award from the U.S. Small Business Administration, and earned a leadership
2 award from the Filipino American Chamber of Commerce based in Los Angeles.

- 3 • Bruce Quan, Jr. – Bruce Quan is a Council Member of THE TWO HUNDRED.
4 Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing
5 founded the Pacific Coast Canning Company in West Oakland in 1905, then one
6 of the largest employers in Oakland. Bruce attended Oakland schools, UC
7 Berkeley, and Boalt Hall School of Law. At Berkeley, he was a community
8 activist for social justice, participated in the Free Speech Movement and the
9 Vietnam Day Committee and was elected student body president. In 1973, he was
10 chosen as one of three students to clerk for the Senate Watergate Committee and
11 later returned to Washington to draft the “Cover-up” and “Break-in” sections of
12 the committee’s final report. He worked in the Alameda’s City Attorney office, his
13 own law practice advising Oakland’s Mayor Lionel Wilson on economic
14 development issues in Chinatown and serving Mayor Art Agnos as General
15 Counsel for the San Francisco-Shanghai Sister City Committee and the San
16 Francisco-Taipei Sister City Committee. In 2000, he moved to Beijing, continued
17 his law practice, worked as a professor with Peking Law School, and became
18 senior of counsel with Allbright Law Offices. Now in Oakland, he has reengaged
19 in issues affecting the Chinese community and on issues of social justice, public
20 safety and economic development in Oakland.

- 21 • Robert J. Apodaca – Robert Apodaca is a Council Member of THE TWO
22 HUNDRED. He is a Founder of ZeZeN Advisors, Inc., a boutique financial
23 services firm that connects institutional capital with developers and real estate
24 owners. He has a 45-year career that spans private and public sectors. He was
25 Chairman and Trustee of Alameda County Retirement Board (pension fund) and
26 then joined Kennedy Associates, an institutional investor for pension funds as
27 Senior Vice President & Partner. He represented Kennedy Companies on Barings
28 Private Equity’s “Mexico Fund” board of directors. He later joined McLarand

1 Vasquez Emsiek & Partners, a leading international architectural and planning
2 firm, as Senior Vice President of Business Development. He currently serves on
3 numerous board of directors including Jobs and Housing Coalition, Greenlining
4 Institute, California Community Builders and California Infill Federation.

- 5 • Ortensia Lopez – Ortensia Lopez is a Council Member of THE TWO HUNDRED.
6 She is a nationally recognized leader in creating coalitions, collaboratives and
7 partnerships, resulting in innovative initiatives that ensure participation for low-
8 income communities. Ms. Lopez has worked in the non-profit sector for over
9 forty-one years in executive management positions. She is the second of 11
10 children born to parents from Mexico and the first to graduate from college. She
11 currently serves on the California Public Utilities Commission’s Low-Income
12 Oversight Board, as Co-Chairperson and founding member of the Greenlining
13 Institute, as Vice-President Chicana/Latina Foundation, as Director of Comerica
14 Advisory Board, and on PG&E’s Community Renewables Program Advisory
15 Group. Ms. Lopez has earned numerous awards, including Hispanic Magazine’s
16 “Hispanic Achievement Award”, San Francisco’s “ADELITA Award”, the
17 prestigious “Simon Bolivar Leadership Award”, the League of Women Voters of
18 San Francisco “Woman Who Could Be President” award, California Latino Civil
19 Rights Network award, and the Greenlining Lifetime Achievement.
- 20 • Frank Williams – Frank Williams is a Council Member of THE TWO
21 HUNDRED. He is an established leader in the mortgage banking industry, with
22 over 25 years of experience, and is an unwavering advocate for creating wealth
23 through homeownership for underrepresented communities. Frank began his real
24 estate finance career in 1990, emphasizing Wholesale Mortgage Banking. He
25 founded Capital Direct Funding, Inc. in 2009. Today, as Co-founder and
26 Divisional Manager, Mr. Williams has made Capital Direct Funding into
27 California’s premier private lending firm. Capital Direct Funding’s foundations are
28 built on giving back to the community by supporting several non-profits. He

1 currently serves as President of East LA Classic Theater, a non-profit that works
2 with underserved school districts in California. Frank was also Past President for
3 Los Angeles' National Association of Hispanic Real Estate Professionals.

- 4 • Leticia Rodriguez - Leticia Rodriguez is a resident of Fresno County, California.
5 She is a low-income single mother and Latina who suffers ongoing personal harm
6 from the severe shortage of housing that is affordable to working-class families.
7 Within the last three years, she has spent more than 30% of her income on rent.
8 She has been forced to move into her parents' home because she cannot afford a
9 decent apartment for herself and her family.
- 10 • Teresa Murillo – Teresa Murillo is a resident of the City of Parlier in Fresno
11 County, California. She is a young Latina with a low income. In recent years, she
12 has spent approximately 30% of her income on housing. She currently is unable to
13 afford a decent apartment and has been forced to move back in with her parents.
- 14 • Eugenia Perez – Eugenia Perez is a resident of Fresno County, California. She is a
15 Latina grandmother. The majority of her income goes to pay rent. She currently is
16 renting a room on E. Fremont Avenue in Fresno. She struggles to pay rent and
17 lives in fear of becoming homeless if housing prices and rent continue to increase.

18 73. Defendant CALIFORNIA AIR RESOURCES BOARD is an agency of the State
19 of California. On information and belief, current members of the CALIFORNIA AIR
20 RESOURCES BOARD are: Mary D. Nichols, Sandra Berg, John R. Balmes, Hector De La Torre,
21 John Eisenhut, Dean Flores, Eduardo Garcia, John Gioia, Ricardo Lara, Judy Mitchell, Barbara
22 Riordan, Ron Roberts, Phil Serna, Alexander Sherriffs, Daniel Sperling, and Diane Takvorian.

23 74. Defendant RICHARD COREY, sued herein in his official capacity, is Executive
24 Officer of the CALIFORNIA AIR RESOURCES BOARD.

25 75. Petitioners are ignorant of the true names or capacities of the defendants sued
26 herein under the fictitious names DOES 1 through 20 inclusive. When their true names and
27 capacities are ascertained, Petitioners will amend this Petition/Complaint to show such true names
28 and capacities. Petitioners are informed and believe, and thereon allege, that DOES 1 through 20,

1 inclusive, and each of them, are agents or employees of one or more of the named Defendants
2 responsible, in one way or another, for the promulgation and prospective enforcement of the
3 GHG Housing Measures sought to be invalidated and set aside herein.

4 **IV. GENERAL ALLEGATIONS**

5 **A. California’s Statutory Scheme To Reduce Greenhouse Gas Emissions and**
6 **Avoid Disparate Impacts**

7 76. As part of developing solutions to global warming, the California Legislature
8 adopted the California Global Warming Solutions Act of 2006 (otherwise known as “AB 32” or
9 the “GWSA”) and established the first comprehensive greenhouse gas regulatory program in the
10 United States. H&S Code § 38500 *et seq.*

11 77. Under AB 32, CARB is the state agency charged with regulating and reducing the
12 sources of emissions of GHGs that cause global warming. H&S Code § 38510.

13 78. AB 32 required CARB to set a statewide GHG emissions limit equivalent to
14 California’s 1990 GHG emissions to be achieved by 2020. H&S Code § 38550.

15 79. AB 32 also required CARB to prepare, approve, and periodically update a scoping
16 plan detailing how it would achieve the maximum technologically feasible and cost-effective
17 GHG emissions reductions by 2020. H&S Code § 38561(a). The scoping plan is required to
18 identify and make recommendations on direct emissions reductions measures, alternative
19 compliance mechanisms, market-based compliance mechanisms, and potential monetary and
20 nonmonetary incentives for sources to achieve reductions of GHGs by 2020. H&S Code
21 § 38561(b). The scoping plan must be updated at least every five years. H&S Code § 38561(h).

22 80. In adopting a scoping plan, CARB must evaluate the total potential costs and total
23 potential benefits of the plan to California’s economy, environment, and public health. H&S Code
24 § 38561(d).

25 81. Each scoping plan update also must identify, for each emissions reduction
26 measure, the range of projected GHG emissions reductions that result from the measure, the range
27 of projected air pollution reductions that result from the measure, and the cost-effectiveness,
28 including avoided social costs, of the measure. H&S Code § 38562.7.

1 82. The initial scoping plan⁵⁴ was discussed in public hearings on or about December
2 11, 2008. The initial scoping plan was adopted by CARB on or about May 7, 2009.

3 83. On or about December 23, 2009, the initial scoping plan was challenged in the
4 Superior Court for the City and County of San Francisco for failing to meet the statutory
5 requirements of AB 32, the APA, and CEQA. The superior court accepted the challenge in part
6 and the appeal was thereafter resolved after a further environmental document was filed.⁵⁵

7 84. The Low Carbon Fuel Standard (“LCFS”) was an early action item under AB 32.
8 The LCFS was adopted on or about November 25, 2009 by CARB’s executive officer. CARB’s
9 action to adopt the LCFS also was challenged for CEQA and APA violations. On or about
10 November 2011, the Superior Court of Fresno County found that CARB had not violated the
11 APA or CEQA. On or about July 15, 2013 the Fifth District Court of Appeal reversed the
12 superior court’s judgment and ordered it to issue a preemptory writ of mandate ordering CARB to
13 revise and recertify its environmental assessment to meet CEQA’s standards.⁵⁶

14 85. The first update to the scoping plan⁵⁷ was adopted on or about May 22, 2014.

15 86. Thereafter, on or about May 30, 2017, the Fifth District Court of Appeal again
16 found that CARB had violated CEQA and the APA, and that it had not acted in good faith in
17 responding to certain of the Court’s prior orders.⁵⁸ Specifically, the court found that CARB
18 violated CEQA in deferring its analysis and mitigation of potential increases in nitrogen oxide
19 emissions resulting from impacts of the LCFS regulations.

21 _____
22 ⁵⁴ California Air Resources Board, Climate Change Scoping Plan (Dec. 2008),
https://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

23 ⁵⁵ *Ass’n. of Irrigated Residents v. Cal. Air Res. Bd.*, 2011 WL 8897315 (Cal. Super. May 20,
24 2011) (approving challenges to alternatives analysis and improper “pre-approval” under CEQA)
and *Ass’n. of Irrigated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487.

25 ⁵⁶ *POET, LLC v. California Air Resources Board* (2013) 217 Cal.App.4th 1214 (holding that
26 CARB prematurely approved the LCFS and improperly deferred analysis and mitigation of
potential NOx emissions increased by the rule).

27 ⁵⁷ California Air Resources Board, First Update to the Climate Change Scoping Plan (May 2014),
https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf.

28 ⁵⁸ *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App. 5th 52.

1 87. In 2016, the California Legislature adopted SB 32, which required CARB to
2 ensure that rules and regulations adopted pursuant to the GWSA would target California’s GHG
3 emissions for reductions of 40% below 1990 levels by 2030. H&S Code § 38566.

4 88. AB 32 requires CARB to update the scoping plan at least every five years. CARB
5 superseded its 2014 Scoping Plan with the current 2017 Scoping Plan adopted on December 14,
6 2017. The 2017 Scoping Plan contains the new GHG Housing Measures complained of herein.⁵⁹

7 89. Between December, 2017 and mid-April, 2018, Petitioners, through counsel,
8 sought to persuade CARB to eliminate or materially modify the four new GHG Housing
9 Measures complained of herein, without success. During this time, the parties entered into a series
10 of written tolling agreements that were continuously operative until April 30, 2018.

11
12 **B. The 2017 Scoping Plan**

13 90. Throughout 2016 and 2017, CARB prepared the 2017 Scoping Plan. CARB held
14 meetings on or about January 27, 2017, February 16-17, 2017 and December 14, 2017 to accept
15 public comment on the proposed 2017 Scoping Plan.

16 91. Because the Scoping Plan is both sweeping and vague, and because it was not
17 preceded by a notice of proposed rulemaking, Petitioners THE TWO HUNDRED, *et al.* did not
18 initially appreciate the significance of the new GHG regulations and standards embedded in the
19 2017 Scoping Plan by CARB staff.

20 92. Petitioners submitted a detailed letter commenting on the 2017 Scoping Plan on
21 December 11, 2017, in advance of CARB’s meeting to vote on the 2017 Scoping Plan.⁶⁰ The
22 letter included extensive citations to documents and publications analyzing California’s ongoing
23 housing crisis and the disproportionate impact of the worsening housing shortage on marginalized
24 minority communities.

25 _____
26 ⁵⁹ California Air Resources Board, The 2017 Climate Change Scoping Plan Update (Jan. 20,
2017), https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf.

27 ⁶⁰ The Two Hundred Comment Letter dated Dec. 11, 2017, can be found in the Supplemental
28 Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for
Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 74,
<https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>

1 93. On December 14, 2017, CARB adopted the 2017 Scoping Plan.

2 94. While the 2017 Scoping Plan is replete with protestations to the effect that it is
3 only providing “guidance” rather than a “directive or mandate to local governments” (see, e.g.,
4 Scoping Plan, p. 99), it is plain that CARB’s pronouncements on the GHG Housing Measures, by
5 their nature, will be given the force and effect of law. Numerous courts have stated that when an
6 agency has specific expertise in an area and/or acts as lead or responsible agency under CEQA,
7 and publishes guidance, that guidance must be taken into consideration and will be given heavy
8 weight.

9 95. In *California Building Industry Assn. v. Bay Area Air Quality Mgmt. Dist.* (2016)
10 2 Cal.App.5th 1067, 1088, the court rejected the notion that the District’s CEQA guidelines were
11 a nonbinding, advisory document. The court stated that the guidelines suggested a routine
12 analysis of air quality in CEQA review and were promulgated by an air district that acts as either
13 lead or responsible agency on projects within its jurisdictional boundaries.

14 96. In addition, in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife*
15 (2015) 62 Cal.4th 204, 229, the court recognized the value of “performance based standards” as
16 CEQA thresholds, as outlined in the Scoping Plan or other authoritative body of regulations.

17 97. Further, in *Cleveland Nat. Forest Foundation, et al v. San Diego Assoc. of*
18 *Governments* (2017) 3 Cal.5th 497, 515, the court held that even though the 2050 Executive
19 Order was not an adopted GHG reduction plan and there was no legal requirement to use it as a
20 threshold of significance, that was not dispositive of the issue. Although lead agencies have
21 discretion in designing an Environmental Impact Report (“EIR”) under CEQA, the court stated
22 that the exercise of that discretion must be “based to the extent possible on scientific and factual
23 data” and thus the scientific basis for the Executive Order’s and CARB’s emission reduction
24 goals must be considered in a CEQA analysis.

25 98. Thus, because CEQA documents must take a long term view of GHG compliance
26 and because of the deference and weight other agencies are required to give to CARB guidance,
27 the measures alleged to be “guidance” are in reality self-implementing regulations having an
28 immediate “as applied” effect.

1 99. The LAO also has recognized that CARB’s Scoping Plans include “a wide variety
2 of regulations intended to help the state meet its GHG goal...”⁶¹

3 **C. CARB’s Improper “Cumulative Gap” Reduction Requirement**

4 100. In AB 32, the Legislature directed CARB to reduce statewide GHG emissions to
5 1990 levels by 2020 via measures in the first Scoping Plan. This legislative mandate is simple and
6 uncontested. CARB concluded that California’s GHG emissions were 431 million metric tons of
7 carbon dioxide equivalent (“MMTCO₂e”) in 1990.

8 101. SB 32 established the more stringent mandate of reducing GHG emissions to 40%
9 below 1990 levels by 2030, even though California’s population and economic activities are
10 expected to continue to increase during this period. The 2030 Target is simple math: 40% below
11 431 MMTCO₂e equals 258.6 MMTCO₂e.⁶² Thus, the 2017 Scoping Plan created measures to
12 reduce statewide emissions to 260 MMTCO₂e by 2030.

13 102. The 2017 Scoping Plan first evaluates the “Reference Scenario”, which is the
14 emissions expected in 2030 by continuing “Business as Usual” and considering existing legal
15 mandates to reduce GHG emissions that have been implemented, but without adopting any new
16 GHG reduction measures. The Scoping Plan concludes that in this scenario California’s GHG
17 .emissions will fall to 389 MMTCO₂e by 2030.

18 103. Because numerous GHG reduction mandates are being phased in over time, CARB
19 also evaluated a “Known Commitments Scenario” (which CARB confusingly named the
20 “Scoping Plan Scenario”) which estimates GHG emissions in 2030 based on compliance with all
21 legally required GHG reduction measures, including those that have not yet been fully
22 implemented. Under the “Known Commitments Scenario” the 2017 Scoping Plan concludes that
23 California’s GHG emissions will fall to 320 MMTCO₂e by 2030.

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27 ⁶¹ LAO, Cap-and-Trade Revenues: Strategies to Promote Legislative Priorities (Jan. 21, 2016),
<http://www.lao.ca.gov/reports/2016/3328/cap-trade-revenues-012116.pdf>, at p. 5-6.

28 ⁶² CARB generally rounds this to 260 MMTCO₂e.

1 104. Given that SB 32 required a reduction to 260 MMTCO₂e, this left a gap of 60
2 MMTCO₂e for which CARB was required to identify measures in the 2017 Scoping Plan in the
3 “Known Commitments Scenario” and 129 MMTCO₂e in the “Reference Scenario”.

4 105. CARB declined to comply with this legislated mandate, and instead invented a
5 different “cumulative gap” reduction requirement which requires far more GHG emission
6 reductions.

7 106. Neither the Scoping Plan nor any of its appendices explain how this “cumulative
8 gap” reduction requirement was derived, and the methodology and assumptions CARB used can
9 only be located in one of several modeling spreadsheets generally referenced in the plan.

10 107. CARB’s unlegislated “cumulative gap” requirement is based on the unsupportable
11 assumption that state emissions must decline in a fixed trajectory from 431 MMTCO₂e in 2020 to
12 258.6 MMTCO₂e in 2030 despite the fact that SB 32 does not require that the state reach the
13 2030 Target in any specific way. CARB arbitrarily created the “cumulative gap” requirement by
14 summing the annual emissions that would occur from 2021-2030 if emissions declined in a
15 straight line trajectory, which totaled 3,362 MMTCO₂e, as follows:

	Annual emissions based on a straight line trajectory from 2020 to 2030 (MMTCO ₂ e)
2020	431.0
2021	413.8
2022	396.5
2023	379.3
2024	362.0
2025	344.8
2026	327.6
2027	310.3
2028	293.1
2029	275.8
2030	258.6
2021-2030 Cumulative Emissions	3,362

1 108. CARB then summed the annual emissions projected to occur from 2021-2030
2 under the “Reference Scenario” without the implementation of the measures included in the
3 “Known Commitments Scenario,” as 3,982 MMTCO₂e.

4 109. CARB then subtracted the cumulative “Reference Scenario” emissions (3,982
5 MMTCO₂e) from the cumulative emissions based on the straight line trajectory (3,362
6 MMTCO₂e) and illegally used the difference, 621 MMTCO₂e, as a new, unlegislated GHG
7 “cumulative gap” reduction requirement.

Year	“Reference Scenario” Annual Emissions (MMTCO ₂ e)
2020	415.8
2021	411.0
2022	405.5
2023	400.3
2024	397.6
2025	398.7
2026	396.8
2027	395.5
2028	394.4
2029	393.9
2030	388.9
2021-2030 Cumulative Emissions	3,982
Difference from Straight Line Cumulative Emissions Total	621

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22 110. Scoping Plan Figure 7, for example, is titled “Scoping Plan Scenario – Estimated
23 Cumulative GHG Reductions by Measure (2021–2030).” The identified measures show the
24 amount of reductions required to “close” the 621 MMTCO₂e GHG “cumulative gap” CARB
25 invented from the difference in cumulative emissions from 2021-2030 between a hypothetical
26 straight line trajectory to the 2030 Target and the “Reference Scenario” projections.

1 111. Figure 8 of the Scoping Plan and associated text provide an “uncertainty analysis
2 to examine the range of outcomes that could occur under the Scoping Plan policies and measures”
3 which is entirely based on the 621 MMTCO_{2e} GHG “cumulative gap” metric.⁶³

4 112. CARB also calculated that the cumulative annual emissions projected to occur
5 under the “Known Commitments Scenario” from 2021-2030 would be 3,586 MMTCO_{2e} and
6 subtracted this amount from the cumulative emissions generated by the straight line trajectory
7 (3,362 MMTCO_{2e}). The difference is 224 MMTCO_{2e}, which is incorrectly shown as 236
8 MMTCO_{2e} in Table 3 of the Scoping Plan and in the text following Table 3. CARB illegally
9 characterized the 224 MMTCO₂ difference as the “cumulative emissions reduction gap” in the
10 “Known Commitments Scenario” in the Scoping Plan and evaluated the need for additional
11 measures on the basis of “closing” this unlegislated and unlawful “cumulative gap”.

Year	“Known Commitments Scenario” Annual Emissions (MMTCO _{2e})
2020	405.5
2021	396.8
2022	387.1
2023	377.6
2024	367.4
2025	362.7
2026	354.4
2027	347.1
2028	340.4
2029	331.8
2030	320.4
2021-2030 Cumulative Annual Emissions	3,586
Difference from Straight Line Cumulative Emissions Total	224

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⁶³ The analysis discussion references Scoping Plan Appendix E for more details.

1 113. The California legislature in no way authorized CARB to invent a “cumulative
2 gap” methodology based on an unreasonable and arbitrary straight line trajectory from 2020 to
3 the 2030 Target, which counted each year’s shortfall against the 2030 Target and then added all
4 such shortfalls to inflate reduction needed from the 129 and 60 MMTCO_{2e} (depending on
5 scenario) required by the 2030 Target to the 621 and 224 MMTCO_{2e} “cumulative gap”
6 requirements.

7 114. SB 32 does not regulate cumulative emissions and only requires that the 2030
8 Target of 260 MMTCO_{2e} be achieved by 2030. CARB’s own analysis shows that existing legal
9 requirements will reduce emissions to 320 MMTCO_{2e} in 2030. At most, CARB was authorized to
10 identify measures in the Scoping Plan that would further reduce emissions by 60 MMTCO_{2e} in
11 2030 under the “Known Commitments Scenario”. CARB instead illegally created new, and much
12 larger “cumulative gap” reduction requirements of 224 MMTCO_{2e} and 621 MMTCO_{2e}.

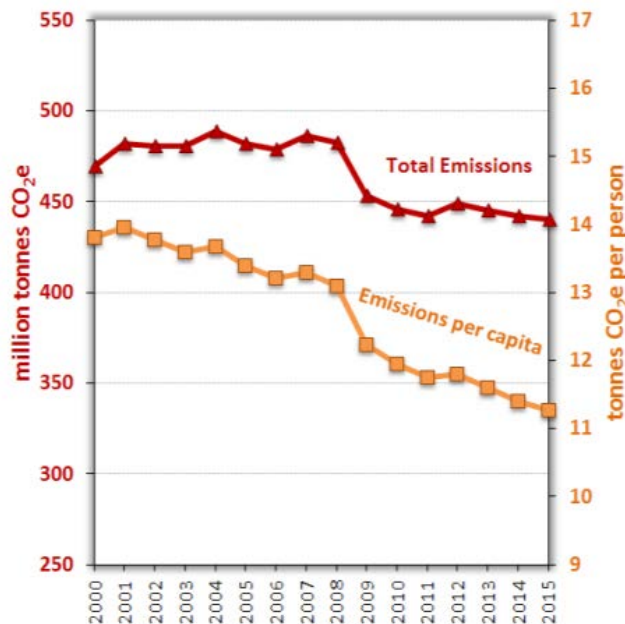
13 115. CARB arbitrarily determined that the straight line trajectory to the 2030 Target
14 was the only way to reach the mandate of 260 MMTCO_{2e} by 2030 when there are numerous
15 potential paths that California’s GHG emission reductions could take between 2021 and 2030.

16 116. For example, as shown in Figure 1 below, in reaching the 2020 Target,
17 California’s GHG emissions reductions have not followed a straight line trajectory, but have gone
18 up and down based on the economy and other factors.⁶⁴

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28 ⁶⁴ Figure 1 is from the California Air Resources Board’s 2017 Edition of California’s GHG
Emission Inventory (June 6, 2017), p. 2,
https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2015/ghg_inventory_trends_00-15.pdf.

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Figure 1. California Total and Per Capita GHG Emissions



117. CARB’s arbitrary and capricious requirement that reductions must meet a cumulative GHG reduction total, rather than take any path feasible that gets the state to the 2030 Target is unlawful.

118. Both AB 32 (and earlier Scoping Plans) and SB 32 contemplated a “step down” of GHG emissions to the quantity established for the target year, with the “step down” increments occurring as new technologies, regulations, and other measures took effect. This step down approach has been part of air pollution control law for decades.

119. Under the federal Clean Air Act (“CAA”), the EPA sets National Ambient Air Quality Standards (“NAAQS”) that set air quality levels in certain years for specific pollutants (*e.g.*, the 2015 NAAQS for ozone is 70 ppb and it must be achieved as expeditiously as possible). States then create and adopt State Implementation Plans (“SIPs”) which include control measures to indicate how the state will meet the NAAQS standard. The reductions that the SIPs must achieve via their control measures to reach the NAAQS are always interpreted as being applicable to the target year, *i.e.*, how much reduction will need to occur in one year to reduce emissions from business as usual to the NAAQS level? The SIPs do not plan for emission reduction measures that must reduce emissions cumulatively over time (from the time of adoption of the

1 2015 ozone NAAQS until the year it is reached), such that not meeting the NAAQS in earlier
2 years means that those excess emissions must be added to future years to create the required
3 emissions reductions to balloon over time as the NAAQS goes unmet.

4 120. In addition, criteria air pollutants regulated by EPA, CARB, and California’s local
5 air districts are always regulated under a cost/ton disclosure metric in which the expected cost to
6 reduce emissions must be not only explained in rulemaking documents, but taken into
7 consideration in deciding whether to adopt any rule controlling emissions. This system has
8 worked to reduce tailpipe emissions of criteria pollutants from passenger cars by 99% over time.

9 121. Given this clear and consistent pattern of EPA and CARB interpretation of the
10 legal status of air quality levels to be achieved by a certain time, it was arbitrary and capricious
11 for CARB to create this “deficit accounting” metric in the cumulative gap analysis rather than
12 merely creating measures which would meet the 2030 Target by 2030.

13 122. CARB also used the unlawful “cumulative gap” reduction metric to identify the
14 nature and extent of Scoping Plan reduction measures, including the GHG Housing Measures,
15 address uncertainties in achieving these reductions, and to complete the legally mandated FA and
16 EA for the 2017 Scoping Plan.

17 123. CARB’s unilateral creation and use of the “cumulative gap” reduction
18 requirement instead of the statutory SB 32 2030 Target is unlawful, and imposes new cost
19 burdens, including on housing, that will further exacerbate the housing-induced poverty crisis.

20 **D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan**
21 **Authorizes**

22 **1. Unlawful VMT Reduction Requirement**

23 124. Among the new regulations and standards added to CARB’s 2017 Scoping Plan—
24 which were not in any of its earlier scoping plans—is a requirement to reduce VMT. This
25 requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the “Mobile Source
26 Strategy.”⁶⁵

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28 ⁶⁵ See Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy
(Cleaner Technology and Fuels [CTF] Scenario)).

1 125. The “Mobile Source Strategy” includes a requirement to reduce VMT. This
2 allegedly would be achieved by continued implementation of SB 375, regional Sustainable
3 Communities Strategies, statewide implementation of SB 743, and potential additional VMT
4 reduction strategies included in Appendix C (“Potential VMT Reduction Strategies for
5 Discussion”). Scoping Plan, p. 25.

6 126. The 2017 Scoping Plan states that “VMT reductions will be needed to achieve the
7 2030 target” and to meet the 2050 GHG emission reduction goal set in Executive Order S-3-05.
8 Scoping Plan, p. 75.

9 127. CARB states that VMT reductions of 7 percent below projected VMT are
10 necessary by 2030 and 15 percent below projected VMT by 2050. Scoping Plan, p. 101.

11 128. The “Mobile Source Strategy” measure requires a 15 percent reduction in total
12 light-duty VMT from the business as usual scenario by 2050. Scoping Plan, p. 78. It also requires
13 CARB to work with regions to update SB 375 targets to reduce VMT to reach the 2050 goal and
14 to implement VMT as the CEQA metric for assessing transportation impacts. *Id.*

15 129. The “Mobile Source Strategy” as a whole is estimated to result in cumulative GHG
16 emission reductions of 64 MMTCO_{2e} per year. Scoping Plan, p. 28.

17 130. These VMT reduction requirements are included in the 2017 Scoping Plan without
18 appropriate recognition of the counterproductive effects of such a fixation on reducing VMT in
19 the context of affordable housing proximate to job centers.

20 131. The 2017 Scoping Plan notes that promoting stronger boundaries to suburban
21 growth, such as urban growth boundaries, will reduce VMT. Scoping Plan, p. 78. This also raises
22 housing prices within the urban growth boundary and pushes low-income Californians, including
23 minorities, to unacceptable housing locations with long drive times to job centers.

24 132. Other VMT reduction measures in the 2017 Scoping Plan, such as road user and/or
25 VMT-based pricing mechanisms, congestion pricing, and parking pricing, further disadvantage
26 low-income and minority residents who must drive farther through more congested roads.

27 133. The VMT reductions called for in Chapters 2 and 5 of the Scoping Plan make no
28 distinction for miles driven by electric vehicles with zero GHG emissions or for miles driven by

1 hybrid vehicles when using only electric power. Instead, they would advance a suite of new
2 burdens, including charging individual drivers for each vehicle mile travelled, and intentionally
3 increasing overall roadway congestion to induce more workers to use public transit.

4 134. CARB's new VMT requirements, which purport to encourage public transit,
5 essentially ignore the fact that far fewer than 10% of Californians can get from their home to their
6 jobs in less than one hour on public transit, and that public transit ridership has fallen nationally
7 and in California.⁶⁶ CARB's new VMT requirements fail to rationally address the reality that
8 VMT continues to increase rather than decrease in California due to increasing population and
9 employment levels.⁶⁷

10 135. CARB's answer to reducing VMT by increasing bicycling, walking, and transit
11 use is a laughable solution for low-income Californians, such as those living in the San Joaquin
12 Valley and commuting to jobs in the San Francisco Bay Area.⁶⁸

13 136. The burden of CARB's VMT reduction measures falls disproportionately on
14 minority workers already forced by the housing crisis to endure long and even "mega" commutes
15 lasting more than three hours per day.⁶⁹ The vast majority of middle and lower-income jobs
16 (disproportionately performed by minority workers) require those workers to be physically
17 present at their job sites to be paid. Affected job categories include teachers, nurses, emergency
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19 ⁶⁶ Laura J. Nelson, *L.A. Bus Ridership Continues to Fall: Officials Now Looking to Overhaul the*
20 *System*, L.A. Times (May 23, 2017) <http://www.latimes.com/local/lanow/la-me-ln-bus-ridership-study-20170518-story.html>; Center for Transportation Studies, Access Across America, University of Minnesota (2017) <http://www.cts.umn.edu/research/featured/access>.

21 ⁶⁷ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
22 Greenhouse Gas Emission Reduction Targets, Feb. 2018,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf, p. 19.

23 ⁶⁸ Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7*
24 *A.M.*, N.Y. Times (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html>.

25 ⁶⁹ 2007 and 2016 American Community Survey 1-Year Estimates, Table B08303 series (Travel
26 Time To Work, Workers 16 years and over who did not work at home),
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (showing increase
27 in commute time from 2007 to 2016 in California and Bay Area); 2007 and 2016 American
28 Community Survey 1-Year Estimates, Table S802 series (Means of transportation to work by
selected characteristics),
<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (showing more
Latino and noncitizen workers commuting to work by driving alone).

1 responders, courtroom and municipal service workers, construction workers, day care and home
2 health care workers, retail clerks, and food service workers.⁷⁰

3 137. In addition to being ill-conceived, CARB’s new VMT measures are not statutorily
4 authorized. The Legislature has repeatedly rejected proposed legislation to mandate that
5 Californians reduce their use of cars and light duty trucks (e.g., personal pickup trucks), including
6 most recently in 2017 (Senate Bill 150, Allen).

7 138. Only a different agency, the Office of Planning and Research (“OPR”), has
8 legislative authority to regulate VMT. It has not done so. In Senate Bill 743 (2013), the
9 Legislature authorized OPR to consider adopting VMT as a new threshold for assessing the
10 significance of transportation impacts under CEQA, but only after OPR completed a rulemaking
11 process and amended the regulatory requirements implementing CEQA, *i.e.*, the CEQA
12 Guidelines (14 C.C.R. § 15000 *et seq.*) (“CEQA Guidelines”). OPR has commenced but not
13 completed the process for amending the CEQA Guidelines as authorized by SB 743.

14 139. Instead of regulating VMT, CARB’s role under SB 375 is to encourage higher
15 density housing and public transit and thereby reduce GHGs. In this context, CARB has included
16 VMT reduction metrics for helping achieve GHG reduction goals in current SB 375 targets.

17 140. In the past, when CARB proposed to establish standalone VMT reduction targets
18 (independent of GHG emission reduction targets) it has been swamped with objections and
19 concerns, including challenges to its legal authority to attempt to impose fees and restrictions on
20 driving as a standalone mandate independent of regional GHG reduction targets.

21 141. Until its adoption of the 2017 Scoping Plan, CARB had rightly stopped short of
22 purporting to set out standalone VMT reduction targets and methods. At the same meeting that
23 CARB approved the 2017 Scoping Plan, CARB agreed to indefinitely postpone establishing
24 regional VMT reduction targets for a variety of reasons (including but not limited to the fact that
25 notwithstanding current efforts, VMT is actually increasing).

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27 ⁷⁰ Adam Nagourney and Conor Dougherty, *The Cost of a Hot Economy in California: A Severe*
28 *Housing Crisis*, N.Y. Times (July 17, 2017), <https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html>.

1 142. Immediately following its determination to indefinitely postpone its proposal to
2 adopt standalone VMT reduction targets, CARB nevertheless voted to approve the 2017 Scoping
3 Plan’s VMT reduction mandate, which includes in pertinent part a GHG measure requiring
4 additional VMT reductions beyond the reductions achieved via SB 743 and SB 375. See Scoping
5 Plan p. 25, Table 1, p. 101.

6 143. The inherent contradiction between the morning CARB agenda discussion
7 indefinitely postponing establishing SB 375 VMT reduction targets, and CARB’s afternoon
8 agenda item approving the 2017 Scoping Plan, going above and beyond the VMT reductions
9 CARB elected not to set a few hours earlier, caused widespread confusion. Even the CARB
10 Board chair reported that she was “confused” – but CARB’s unlawful action to mandate reduced
11 driving by individual Californians was nevertheless unanimously approved in the 2017 Scoping
12 Plan that CARB has now adopted.

13 144. In order to achieve these newly-mandated reductions in VMT, CARB intends to
14 intentionally increase congestion to induce transit use. OPR’s proposal for updating the CEQA
15 Guidelines to include VMT as a metric for analyzing transportation impacts states that adding
16 new roadway capacity increases VMT.⁷¹ The OPR proposal further states that “[r]educing
17 roadway capacity (i.e. a “road diet”) will generally reduce VMT and therefore is presumed to
18 cause a less than significant impact on transportation. Building new roadways, adding roadway
19 capacity in congested areas, or adding roadway capacity to areas where congestion is expected in
20 the future, typically induces additional vehicle travel.” *Id.* at p. III:32.

21 145. Attempting to reduce VMT by purposefully increasing congestion by reducing
22 roadway capacity will not lead to GHG emission reductions. Instead, increasing congestion will
23 cause greater GHG emissions due to idling, not to mention increased criteria air pollutant⁷² and
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26 ⁷¹ OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts
27 in CEQA (Jan. 20, 2016), p. I:4,
28 http://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

⁷² The six criteria air pollutants designated by the Environmental Protection Agency (“EPA”) are
particulate matter (“PM”), ozone, nitrogen dioxide (“NO₂” or “NO_x”), carbon monoxide (“CO”),
sulfur dioxide (“SO₂”), and lead.

1 toxic air contaminant⁷³ emissions. CARB has no authority to impose a VMT limit and any VMT
2 limit imposed by an agency must be approved in a formal rulemaking process.

3 146. As implemented, CARB's VMT reduction measure will not achieve the GHG
4 reductions ascribed to it in the 2017 Scoping Plan and has no rational basis. In fact, it will
5 increase air quality and climate related environmental impacts, something not analyzed in the EA
6 for the 2017 Scoping Plan.

7 147. In addition, CARB has recently undergone an update of regional GHG emission
8 reduction targets under SB 375 in which CARB stated that: "In terms of tons, CARB staff's
9 proposed [SB 375] targets would result in an estimated additional reduction of approximately 8
10 million metric tons of CO₂ per year in 2035 compared to the existing targets. The estimated
11 remaining GHG emissions reductions needed would be approximately 10 million metric tons
12 CO₂ per year in 2035 based on the Scoping Plan Update scenario. These remaining GHG
13 emissions reductions are attributed to new State-initiated VMT reduction strategies described in
14 the Scoping Plan Update."⁷⁴

15 148. Thus, CARB's only stated support for needing the VMT reduction mandates in the
16 2017 Scoping Plan is to close a gap to the Scoping Plan Update Scenario that the SB 375 targets
17 will not meet. However, all of the allegedly "necessary" reductions in the Scoping Plan Update
18 Scenario are based on CARB's unlawful "cumulative gap" reduction requirement, which, as
19 described above, improperly ballooned the GHG reductions required from 60 to 224 MMTCO_{2e}
20 based on the "Known Commitments Scenario" and from 129 to 621 MMTCO_{2e} based on the
21 "Reference Case Scenario."

22 149. Because of CARB's unlawful "cumulative gap" calculation, CARB now argues
23 that the VMT reduction mandates are necessary, but the only reason they are necessary is to meet
24 the unlawful "cumulative gap" reduction requirements.

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26 ⁷³ Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform,
vinyl chloride, formaldehyde, and numerous other chemicals.

27 ⁷⁴ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 35,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

1 150. There is also no evidence that CARB’s estimated 10 MMTCO₂e per year
2 reductions based on the VMT reduction mandate is in any way achievable. The Right Type, Right
3 Place report⁷⁵ estimates only 1.79 MMTCO₂e per year will be reduced from both lower VMT and
4 smaller unit size houses using less energy and thus creating lower operational emissions.

5 151. The Staff Report for SB 375 acknowledges that VMT has increased, that the
6 results of new technologies are at best mixed in early reports as to VMT reductions, and that the
7 correlation between VMT and GHG is declining.⁷⁶ There is no evidence that the 10 MMTCO₂e
8 per year reductions based on the VMT reduction mandate in the 2017 Scoping Plan is in any way
9 something other than a number created solely based on the fundamental miscalculation about the
10 2030 target demonstrated by the “cumulative gap” methodology in the 2017 Scoping Plan.

11 **2. Unlawful CEQA Net Zero GHG Threshold**

12 152. The 2017 Scoping Plan also sets a net zero GHG threshold for all projects subject
13 to CEQA review, asserting that “[a]chieving no net additional increase in GHG emissions,
14 resulting in no contribution to GHG impacts, is an appropriate overall objective for new
15 development”. Scoping Plan, p. 101-102.

16 153. The Scoping Plan directs that this new CEQA “zero molecule” GHG threshold be
17 presumptively imposed by all public agencies when making all new discretionary decisions to
18 approve or fund projects in all of California, where under CEQA “project” is an exceptionally
19 broad legal term encompassing everything from transit projects to recycled water plants, from the
20 renovation of school playgrounds to building six units of affordable housing, from the adoption of
21 General Plans applicable to entire cities and counties to the adoption of a single rule or regulation.

22 154. This is an unauthorized, unworkable and counterproductive standard as applied to
23 new housing projects. CEQA applies to the “whole of a project”, which includes construction
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25 ⁷⁵ Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic
26 Impacts of Infill Residential Development through 2030, U.C. Berkeley Turner Center for
Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017),
<https://turnercenter.berkeley.edu/right-type-right-place>.

27 ⁷⁶ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 19,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

1 activities, operation of new buildings, offsite electricity generation, waste management,
2 transportation fuel use, and a myriad of other activities. Meeting a net zero threshold for these
3 activities is not possible. While there have been examples of “net zero” buildings—which are
4 more expensive than other housing⁷⁷—none of these examples included the other components of
5 a “project” as required by CEQA.

6 155. The Scoping Plan’s “net zero” CEQA provisions also would raise housing and
7 homeowner transportation costs and further delay completion of critically needed housing by
8 increasing CEQA litigation risks—thereby exacerbating California’s acute housing and poverty
9 crisis.⁷⁸

10 156. Despite CARB’s claim that this “net zero” threshold is “guidance”, CARB’s status
11 as the expert state agency on GHG emissions means that all lead agencies or project proponents
12 will have to accept this standard in CEQA review unless they can prove by substantial evidence
13 that a project cannot meet the standard.

14 157. The threshold has immediate evidentiary weight as the expert conclusion of the
15 state’s expert GHG agency. An agency’s failure to use the 2017 Scoping Plan’s CEQA threshold
16 has already been cited as legal error in the comment letter preceding the expected lawsuit against
17 the Northlake housing project in Los Angeles.⁷⁹

18 158. A “net zero” GHG threshold is inconsistent with current California precedent
19 affirming that compliance with law is generally an acceptable CEQA standard. See, e.g., *Center*
20 *for Biological Diversity v. Dept. of Fish and Wildlife* (2016) 62 Cal.4th 204, 229 (“*Newhall*”) (a
21 lead agency can assess consistency with AB 32 goal by looking to compliance with regulatory
22 programs). This includes, but is not limited to, using compliance with the cap-and-trade program
23 as appropriate CEQA mitigation for GHG and transportation impacts.

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25 ⁷⁷ LAO, *Evaluating California’s Pursuit of Zero Net Energy State Buildings* (Nov. 14, 2017),
<http://www.lao.ca.gov/Publications/Report/3711>.

26 ⁷⁸ Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S.*
27 *Economy*, N.Y. Times (Sept. 6, 2017), <https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html>.

28 ⁷⁹ Center for Biological Diversity, *Letter to Los Angeles County* (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

1 159. The Scoping Plan’s expansive new “net zero” GHG CEQA threshold is directly at
2 odds with, and is dramatically more stringent than, the existing CEQA regulatory threshold for
3 GHG emissions. This existing threshold was adopted by OPR pursuant to specific authorization
4 and direction from the Legislature in SB 97. In the SB 97 rulemaking context, OPR, in its
5 Statement of Reasons, expressly rejected a “zero molecule” or “no net increase” GHG threshold
6 (now adopted by CARB without Legislative authority) as being inconsistent with, and not
7 supported by, CEQA’s statutory provisions or applicable judicial precedent. OPR stated that
8 “[n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of
9 significance. As case law makes clear, there is no “one molecule rule” in CEQA.”⁸⁰

10 160. In January of 2017, OPR commenced a formal rulemaking process for what it
11 describes as a “comprehensive” set of regulatory amendments to the CEQA Guidelines. After
12 adoption of the 2017 Scoping Plan, OPR has not proposed to change the existing GHG thresholds
13 in the Guidelines to conform with CARB’s unauthorized new “net zero” GHG threshold. Instead,
14 OPR has expressly criticized reliance on a numerical project-specific assessment of GHGs.

15 161. In short, CARB’s “net zero” GHG threshold is inconsistent with OPR’s legal
16 conclusion that CEQA cannot be interpreted to impose a “net zero” standard.⁸¹

17 162. In addition to being Legislatively unauthorized and unlawful, the “net zero” GHG
18 threshold would operate unconstitutionally so as to disproportionately disadvantage low income
19 minorities in need of affordable housing relative to wealthier, whiter homeowners who currently
20 occupy the limited existing housing stock.⁸² This disadvantage arises because of the use of CEQA

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22 ⁸⁰ OPR, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA
23 Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97
(Dec. 2009), p. 25, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

24 ⁸¹ See OPR, Proposed Updates to the CEQA Guidelines (Nov. 2017), p. 81-85,
http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

25 ⁸² See Richard Rothstein, *Color of Law: A Forgotten History of How Our Government*
26 *Segregated America* (2017) for a historical review of how zoning and land use laws were
27 designed to promote discrimination against African Americans and other communities of color,
28 patterns that, in many instances, have been maintained to this day; see also Housing Development
Toolkit, The White House (Sept. 2016),
[https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%
20f.2.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf).

1 litigation by current homeowners to block new housing for others, including especially low
2 income housing for minorities.⁸³

3 163. Under CEQA, once an impact is considered “significant”, it must be “mitigated”
4 by avoidance or reduction measures “to the extent feasible.” Pub. Res. Code §§ 21002, 21002.1;
5 14 C.C.R. § 15020(a)(2). By imposing a presumptive “net zero” GHG threshold on all new
6 projects pursuant to CEQA, CARB has instantly and unilaterally increased the GHG CEQA
7 mitigation mandate to “net zero” unless a later agency applying CEQA can affirmatively
8 demonstrate, through “substantial evidence”, that this threshold is not “feasible” as that term is
9 defined in the CEQA Guidelines.

10 164. Under CEQA, any party—even an anonymous litigant—can file a CEQA lawsuit
11 challenging the sufficiency of a project’s analysis and mitigation for scores of “impacts,”
12 including GHG emissions. *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011)
13 52 Cal.4th 155.

14 165. Anonymous use of CEQA lawsuits, as well as reliance on CEQA lawsuits to
15 advance economic objectives such as fast cash settlements, union wage agreements, and
16 competitive advantage, has been repeatedly documented—but Governor Brown has been unable
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23 ⁸³ See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
24 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
25 [https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf)
26 [df](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf); see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
27 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
28 [https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)
[ceqa-august-2015/](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/).

1 to secure the Legislature’s support for CEQA because, as he explains, unions use CEQA to
2 leverage labor agreements.⁸⁴

3 166. Using CEQA to advance economic rather than environmental objectives, and
4 allowing anonymous lawsuits to mask more nefarious motives including racism and extortion, has
5 established CEQA litigation (and litigation threats) as among the top reasons why adequate
6 housing supplies have not been built near coastal jobs centers.⁸⁵

7 167. The “net zero” threshold, as applied to new housing projects in California, adds
8 significantly to the risk and CEQA litigation outcome uncertainty faced by persons who wish to
9 build such housing.⁸⁶ Not even the California Supreme Court, in *Newhall, supra*, 62 Cal.4th 204,
10 could decide how CEQA should apply to a global condition like climate change in the context of
11 considering the GHG impacts of any particular project. Instead, the Supreme Court identified four
12 “potential pathways” for CEQA compliance. Notably, none of these was the “net zero” threshold
13 adopted by CARB in its 2017 Scoping Plan.

14 168. The California Supreme Court has declined to mandate, under CEQA, a non-
15 statutory GHG threshold. Instead, the California Supreme Court has recognized that this area
16 remains in the province of the Legislature, which has acted through directives such as SB 375.
17 *Cleveland National Forest Foundation v. San Diego Assn. of Gov’ts* (2017) 3 Cal.5th 497
18 (“*SANDAG*”).

19 169. As explained in The Two Hundred’s comment letter, and referenced academic and
20 other studies in that letter, the top litigation targets of CEQA lawsuits statewide are projects that

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22 ⁸⁴ See Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
23 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
24 <https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf>, p. 10-12 (stating Governor Brown’s 2016 conclusion that CEQA litigation reform was
25 politically impossible because labor unions use litigation threats to “hammer” project sponsors
26 into agreeing to enter into union labor agreements, and Building Trades Council lobbyist Caesar
27 Diaz testimony in “strong opposition” to legislative proposal to require disclosure of the identity
28 and interests of those filing CEQA lawsuits at the time CEQA lawsuits are filed, rather than at the
end of the litigation process when seeking attorneys’ fees, wherein Mr. Diaz concluded that
requiring such disclosure would “dismantle” CEQA).

⁸⁵ Legislative Analyst’s Office, California’s High Housing Costs: Causes and Consequences, May
17, 2015, <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

⁸⁶ See *Id.*

1 include housing.⁸⁷ Over a three year period in the SCAG region, nearly 14,000 housing units were
2 challenged in CEQA lawsuits, even though 98% of these units were located in already developed
3 existing communities and 70% were located within a short distance of frequent transit and other
4 existing infrastructure and public services. This and a referenced prior study also showed that the
5 vast majority of CEQA lawsuits filed statewide are against projects providing housing,
6 infrastructure and other public services and employment uses within existing communities.⁸⁸

7 170. Thus, the same minority families victimized by the housing-induced poverty crisis,
8 and forced to drive ever longer distances to qualify for housing they can afford to rent or buy are
9 disproportionately affected by CEQA lawsuits attacking housing projects that are proximate to
10 jobs.

11 171. Expanding CEQA to require only future occupants of acutely needed housing units
12 to double- and triple-pay to get to and from work with a CEQA mitigation obligation to purchase
13 GHG offsets to satisfy a “net zero” threshold unlawfully and unfairly discriminates against new
14 occupants in violation of equal protection and due process.

15 172. Finally, CARB’s “net zero” threshold fails to address the likelihood that it will
16 actually be counterproductive because of “leakage” of California residents driven out to other
17 states because of unaffordable housing prices.⁸⁹ Including this measure in the 2017 Scoping Plan
18 bypasses statutory requirements to discourage and minimize “leakage”—movement of
19

20 ⁸⁷ See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
21 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
22 [https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf)
23 [df](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf); see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
24 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
25 [https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf)
26 [uits.pdf](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/); Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
27 Environment: Litigation Abuse Under CEQA (August 2015),
28 [https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)
[ceqa-august-2015/](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)

⁸⁸ *Ibid.*

⁸⁹ California experienced a net loss of 556,710 former residents to other states during 2010 to
2017. U.S. Census Bureau, Table 4. Cumulative Estimates of the Components of Resident
Population Change for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July
1, 2017 (NST-EST2017-04) (Dec. 2017),
<https://www.census.gov/data/datasets/2017/demo/popest/nation-total.html>.

1 economically productive activities to other states or countries that have much higher GHG
2 emissions on a per capita basis than California. Imposing “net zero” standards that end up
3 shutting down or blocking economic activities in California results in a global increase in GHGs
4 when those activities move to other states or countries with higher per capita GHG emissions.⁹⁰

5 173. It is noteworthy that the GWSA and SB 32 “count” only GHG emissions produced
6 within the state, and from the generation of out-of-state electricity consumed in the state. When a
7 family moves from California to states such as Texas (nearly three times higher per capita GHG
8 emissions) or Nevada (more than double California’s per capita GHG emissions), *global* GHG
9 emissions increase even though California’s GHG emissions decrease.

10 174. The housing crisis has resulted in a significant emigration of families that cannot
11 afford California housing prices, and this emigration increases global GHG emissions—precisely
12 the type of “cumulative” contribution to GHGs that OPR explains should be evaluated under
13 CEQA, rather than CARB’s net zero GHG threshold which numerically-focuses on project-level
14 GHG emissions and mitigation.⁹¹

15 175. The Scoping Plan’s CEQA threshold is appropriately justiciable, and should be
16 vacated for the reasons set forth herein.

17 3. Unlawful Per Capita GHG Targets for Local Climate Action Plans

18 176. California’s per capita GHG emissions are already far lower than all but two
19 states. The only state with low per capita GHG emissions that is comparable to California is New
20 York, which has a lower per capita GHG emission level but also six nuclear power plants

21 ⁹⁰ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move*
22 *In*, The Sacramento Bee (Mar. 5, 2017),
23 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
24 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>;
U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

25 ⁹¹ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move*
26 *In*, The Sacramento Bee (Mar. 5, 2017),
27 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
28 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>;
U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 (compared to California’s one) as well as more reliable hydropower from large dams that are less
2 affected by the cyclical drought cycles affecting West Coast rivers.⁹²

3 177. California’s current very low per capita GHG emissions are approximately 11
4 MMTCO_{2e}.

5 178. The existing CEQA Guidelines include a provision that allows projects that
6 comply with locally-adopted “climate action plans” (“CAPs”) to conclude that project-related
7 GHG emissions are less than significant, and thus require no further mitigation that would add to
8 the cost of new housing projects.

9 179. In *Newhall, supra*, 62 Cal.4th at 230, the California Supreme Court endorsed
10 CAPs, and wrote that a project’s compliance with an approved CAP could be an appropriate
11 “pathway” for CEQA compliance. No local jurisdiction is required by law to adopt a CAP, but if
12 a CAP is adopted, then the Supreme Court has held that it must have enforceable measures to
13 actually achieve the CAP’s GHG reduction target. *SANDAG, supra*, 3 Cal.5th 497.

14 180. The CAP compliance pathway through CEQA was upheld in *Mission Bay Alliance*
15 *v. Office of Community Invest. & Infrastructure* (2016) 6 Cal.App.5th 160. This compliance
16 pathway provides a more streamlined, predictable, and generally cost-effective pathway for
17 housing and other projects covered by the local CAP.

18 181. In stark contrast, CARB’s unlawful new per capita GHG requirements effectively
19 direct local governments—cities and counties—to adopt CAPs that reduce per capita GHG
20 emissions from eleven to six MMTCO_{2e} per capita by 2030, and to two MMTCO_{2e} per capita by
21 2050. This mandate is unlawful.

22 182. First, CARB has no statutory authority to impose any 2050 GHG reduction
23 measure in CAPs or otherwise since the Legislature has repeatedly declined to adopt a 2050 GHG
24 target (including by rejecting earlier versions of SB 32 that included such a 2050 target), and the
25 California Supreme Court has declined to interpret CEQA to mandate a 2050 target based on an
26 Executive Order. *SANDAG, supra*, 3 Cal.5th at 509; *Newhall, supra*, 62 Cal.4th at 223.

27 _____
28 ⁹² U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 183. Second, the Scoping Plan attributes the vast majority of state GHG emissions to
2 transportation, energy, and stationary source sectors over which local governments have little or
3 no legal jurisdiction or control. A local government cannot prohibit the sale or use of gasoline or
4 diesel-powered private vehicles, for example—nor can a local government regulate and redesign
5 the state’s power grid, or invent and mandate battery storage technology to capture intermittent
6 electricity produced from solar and wind farms for use during evening hours and cloudy days.

7 184. The limited types of GHG measures that local governments can mandate (such as
8 installation of rooftop solar, water conservation, and public transit investments) have very
9 small—or no—measurable quantitative effect on GHG emission reductions. The 2017 Scoping
10 Plan Appendix recommending local government action does not identify any measure that would
11 contribute more than a tiny fraction toward reducing a community’s per capita GHG emissions to
12 six metric tons or two metric tons, respectively.

13 185. Additionally, under state law, local governments’ authority to require more
14 aggressive GHG reductions in buildings is subject to a cost-effectiveness test decided by the
15 California Building Standards Commission (“CBSC”)—the same CBSC that has already
16 determined that “net zero”, even for single family homes and even for just the electricity used in
17 such homes, is *not* yet feasible or cost-effective to impose.⁹³

18 186. Third, it is important to consider the per capita metrics that the 2017 Scoping Plan
19 wants local governments to achieve in their localized climate action plans in a real world context.
20 Since most of the world’s energy is still produced from fossil fuels, energy consumption is still
21 highly correlated to economic productivity and per capita incomes and other wealth-related
22 metrics such as educational attainment and public health.⁹⁴ The suggested very low per capita
23

24 ⁹³ California Energy Commission, 2019 Building Energy Efficiency Standards PreRulemaking
25 Presentation - Proposed 2019 Building Energy Efficiency Standards ZNE Strategy (Aug. 24,
2017), [http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-
01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf).

26 ⁹⁴ See Mengpin Ge, Johannes Friedrich, and Thomas Damassa, 6 Graphs Explain the World’s
27 Top 10 Emitters, World Resources Institute (Nov. 25, 2014), [https://wri.org/blog/2014/11/6-
graphs-explain-world%E2%80%99s-top-10-emitters](https://wri.org/blog/2014/11/6-graphs-explain-world%E2%80%99s-top-10-emitters) (see tables entitled “Per Capita Emissions
28 for Top 10 Emitters” and “Emissions Intensity of Top 10 Emitters” showing that emissions are
generally linked to GDP).

1 metrics in the 2017 Scoping Plan are currently only achieved by countries with struggling
2 economies, minimal manufacturing and other higher wage middle income jobs, and extremely
3 high global poverty rates.

4 187. Growing economies such as China and India bargained for, and received,
5 permission to substantially increase their GHG emissions under the Paris Accord precisely
6 because economic prosperity remains linked to energy use.⁹⁵ This is not news: even in the 1940's,
7 the then-Sierra Club President confirmed that inexpensive energy was critical to economic
8 prosperity AND environmental protection.

9 188. Nor has CARB provided the required economic or environmental analysis that
10 would be required to try to justify its irrational and impractical new per capita GHG target
11 requirements. As with CARB's project-level "net zero" CEQA threshold, the per capita CEQA
12 expansion for CAPs does not quantify the GHG emission reductions to be achieved by this
13 measure.

14 189. Finally, these targets effectively create CEQA thresholds as compliance with a
15 CAP is recognized by the California Supreme Court as a presumptively valid CEQA compliance
16 pathway. *Newhall, supra*, 62 Cal.4th at 230 (stating that local governments can use climate action
17 plans as a basis to tier or streamline project-level CEQA analysis). The targets clearly establish
18 CARB's position on what would (or would not) be consistent with the 2017 Scoping Plan and the
19 State's long-term goals. Courts have stated that GHG determinations under CEQA must be
20 consistent with the statewide CARB Scoping Plan goals, and that CEQA documents taking a
21 goal-consistency approach to significance need to consider a project's effects on meeting the
22 State's longer term post-2020 goals. Thus, these per capita targets are essentially self-
23 implementing CEQA requirements that lead and responsible agencies will be required to use.

24 190. The CAP measure thus effectively eliminates the one predictable CEQA GHG
25 compliance pathway that has been upheld by the courts, compliance with an adopted CAP. The
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27 ⁹⁵ Marianne Lavelle, *China, India to Reach Climate Goals Years Early, as U.S. Likely to Fall Far*
28 *Short*, Inside Climate News (May 16, 2017), <https://insideclimatenews.org/news/15052017/china-india-paris-climate-goals-emissions-coal-renewable-energy>.

1 pathway that CARB’s per capita GHG targets would unlawfully displace is fully consistent with
2 the existing CEQA Guidelines adopted pursuant to full rulemaking procedures based on express
3 Legislative direction.

4 191. In short, the 2017 Scoping Plan directs local governments to adopt CAPs—which
5 the Supreme Court has explained must then be enforced—with per capita numeric GHG reduction
6 mandates in sectors that local governments have no legal or practical capacity to meet, without
7 any regard for the consequential losses to middle income jobs in manufacturing and other
8 business enterprises, or to the loss of tax revenues and services from such lost jobs and
9 businesses,⁹⁶ or to the highly disparate impact that such anti-jobs measures would have on
10 minority populations already struggling to get out of poverty and afford housing.

11 192. While the 2017 Scoping Plan acknowledges that some local governments may
12 have difficulty achieving the per capita targets if their communities have inherently higher GHG
13 economic activities, such as agriculture or manufacturing, such communities are required to
14 explain why they cannot meet the numeric targets—and withstand potential CEQA lawsuit
15 challenges from anyone who can file a CEQA lawsuit.

16 193. As with CARB’s project-level “net zero” CEQA threshold, CARB’s new per
17 capita GHG targets are entirely infeasible, unlawful, and disparately affect those in most need of
18 homes they can afford with jobs that continue to exist in manufacturing, transportation, and other
19 sectors having GHG emissions that are outside the jurisdiction and control of local governments.

20
21 _____
22 ⁹⁶ Just four states—Ohio, Pennsylvania, Georgia and Indiana—collectively have a population and
23 economy comparable with California. With a combined gross product of \$2.25 trillion in 2016,
24 these four states would be the 8th largest economy in the world if considered a nation. Yet despite
25 achieving five times more GHG emission reductions than California since 2007, in 2016 these
26 four states had 560,000 fewer people in poverty and 871,000 more manufacturing jobs (including
27 200,000 new jobs from 2009 to 2017 compared with just 53,000 in California). U.S. Bureau of
28 Labor Statistics, Monthly Total Nonfarm Employment, Seasonally Adjusted, <https://www.bls.gov/data/>; U.S. Bureau of Economic Analysis, Table 3. Current-Dollar Gross Domestic Product (GDP) by State, 2016:Q1-2017:Q3, https://www.bea.gov/newsreleases/regional/gdp_state/qgdpstate_newsrelease.htm; Liana Fox, The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261 (Sept. 21, 2017), <https://www.census.gov/library/publications/2017/demo/p60-261.html>; U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Table B15001, Sex by age by educational attainment for the population 18 years and over, <https://factfinder.census.gov/>.

1 They are also inconsistent with current standards and common sense and result in unjustifiable
2 disproportionate adverse impacts on California minorities, including Petitioners.

3 **4. Appendix C “Vibrant Communities” Policies Incorporating Unlawful**
4 **VMT, “Net Zero” and CO2 Per Capita Standards**

5 194. Chapter 5 of CARB’s 2017 Scoping Plan explains that notwithstanding the other
6 GHG Housing Measures (*e.g.*, the VMT reduction mandated in Chapter 2), California must do
7 “more” to achieve the 2030 Target. With this in mind, CARB purports to empower eight new
8 state agencies—including itself—with a new, non-legislated role in the plan and project approval
9 process for local cities and counties. This hodgepodge of unlegislated, and in many cases
10 Legislatively-rejected, new “climate” measures is included in what the Scoping Plan calls a
11 “Vibrant Communities” appendix.

12 195. Cities and counties have constitutional and statutory authority to plan and regulate
13 land use, and related community-scale health and welfare ordinances. Cities and counties are also
14 expressly required to plan for adequate housing supplies, and in response to the housing crisis and
15 resulting poverty and homeless crisis, in 2017 the Legislature enacted 15 new bills designed to
16 produce more housing of all types more quickly. These include: Senate Bills (“SB”) 2, SB 3, SB
17 35, SB 166, SB 167, SB 540, SB 897, and Assembly Bills (“AB”) 72, AB 73, AB 571, AB 678,
18 AB 1397, AB 1505, AB 1515, and AB 1521.

19 196. The Legislature has periodically, and expressly, imposed new statutory obligations
20 on how local agencies plan for and approve land use projects. For example, in recent years, the
21 Legislature required a greater level of certainty regarding the adequacy of water supplies as well
22 as expressly required new updates to General Plans, which serve as the “constitution” of local
23 land use authority, to expressly address environmental justice issues such as the extent to which
24 poor minority neighborhoods are exposed to disproportionately higher pollution than wealthier
25 and whiter neighborhoods.

26 197. Local government’s role in regulating land uses, starting with the Constitution and
27 then shaped by scores of statutes, is where the “rubber hits the road” on housing: without local
28

1 government approval of housing, along with the public services and infrastructure required to
2 support new residents and homes, new housing simply cannot get built.

3 198. The Legislature has repeatedly authorized and/or directed specific agencies to have
4 specific roles in land use decisionmaking.

5 199. The Legislature also is routinely asked to impose limits on local land use controls
6 that have been rejected during the legislative process, such as the VMT reduction mandates
7 described above. The Vibrant Communities Scoping Plan appendix is a litany of new policies,
8 many of which were previously considered and rejected by the Legislature, directing eight state
9 agencies to become enmeshed in directing the local land use decisions that under current law
10 remain within the control of cities and counties (and their voting residents) and not within any
11 role or authority delegated by the Legislature.

12 200. Just a few examples of Vibrant Community Scoping Plan measures adopted by
13 CARB that have been expressly considered and rejected by the Legislature or are not legal
14 include:

15 (A) **Establishing mandatory development area boundaries (urban growth**
16 **boundaries) around existing cities**, that cannot be changed even if approved by local voters as
17 well as the city and county, to encourage higher density development (*e.g.*, multi-story apartments
18 and condominiums) and to promote greater transit use and reduce VMT. An authoritative study
19 that CARB funded, as well as other peer reviewed academic studies, show that there is no
20 substantial VMT reduction from these high density urban housing patterns—although there is
21 ample confirmation of “gentrification” (displacement of lower income, disproportionately
22 minority) occupants from higher density transit neighborhoods to distant suburbs and exurbs
23 where workers are forced to drive greater distances to their jobs.⁹⁷ Mandatory urban growth
24 boundaries have been routinely rejected in the Legislature. See AB 721 (Matthews, 2003)

25
26
27 ⁹⁷ UCLA Department of Urban and Regional Planning, *Oriented For Whom? The Impacts of*
28 *TOD on Six Los Angeles Neighborhoods* (June 2, 2015),
http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.

1 (proposing the addition of mandatory urban growth boundaries in the land use element of
2 municipalities' general plans).

3 **(B) Charging new fees for cities and counties to pay for “eco-system services”**
4 such as carbon sequestration from preserved vegetation on open space forests, deserts,
5 agricultural and rangelands. Taxes or fees could not be imposed on residents of Fresno or Los
6 Angeles to pay for preservation of forests in Mendocino or watersheds around Mount Lassen
7 unless authorized by votes of the people or the Legislature—*except* that payment of fees has
8 become a widespread “mitigation measure” for various “impacts” under CEQA. The 2017
9 Scoping Plan’s express approval of the “Vibrant Communities” Appendix creates a massive
10 CEQA mitigation measure work-around that can be imposed in tandem with agency approvals of
11 local land use plans and policies that entirely bypasses the normal constitutional and statutory
12 requirements applicable to new fees and taxes. Since CEQA applies only to new agency
13 approvals, this unlawful and unauthorized framework effectively guarantees that residents of
14 newly-approved homes will be required to shoulder the economic costs of the additional
15 “mitigation” measures. This idea of taxation has been rejected by voter initiatives such as
16 Proposition 13 (which limits ad valorem tax on real property to 1 percent and requires a 2/3 vote
17 in both houses to increase state tax rates or impose local special taxes) and Proposition 218
18 (requiring that all taxes and most charges on property owners are subject to voter approval).

19 **(C) Intentionally worsening roadway congestion**, even for voter-funded and CARB-
20 approved highway and roadway projects, to “induce” people to rely more on walking, biking, and
21 public transit, and reduce VMT. Efficient goods movement, and avoidance of congestion, on
22 California’s highways and roads is required under both federal and state transportation and air
23 quality laws. This component of “Vibrant Communities” is another example of a VMT reduction
24 mandate, but is even more flatly inconsistent with applicable laws and common sense. Voters
25 have routinely approved funding for new carpool lanes and other congestion relief projects. The
26 goods movement industry—which is linked to almost 40% of all economic activity in Southern
27 California and is critical to agricultural and other product-based business sectors throughout
28

1 California—cannot function under policies that intentionally increase congestion.⁹⁸ CARB has
2 itself approved hundreds of highway improvement projects pursuant to the Legislative mandates
3 in SB 375—yet the “Vibrant Communities” appendix unilaterally rejects this by telling
4 Californians not to expect any relief from gridlock, ever again. The Legislature and state agencies
5 have also consistently rejected VMT reduction mandates. See SB 150 (Allen, 2017) (initially
6 requiring regional transportation plans to meet VMT reductions but modified before passage); SB
7 375 (Steinberg, 2008) (early version stating bill would require regional transportation plan to
8 include preferred growth scenario designed to achieve reductions in VMT but modified before
9 passage).

10 (D) **Mileage-based road pricing strategies which charge a fee per miles driven.**

11 These types of “pay as you drive” fees are barred by current California law, which prohibits local
12 agencies from “imposing a tax, permit fee or other charge” in ways that would create congestion
13 pricing programs. Vehicle Code § 9400.8. Yet CARB attempts to override a Legislative mandate
14 via the 2017 Scoping Plan and its “Vibrant Communities” strategies.

15 201. Through the Vibrant Communities strategies, CARB attempts to give state
16 agencies expansive authority and involvement in city and county decisionmaking. The 2017
17 Scoping Plan asserts that the Vibrant Communities strategies will reduce GHG emissions by an
18 amount that is “necessary” to achieving California’s 2030 Target. However, no effort is made by
19 CARB to quantify the reductions it anticipates would result from injecting these agencies into
20 local decisionmaking processes. Instead, CARB merely states that the “Vibrant Communities”
21 appendix is a supposedly-necessary step to meet the 2030 Target.

22 202. The eight named state agencies CARB attempts to give unauthorized authority
23 over local actions are:⁹⁹

24 ⁹⁸ Edward Humes, *Four Easy Fixes for L.A. Traffic*, L.A. Times (Apr. 10, 2016),
25 [http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-](http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-along-20160410-story.html)
26 [along-20160410-story.html](http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion); Eleanor Lamb, *California Eyes Future Projects to Relieve Freight*
27 *Congestion*, Transport Topics (Mar. 26, 2018), [http://www.ttnews.com/articles/california-eyes-](http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion)
28 [future-projects-relieve-freight-congestion](http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion).

⁹⁹ Several of the eight named agencies are parent agencies, each of which has several subordinate
agencies and departments. If these are counted, they collectively elevate the number of state
agencies being coopted to join in CARB’s local land use power grab to nearly twenty.

1 (1) **Business, Consumer Services and Housing Agency**, which among other
2 subordinate agencies includes the Department of Housing and Community Development (HCD),
3 which alone among these agencies has direct statutory responsibility for designating housing
4 production and corresponding land use planning requirements for cities and counties;

5 (2) **California Environmental Protection Agency**, which is the parent agency for
6 CARB as well as several other agencies and departments;

7 (3) **California Natural Resources Agency**, another parent agency of subordinate
8 agencies and departments;

9 (4) **California State Transportation Agency**, most notably **Caltrans** – which the
10 Scoping Plan would redirect from implementing their statutory responsibilities to reduce
11 congestion and facilitate transportation on the state’s highways to instead advancing CARB’s
12 “road diet” policy of intentionally increasing congestion to satisfy CARB’s desire to induce more
13 public transit ridership;

14 (5) **California Health and Human Services Agency**, which among other duties
15 administers health and welfare assistance programs;

16 (6) **California Department of Food and Agriculture**, which among other duties
17 regulates food cultivation and production activities;

18 (7) **Strategic Growth Council**, formed in 2008 by SB 732, which is tasked with
19 “coordinating” activities of state agencies to achieve a broad range of goals but has no
20 independent statutory authority to regulate housing or local land use plans and projects; and

21 (8) **Governor’s Office of Planning and Research**, which has statutory responsibility
22 to issue the CEQA Guidelines as well as “advisory” guidelines for local agency preparation of
23 General Plans pursuant to Gov. Code § 65040.

24 203. The “Vibrant Communities” Appendix includes provisions that conflict with
25 applicable law and/or have been rejected by the Legislature and cannot now be imposed by
26 CARB through the 2017 Scoping Plan given California’s comprehensive scheme of agency-
27 allocated land use obligations (certain agencies—such as California Department of Fish and
28

1 Game, the Regional Water Quality Control Boards, and the Coastal Commission—already
2 possess land use authority or obligations based on statutory or voter-approved schemes).

3 204. If CARB intends that other agencies be imbued with similar land use authority, it
4 should ask the Legislature for such authority for those agencies, not its own Board. The “Vibrant
5 Communities” Appendix should be struck from the 2017 Scoping Plan for this reason.

6 205. Less housing that is more expensive (urban growth boundary)¹⁰⁰, increased
7 housing cost (CEQA mitigation measure fees), and ever-worsening gridlock resulting in ever-
8 lengthier commutes with ever-increasing vehicular emissions and ever-reduced time at home with
9 children, is the dystopian “necessity” built into the “Vibrant Communities” appendix.

10 206. Bureaucrats and tech workers in the “keyboard” economy who can work remotely,
11 with better wages, benefits and job security that remove the economic insecurity of lifetime renter
12 status, should be just fine. They can live in small apartments in dense cities filled with coffee
13 shops and restaurants, rely on home delivery of internet-acquired meals and other goods, and
14 enjoy “flextime” jobs that avoid the drudgery of the five-day work week model.

15 207. But for the rest of the California populace—including particularly the people
16 (disproportionately minorities) staffing those restaurants and coffee shops, delivering those
17 goods, providing home healthcare and building and repairing our buildings and infrastructure, and
18 those Californians that are actually producing food and manufacturing products that are
19 consumed in California and around the world—“Vibrant Communities” is where they can’t afford
20 to live, where they sleep in their cars during the week, where they fall into homelessness for
21 missing rental payments because of an illness or injury to themselves or a family member.¹⁰¹ For
22 these folks, “Vibrant Communities” amounts to an increase in poverty, homelessness, and
23 premature “despair deaths” as well as permanent drop outs from the work force.

24
25 _____
26 ¹⁰⁰ Shishir Mathur, Impact of Urban Growth Boundary on Housing and Land Prices: Evidence
27 from King County, Washington, *Journal of Housing Studies* Vol. 29 – Issue 1 (2014),
28 <https://tandfonline.com/doi/abs/10.1080/02673037.2013.825695>.

¹⁰¹ Alastair Gee, *Low-income workers who live in RVs are being 'chased out' of Silicon Valley streets*, *The Guardian* (June 29 2017), <https://www.theguardian.com/us-news/2017/jun/29/low-income-workers-rvs-palo-alto-california-homeless>.

1 208. For the foregoing reasons, the “Vibrant Communities” appendix is an unlawful
2 and unconstitutional attempt by CARB to supplant existing local land use law and policy
3 processes with a top-down regime that is both counterproductive and discriminatory against
4 already-disadvantaged minority Californians, including but not limited to Petitioners.

5 **E. CARB’s Inadequate Environmental Analysis and Adverse Environmental**
6 **Effects of the 2017 Scoping Plan**

7 209. Along with the 2017 Scoping Plan, CARB prepared an EA purporting to comply
8 with CEQA requirements.¹⁰²

9 210. Under its certified regulatory program, CARB need not comply with requirements
10 for preparing initial studies, negative declarations, or environmental impact reports. CARB’s
11 actions, however, remain subject to other provisions of CEQA. CEQA Guidelines § 15250.

12 211. CARB’s regulatory program is contained in 17 C.C.R. §§ 60005, 60006, and
13 60007. These provisions require the preparation of a staff report at least 45 days before the public
14 hearing on a proposed regulation, which report is required to be available for public review and
15 comment. It is also CARB's policy “to prepare staff reports in a manner consistent with the
16 environmental protection purposes of [ARB’s] regulatory program and with the goals and policies
17 of [CEQA].” The provisions of the regulatory program also address environmental alternatives
18 and responses to comments on the EA.

19 212. For purposes of its CEQA review, CARB defined the project as the Proposed
20 Strategy for Achieving California’s 2030 Greenhouse Gas Target (Scoping Plan) and the
21 recommended measures in the 2017 Plan (Chapter 2).

22 213. The Draft EA was released on or about January 20, 2017 for an 80-day public
23 review period that concluded on or about April 10, 2017.

24 214. On or about November 17, 2017, CARB released the Final EA. CARB did not
25 modify the Draft EA to bring it into compliance with CEQA’s requirements.

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¹⁰² CARB has a regulatory program certified under Pub. Res. Code § 21080.5 and pursuant to this
program CARB conducts environmental analyses to meet the requirements of CEQA.

1 215. The Final EA provides a programmatic analysis of the potential for adverse
2 environmental impacts associated with implementation of the 2017 Scoping Plan. It also
3 describes feasible mitigation measures for identified significant impacts.

4 216. The Final EA states that, although the 2017 Scoping Plan is a State-level planning
5 document that recommends measures to reduce GHG emissions to achieve the 2030 target, and its
6 approval does not directly lead to any adverse impacts on the environment, implementation of the
7 measures in the Plan may indirectly lead to adverse environmental impacts as a result of
8 reasonably foreseeable compliance responses.

9 217. The Final EA also states that CARB expects that many of the identified potentially
10 significant impacts can be feasibly avoided or mitigated to a less-than-significant level either
11 when the specific measures are designed and evaluated (e.g., during the rulemaking process) or
12 through any project-specific approval or entitlement process related to compliance responses,
13 which typically requires a project-specific environmental review.

14 218. The EA violated CEQA by failing to comply with its requirements in numerous
15 ways, as described below.

16 **1. Deficient Project Description**

17 219. The EA's Project description was deficient because CARB did not assess the
18 "whole of the project" as required by CEQA. The GHG Housing Measures are included in the
19 2017 Scoping Plan (in Chapters 2 and 5) and thus the "project" for CEQA purposes should have
20 been defined to include potential direct and indirect impacts on the environment from the four
21 GHG Housing Measures. Instead, CARB described the Project for CEQA purposes as the
22 measures only in Chapter 2 of the 2017 Scoping Plan.

23 220. CARB has acknowledged that Chapter 5 of the 2017 Scoping Plan (which sets out
24 the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In
25 CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the
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1 Scoping Plan are not part of the proposed ‘project’ for purposes of CEQA review.”¹⁰³ Thus,
2 CARB admits that it did not even pretend to analyze the consequences of the provisions of
3 Chapter 5 of the Scoping Plan.

4 221. The VMT reduction requirement is part of the Scoping Plan Scenario presented in
5 Chapter 2 in the “Mobile Source Strategy”.¹⁰⁴ Chapter 2 is included in the description of the
6 Project in the EA but Chapter 5 is not, despite the fact that the VMT reduction mandate is found
7 in both chapters.

8 222. For this reason, CARB applied an unreasonable and unlawful “project” definition
9 and undermined CEQA’s informational and decision-making purposes.

10 2. Improper Project Objectives

11 223. The Project objectives in the EA are also improperly defined in relation to the
12 2017 Scoping Plan, the unlawful GHG Housing Measures, and the goals explained in the 2017
13 Scoping Plan.¹⁰⁵ The EA states that the primary objectives of the 2017 Scoping Plan are:

- 14 • Update the Scoping Plan for achieving the maximum technologically feasible and
15 cost-effective reductions in GHG emissions to reflect the 2030 target;
- 16 • Pursue measures that implement reduction strategies covering the State’s GHG
17 emissions in furtherance of executive and statutory direction to reduce GHG
18 emissions to at least 40 percent below 1990 levels by 2030;
- 19 • Increase electricity derived from renewable sources from one-third to 50 percent;
- 20 • Double efficiency savings achieved at existing buildings and make heating fuels
21 cleaner;
- 22 • Reduce the release of methane and other short-lived climate pollutants;

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24 ¹⁰³ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
25 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

26 ¹⁰⁴ Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner
Technology and Fuels [CTF] Scenario)).

27 ¹⁰⁵ Appendix F to 2017 Scoping Plan, Final Environmental Analysis for the Strategy for
28 Achieving California’s 2030 Greenhouse Gas Target, p. 10-11,
https://www.arb.ca.gov/cc/scopingplan/2030sp_appf_finalea.pdf.

- 1 • Pursue emission reductions that are real, permanent, quantifiable, verifiable and
- 2 enforceable;
- 3 • Achieve the maximum technologically feasible and cost-effective reductions in
- 4 GHG emissions, in furtherance of reaching the statewide GHG emissions limit;
- 5 • Minimize, to the extent feasible, leakage of emissions outside of the State;
- 6 • Ensure, to the extent feasible, that activities undertaken to comply with the
- 7 measures do not disproportionately impact low-income communities;
- 8 • Ensure, to the extent feasible, that activities undertaken pursuant to the measures
- 9 complement, and do not interfere with, efforts to achieve and maintain the
- 10 NAAQS and CAAQS and reduce toxic air contaminant (“TAC”) emissions;
- 11 • Consider overall societal benefits, including reductions in other air pollutants,
- 12 diversification of energy sources, and other benefits to the economy, environment,
- 13 and public health;
- 14 • Minimize, to the extent feasible, the administrative burden of implementing and
- 15 complying with the measure;
- 16 • Consider, to the extent feasible, the contribution of each source or category of
- 17 sources to statewide emissions of GHGs;
- 18 • Maximize, to the extent feasible, additional environmental and economic benefits
- 19 for California, as appropriate;
- 20 • Ensure that electricity and natural gas providers are not required to meet
- 21 duplicative or inconsistent regulatory requirements.

22 224. Because CARB used the unlawful “cumulative gap” methodology to calculate the
23 emission reductions that it was required to achieve by 2030, the 2017 Scoping Plan does not meet
24 the project objectives as described in the EA, *i.e.*, to meet the 2030 Target.

25 225. As explained throughout this Petition, CARB’s 2017 Scoping Plan and the
26 unlawful GHG Housing Measures are not cost-effective, are contrary to law, are not equitable to
27 all Californians, and will increase criteria and TAC emissions preventing attainment of the
28 NAAQS and CAAQS

1 226. For this reason, other alternatives to the 2017 Scoping Plan, including an
2 alternative without the GHG Housing Measures, should have been assessed in the EA.

3 **3. Illegal Piecemealing**

4 227. CEQA requires an environmental analysis to consider the whole of the project and
5 not divide a project into two or more pieces to improperly downplay the potential environmental
6 impacts of the project on the environment.

7 228. CARB improperly piecemealed its 2017 Scoping Plan and the GHG Housing
8 Measures within it from its similar and contemporaneous SB 375 GHG target update.¹⁰⁶ Both
9 projects address mandated GHG reductions based on VMT and thus should have been addressed
10 as one project for CEQA purposes.

11 229. In separately issuing the 2017 Scoping Plan and the SB 375 GHG target update,
12 CARB improperly piecemealed a project under CEQA and thus the EA is inadequate as a matter
13 of law.

14 **4. Inadequate Impact Analysis**

15 230. The analysis in the EA also was deficient because the EA did not analyze impacts
16 from implementing the four GHG Housing Measures in Chapter 5, including, but not limited to,
17 the CEQA net zero threshold, the VMT limits, and per capita GHG CAP targets, and the suite of
18 Vibrant Communities measures.

19 231. Potential environmental impacts from these GHG Housing Measures overlap
20 substantially with similar high density, transit-oriented, automobile use reduction measures
21 included in regional plans to reduce GHGs from the land use and transportation sectors under SB
22 375. CARB has reviewed and approved more than a dozen SB 375 regional plans, each of which
23 is informed by its own “programmatic environmental impact report (“PEIR”).

24 232. Each PEIR for each regional plan has identified multiple significant adverse
25 environmental impacts which cannot be avoided or further reduced with feasible mitigation
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27 ¹⁰⁶ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018),
<https://www.arb.ca.gov/cc/sb375/sb375.htm>.

1 measures or alternatives.¹⁰⁷ In the first regional plan adopted for the SCAG region, California’s
2 most-populous region, the PEIR compared the impacts of developing all new housing within
3 previously-developed areas in relation to developing half of such new housing in such areas, and
4 the other half in previously-undeveloped areas near existing major infrastructure like freeways.

5 233. The SCAG 2012 PEIR concluded that the all-infill plan caused substantially more
6 unavoidable significant adverse environmental impacts in relation to the preferred plan which
7 divided new development equally between infill and greenfield locations.¹⁰⁸

8 234. Following public comments and refinement of the PEIR (inclusive of the addition
9 and modification of various mitigation measures to further reduce significant adverse
10 environmental impacts), SCAG approved the mixed infill/greenfield plan instead of the all-infill
11 alternative. CARB then approved SCAG’s plan—first in 2012 and then again in 2016—as
12 meeting California’s applicable statutory GHG reduction mandates.¹⁰⁹

13 235. The Scoping Plan’s GHG Housing Measures now direct an infill only (or mostly
14 infill) outcome, which SCAG’s 2012 PEIR assessed and concluded caused far worse
15 environmental impacts, even though it would result in fewer GHG emissions. In other words,
16 SCAG’s PEIR—and the other regional land use and transportation plan PEIRs prepared under SB
17 375—all disclosed a panoply of adverse non-GHG environmental impacts of changing
18 California’s land use patterns, and shaped both their respective housing plans and a broad suite of
19 mitigation measures to achieve California’s GHG reduction mandates while minimizing other
20 adverse environmental impacts to California.

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24 ¹⁰⁷ See SB 375 “Sustainable Communities Strategies” review page at
25 <https://www.arb.ca.gov/cc/sb375/sb375.htm>, which includes links to the regional land use and
26 transportation plans for multiple areas (which then further link to the PEIRs).

27 ¹⁰⁸ SCAG, Final PEIR for the 2012-2035 RTP/SCS (April 2012),
28 <http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx>.

¹⁰⁹ CARB Executive Order accepted the SCAG determination that its regional plan that balanced
infill and greenfield housing development, and increased transit investments to encourage greater
transit use without any VMT reduction mandate, would meet the GHG reduction targets
mandated by law. See generally <https://www.arb.ca.gov/cc/sb375/sb375.htm>.

1 236. CARB's willful refusal to acknowledge, let alone analyze, the numerous non-GHG
2 environmental impacts of its GHG Housing Measures in the 2017 Scoping Plan EA is an
3 egregious CEQA violation.

4 237. Based on the greater specificity and the significant unavoidable adverse non-GHG
5 environmental impacts identified in regional SB 375 plan PEIRs, the EA here clearly did not fully
6 analyze the potential adverse environmental impacts from creating high-density, transit-oriented
7 development that will result from the measures in the 2017 Scoping Plan, such as:

- 8 • Aesthetic impacts such as changes to public or private views and character of existing
9 communities based on increased building intensities and population densities;
- 10 • Air quality impacts from increases in GHG, criteria pollutants, and toxic air
11 contaminant emissions due to longer commutes and forced congestion that will occur
12 from the implementation of the VMT limits in the 2017 Scoping Plan;
- 13 • Biological impacts from increased usage intensities in urban parks from substantial
14 infill population increases;
- 15 • Cultural impacts including adverse changes to historic buildings and districts from
16 increased building and population densities, and changes to culturally and religiously
17 significant resources within urbanized areas from increased building and population
18 densities;
- 19 • Urban agriculture impacts from the conversion of low intensity urban agricultural uses
20 to high intensity, higher density uses from increasing populations in urban areas,
21 including increasing the urban heat island GHG effect;
- 22 • Geology/soils impacts from building more structures and exposing more people to
23 earthquake fault lines and other geologic/soils hazards by intensifying land use in
24 urban areas;
- 25 • Hazards and hazardous materials impacts by locating more intense/dense housing and
26 other sensitive uses such as schools and senior care facilities near freeways, ports, and
27 stationary sources in urbanized areas;
- 28

- 1 • Hydrology and water quality impacts from increasing volumes and pollutant loads
2 from stormwater runoff from higher density/intensity uses in transit-served areas as
3 allowed by current stormwater standards;
- 4 • Noise impacts from substantial ongoing increases in construction noise from
5 increasing density and intensity of development in existing communities and ongoing
6 operational noise from more intensive uses of community amenities such as extended
7 nighttime hours for parks and fields;
- 8 • Population and housing impacts from substantially increasing both the population and
9 housing units in existing communities;
- 10 • Recreation and park impacts from increasing the population using natural preserve and
11 open space areas as well as recreational parks;
- 12 • Transportation/traffic impacts from substantial total increases in VMT in higher
13 density communities, increased VMT from rideshare/carshare services and future
14 predicted VMT increases from automated vehicles, notwithstanding predicted future
15 decrease in private car ownership;
- 16 • Traffic-gridlock related impacts and multi-modal congestion impacts including noise
17 increases and adverse transportation safety hazards in areas of dense multi-modal
18 activities;
- 19 • Public safety impacts due to impacts on first responders such as fire, police, and
20 paramedic services from congested and gridlocked urban streets; and
- 21 • Public utility and public service impacts from substantial increases in population and
22 housing/employment uses and demands on existing water, wastewater, electricity,
23 natural gas, emergency services, libraries and schools.

24 238. CARB failed to complete a comprehensive CEQA evaluation of these and related
25 reasonably foreseeable impacts from forcing all or most development into higher densities within
26 existing urban area footprints, intentionally increasing congestions and prohibiting driving, and
27 implementing each of the many measures described in the “Vibrant Communities” appendix. The
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1 EA failed to identify, assess, and prescribe feasible mitigation measures for each of the significant
2 unavoidable impacts identified above.

3 **F. CARB’s Insufficient Fiscal Analysis and Failure To Comply with the APA’s**
4 **Cost-Benefit Analysis Requirements**

5 239. The APA sets out detailed requirements applicable to state agencies proposing to
6 “adopt, amend or repeal any administrative regulation.” Gov. Code § 11346.3.

7 240. CARB is a state agency with a statutory duty to comply with the rulemaking laws
8 and procedures set out in the APA.

9 241. The APA requires that CARB, “prior to submitting a proposal to adopt, amend, or
10 repeal a regulation to the office [of Administrative Law], shall consider the proposal’s impact on
11 business, with consideration of industries affected including the ability of California businesses to
12 compete with businesses in other states. For purposes of evaluating the impact on the ability of
13 California businesses to compete with businesses in other states, an agency shall consider, but not
14 be limited to, information supplied by interested parties.” Gov. Code § 11346.3(a) (2).

15 242. The APA further requires that “[a]n economic assessment prepared pursuant to this
16 subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in
17 accordance with subdivision (c), and shall be included in the initial statement of reasons as
18 required by Section 11346.2.” Gov. Code § 11346.3(a)(3).

19 243. CARB’s new GHG Housing Measures will have an economic impact on California
20 business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000)
21 and therefore constitute a “major regulation” within the meaning of the APA and the California
22 Department of Finance regulations incorporated therein. Gov. Code § 11346.3(c); 1 C.C.R. §
23 2000(g).

24 244. In adopting its 2017 Scoping Plan, CARB has failed to comply with these and
25 other economic impact analysis requirements of the APA.

26 245. The 2017 Scoping Plan continues CARB’s use of highly aggregated
27 macroeconomic models that provide almost no useful information about potential costs and
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1 impacts in industries and households. The LAO, an independent state agency, has consistently
2 pointed out the flaws in CARB’s approach since the first Scoping Plan was developed in 2008.

3 246. CARB’s disregard of the APA’s economic impact analysis requirements in issuing
4 the 2017 Scoping Plan is only the latest example of a repeated flouting of the APA’s requirements
5 in pursuit of its pre-determined regulatory goals. The inadequacy of CARB’s compliance with
6 APA requirements has been documented in multiple LAO documents, including the following:

- 7 ● In a November 17, 2008 letter to Assembly Member Roger Niello,¹¹⁰ the LAO found
8 that “ARB’s economic analysis raises a number of questions relating to (1) how
9 implementation of AB 32 was compared to doing BAU, (2) the incompleteness of
10 the ARB analysis, (3) how specific GHG reduction measures are deemed to be cost-
11 effective, (4) weak assumptions relating to the low-carbon fuel standard, (5) a lack
12 of analytical rigor in the macroeconomic modeling, (6) the failure of the plan to lay
13 out an investment pathway, and (7) the failure by ARB to use economic analysis to
14 shape the choice of and reliance on GHG reduction measures.”
- 15 ● In a March 4, 2010 letter to State Senator Dave Cogdill,¹¹¹ the LAO stated that while
16 large macroeconomic models used by CARB in updated Scoping Plan assessments
17 can “capture some interactions among broad economic sectors, industries, consumer
18 groupings, and labor markets,” the ability of these models to “adequately capture
19 behavioral responses of households and firms to policy changes is more limited.
20 Additionally, because the data in such models are highly aggregated, they capture at
21 best the behavioral responses of hypothetical “average” households and firms and do
22 not score well in capturing and predicting the range of behavioral responses to
23 policy changes that can occur for individual or subgroupings of households or firms.
24 As a result, for example, the adverse jobs impacts—including job losses associated
25 with those firms that are especially negatively impacted by the Scoping Plan—can
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27 ¹¹⁰ LAO, http://www.lao.ca.gov/2008/rsrc/ab32/AB32_scoping_plan_112108.pdf.

28 ¹¹¹ LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_impact/ab32_impact_030410.aspx.

1 be hard to identify since they are obscured within the average outcome.” The letter
2 further noted multiple ways that the SP could affect jobs.

- 3 • Similarly, in a June 16, 2010 letter to Assembly Member Dan Logue,¹¹² the LAO
4 found that CARB’s revision to CARB’s 2008 Scoping Plan analysis “still exhibits a
5 number of significant problems and deficiencies that limit its reliability. These
6 include shortcomings in a variety of areas including modeling techniques,
7 identification of the relative marginal costs of different SP measures, sensitivity and
8 scenario analyses, treatment of economic and emissions leakages, identification of
9 the market failures used to justify the need for the regulations selected, analysis of
10 specific individual regulations to implement certain Scoping Plan measures, and
11 various data limitations.” As a result, the LAO concluded that, contrary to CARB’s
12 statutory mandates, “The SP May Not Be Cost-Efficient.” Given these and other
13 issues, it is unclear whether the current mix and relative importance of different
14 measures in the Scoping Plan will achieve AB 32’s targeted emissions reductions in
15 a cost-efficient manner as required.”

- 16 • In a June 2017 presentation to the Joint Committee on Climate Change Policies,
17 *Overview of California Climate Goals and Policies*,¹¹³ and after the draft 2017
18 Scoping Plan had been released for public review, the LAO concluded that “To date,
19 there have been no robust evaluations of the overall statewide effects—including on
20 GHG reductions, costs, and co-pollutants—of most of the state’s major climate
21 policies and spending programs that have been implemented.”

22 247. CARB’s persistent failure to address the APA’s economic analysis requirements,
23 and its penchant for “jumping the gun” by taking actions without first complying with CEQA and
24 other rulemaking requirements, also has drawn criticism from the courts.

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27 ¹¹² LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_logue_061610/ab32_logue_061610.pdf.

28 ¹¹³ LAO, <http://lao.ca.gov/handouts/resources/2017/Overview-California-Climate-Goals-Policies-061417.pdf>.

1 248. In *Lawson v. State Air Resources Board* (2018) 20 Cal.App.5th 77, 98, 110-116
2 (“*Lawson*”), the Fifth District Court of Appeal, in upholding Judge Snauffer’s judgment, found
3 both that CARB “violated CEQA by approving a project too early” and that it also violated the
4 APA. The Court explained the economic impact assessment requirements of the APA
5 “granularly” to provide guidance to CARB for future actions and underscored that “an agency’s
6 decision to include non-APA compliant interpretations of legal principles in its regulations will
7 not result in additional deference to the agency”, because to give weight or deference to an
8 improperly-adopted regulation “would permit an agency to flout the APA by penalizing those
9 who were entitled to notice and opportunity to be heard but received neither.” *Id.* at 113. Despite
10 these recent warnings, CARB has chosen to proceed without complying with CEQA or the APA.

11 249. CARB’s use of the improper “cumulative gap” methodology to determine the
12 GHG reductions it claims are necessary for the 2017 Scoping Plan to meet the 2030 Target means
13 that the inputs for the CARB FA were improper. The FA, which is supposed to inform
14 policymakers and the public about the cost-effectiveness and equity of the Scoping Plan
15 measures, is based on meeting the 621 MMTCO_{2e} GHG “cumulative gap” reduction requirement
16 invented by CARB.

17 250. In fact, the final FA adopted by CARB indicates that an earlier version was based
18 on the asserted “need” to fill an even larger “cumulative gap” of 680 MMTCO_{2e}. This improper
19 analysis renders the FA and the cost analysis required under the APA invalid.

20 **G. The Blatantly Discriminatory Impacts of CARB’s 2017 Scoping Plan**

21 251. CARB has recognized that “[i]t is critical that communities of color, low-income
22 communities, or both, receive the benefits of the cleaner economy growing in California,
23 including its environmental and economic benefits.” Scoping Plan, p. 15.

24 252. The GWSA specifically provides, at H&S Code § 38565, that: “The state board
25 shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms,
26 and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and
27 private investment toward the most disadvantaged communities in California and provide an
28 opportunity for small businesses, schools, affordable housing associations, and other community

1 institutions to participate in and benefit from statewide efforts to reduce greenhouse gas
2 emissions.”

3 253. CARB’s standards, rules, and regulations also must, by statute, be consistent with
4 the state goal of providing a decent home and suitable living environment for every Californian.
5 H&S Code § 39601(c). This includes affordable housing near jobs for hard working, low-income
6 minority families.

7 254. California produces less than one percent of global GHG emissions, and has lower
8 per capita GHG emissions than any other large state except New York, which unlike California
9 still has multiple operating nuclear power plants to reduce its GHG emissions.¹¹⁴

10 255. As Governor Brown and many others have recognized, California’s climate
11 change leadership depends not on further mass reductions of the one percent of global GHG
12 emissions generated within California, but instead on having other states and nations persuaded to
13 follow the example already set by California.

14 256. In any event, as recently demonstrated in a joint study completed by scholars from
15 the University of California at Berkeley and regulators at the Bay Area Air Quality Management
16 District (“BAAQMD”)¹¹⁵, high wealth households cause far more global GHG emissions than
17 middle-class and poor households. The Scoping Plan ignores this undisputed scientific fact and
18 unfairly, and unlawfully, seeks to burden California’s minority and middle-class households in
19 need of affordable housing with new regulatory costs and burdens that do not affect existing,
20 wealthier homeowners who “already have theirs”.

21 257. California has the nation’s highest poverty rate, highest housing prices, greatest
22 housing shortage, highest homeless population—and highest number of billionaires.¹¹⁶ While it is

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24 ¹¹⁴ U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

25 ¹¹⁵ BAAQMD and Cool Climate Network at UC Berkeley, Consumption Based GHG Emissions
26 Inventory (2016), [http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-
based-ghg-emissions-inventory](http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-based-ghg-emissions-inventory).

27 ¹¹⁶ David Friedman, Jennifer Hernandez, California’s Social Priorities, Holland & Knight,
28 Chapman University Press (2015), <https://perma.cc/XKB7-4YK4>; Liana Fox, The Supplemental
Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21,
2017), <https://www.census.gov/library/publications/2017/demo/p60-261.html>.

1 not the function of the courts to address economic inequalities, the federal and state Constitutions
2 prohibit the State from enacting regulatory provisions that have the inevitable effect of
3 unnecessarily and disproportionately disadvantaging minority groups by depriving them of access
4 to affordable housing that would be available in greater quantity but for CARB’s new GHG
5 Housing Measures.

6 258. Members of hard working minority families, in contrast to wealthier white elites,
7 currently are forced to “drive until they qualify” for housing they can afford to own, or even
8 rent.¹¹⁷ As a result, long-commute minority workers and their families then suffer a cascading
9 series of adverse health, educational and financial consequences.¹¹⁸

10 259. It is well-documented and undisputed, in the record that the current housing
11 shortage—which CARB’s regulations would unnecessarily exacerbate—falls disproportionately
12 on minorities. As stated in a United Way Study, “Struggling to Get By: The Real Cost Measure in
13 California 2015”¹¹⁹: “Households led by people of color, particularly Latinos, disproportionately
14 are likely to have inadequate incomes. Half (51%) of Latino households have incomes below the
15 Real Cost Measure,¹²⁰ the highest among all racial groups. Two in five (40%) of African
16 American households have insufficient incomes, followed by other races/ethnicities (35%), Asian
17 Americans (28%) and white households (20%).” Put simply, approximately 80% of the poorest
18 households in the State are non-white families.

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21 ¹¹⁷ Mike McPhate, *California Today: The Rise of the Super Commuter*, N.Y. Times (Aug. 21,
22 2017), <https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html>;
23 Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*,
N.Y. Times (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html>.

24 ¹¹⁸ Rebecca Smith, Here’s the impact long commutes have on your health and productivity,
25 *Business Insider* (May 22, 2017), <http://www.businessinsider.com/long-commutes-have-an-impact-on-health-and-productivity-2017-5>.

26 ¹¹⁹ Betsy Block et al, *Struggling to Get By: The Real Cost Measure in California 2015* (2016), p.
27 10,
28 https://www.norcalunitedway.org/sites/norcalunitedway.org/files/Struggling_to_Get_By_3.pdf.

¹²⁰ The United Way study uses the “Real Cost Measure” to take account of a family budget to
meet basic needs, composed of “costs all families must address such as food, housing,
transportation, child care, out-of-pocket health expenses, and taxes.” *Id.*, p. 8.

1 260. As noted in the same report: “Housing costs can consume almost all of a
2 struggling household’s income. According to Census Bureau data, housing (rent, mortgage,
3 gas/electric) makes up 41% of household expenses in California. . . . Households living above the
4 Federal Poverty Level but below the Real Cost Measure spend almost half of their income on rent
5 (and more in many areas), and households below the Federal Poverty Level, however, report
6 spending 80% of their income on housing, a staggering amount that leaves precious little room
7 for food, clothing and other basics of life.” *Id.*, p. 65.¹²¹

8 261. As further documented in the United Way report presented to CARB:
9 “Recognizing that households of all kinds throughout the state are struggling should not obscure
10 one basic fact: race matters. Throughout *Struggling to Get By*, we observe that people of Latino
11 or African American backgrounds (and to a lesser extent Asian American ones) are less likely to
12 meet the Real Cost Measure than are white households, even when the families compared share
13 levels of education, employment backgrounds, or family structures. While all families face
14 challenges in making ends meet, these numbers indicate that families of color face more obstacles
15 in attempting to achieve economic security.”¹²²

16 262. Against this background, CARB’s new GHG Housing Measures, which
17 disproportionately harm housing-deprived minorities while not materially advancing the cause of
18 GHG reductions, cannot be justified. CARB’s new GHG Housing Measures, facially and as
19 applied to the housing sector in particular, are not supported by sound scientific analysis and are
20 in fact counterproductive. CARB’s new GHG Housing Measures establish presumptive legal
21 standards under CEQA that currently impose, as a matter of law, costly new mitigation
22 obligations that apply only to housing projects proposed now and in the future to meet
23

24 ¹²¹ In addition, family wealth of homeowners has increased in relation to family wealth of renters
25 over time and a homeowners’ net worth is 36 times greater than a renters’ net worth. Jesse
26 Bricker, et al., *Changes in US Family Finances from 2010 to 2013: Evidence from the Survey of
Consumer Finances*, 100 Fed. Reg. Bull. 4 (Sept. 2014),
<https://www.federalreserve.gov/pubs/bulletin/2014/articles/scf/scf.htm>.

27 ¹²² *Id.* p. 75. Studies predict that the 2014-2016 dataset will show a wealth differential between
28 homeowners and renters of 45 times. Lawrence Yun, *How Do Homeowners Accumulate Wealth?*,
Forbes (Oct. 14, 2015), [https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-
homeowners-accumulate-wealth/#7eabbecd1e4b](https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-homeowners-accumulate-wealth/#7eabbecd1e4b).

1 California’s current shortfall of more than three million homes that experts and the Governor-
2 elect agree are needed to meet current housing needs. Two specific examples are provided below.

3 263. By establishing a new “net zero” GHG CEQA significance threshold for all new
4 projects, CARB has created a new legal obligation for such new projects to “mitigate” to a “less
5 than significant” level all such GHG impacts. The California Air Pollution Control Officers
6 Association (“CAPCOA”), which consists of the top executives of all of the local and regional air
7 districts in California, has developed a well-established model for calculating GHG emissions
8 from such new projects called The California Emissions Estimator Model (“CalEEMod”).¹²³ This
9 model is in widespread use throughout the state, and has been determined by the California
10 Supreme Court to be a valid basis for estimating GHG emissions from residential projects for
11 purposes of CEQA. *Newhall*, supra, 62 Cal.4th at 217-218.

12 264. CalEEMod calculates GHG emissions for 63 different types of development
13 projects, including multiple types of residential projects. The scientific and legal framework of
14 CalEEMod is the foundational assumption that all GHG project emissions are “new” and would
15 not occur if the proposed project was not approved or built.

16 265. Within this overall framework, CalEEMod identifies GHG emissions that occur
17 during construction (e.g., from construction vehicles and construction worker vehicular trips to
18 and from the project site), and during ongoing project occupancy by new residents. GHG
19 occupancy or “operational” emissions include GHG emissions from offsite electricity produced to
20 serve the project, from onsite emissions of GHG from natural gas appliances, from on- and off-
21 site GHG emissions associated with providing drinking water and sewage treatment services to
22 the project, from vegetation removal and planting, and from vehicular use by project occupants
23 on an ongoing basis. *See, e.g.*, Appendix A of CalEEMod¹²⁴; South Coast Air Quality
24 Management District User’s Guide to CalEEMod¹²⁵.

25 ¹²³ Available at: <http://www.caleemod.com/>.

26 ¹²⁴ CalEEMod Appendix A: Calculation Details for CalEEMod, available at:
27 <http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf>.

28 ¹²⁵ CalEEMod User’s Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

1 266. Under the CalEEMod CEQA compliance framework, if the project does not occur
2 then the GHG emissions do not occur—notwithstanding the practical and obvious fact that people
3 who cannot live in new housing they can afford must still live somewhere, where they will still
4 engage in basic activities like consuming electricity, drinking water, and driving cars.

5 267. Under CEQA, a “significant” environmental impact is required to be “mitigated”
6 by measures that avoid or reduce the significance of that impact by all “feasible” means. Pub.
7 Res. Code § 21102. The CEQA Guidelines define “feasible” as “capable of being accomplished
8 in a successful manner within a reasonable period of time, taking into account economic,
9 environmental, legal , social and technological factors.” 14 C.C.R. § 15364.

10 268. The first of two examples of immediate and ongoing harm relates to the increased
11 cost of housing caused by the “net zero” threshold. Before the 2017 Scoping Plan was approved,
12 no agency or court had ever required a “net zero” GHG threshold. The only example of a
13 residential project that met this target involved a voluntary commitment by the project applicant
14 to a “net zero” project, in which 49% of the project’s GHG emissions were “offset” by GHG
15 reductions to be achieved elsewhere (e.g., funding the purchase of cleaner cook stoves in Africa)
16 and paid for by higher project costs.

17 269. There is no dispute that funding these types of GHG reduction measures
18 somewhere on Earth is “feasible” taking into account three of CEQA’s five “feasibility” factors
19 (environmental, social and technological). With housing costs already nearly three times higher in
20 California than other states, home ownership rates far lower, and housing-induced poverty rates
21 the highest in the nation, it remains possible – in theory – to demonstrate that in the context of a
22 given housing project, adding \$15,000-\$30,000 more to the price of a home to fund the purchase
23 of cleaner cook stoves in Africa, for example, would not be “legally” or “economically” feasible.

24 270. This theoretical possibility of demonstrating that any particular mitigation cost
25 results in “economic infeasibility” has not succeeded, however, for any housing project in the
26 nearly-50 year history of CEQA. A lead agency decision that a mitigation measure is infeasible
27 must be supported by substantial evidence in the record—effectively the burden is placed on the
28 project applicant to prove this latest “net zero” increment of mitigation costs is simply too

1 expensive and will make the project “infeasible.” No court has found that a housing project has
2 met this burden. *See, e.g., Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th
3 587. Further, this infeasibility evaluation applies to the applicant for the housing project, not
4 prospective future residents—simply raising housing prices affordable only to wealthier buyers.

5 271. The CEQA mitigation criterion of legal infeasibility is likewise illusory when
6 applied to the GHG mitigation measures required to achieve a “net zero” significance threshold.
7 Although there is some judicial precedent recognizing that lead agencies cannot impose CEQA
8 mitigation obligations outside their jurisdictional boundaries (e.g. in adjacent local jurisdictions),
9 this precedent—like OPR’s definitive regulatory conclusion that CEQA cannot be used to impose
10 a “net zero” threshold even and specifically within the context of GHG—is directly challenged by
11 the 2017 Scoping Plan, which cited with approval the one “net zero” GHG residential project that
12 relied in part on offsite (off-continent) GHG reduction measures.

13 272. This “legal infeasibility” burden of proof also is extremely high under CEQA. For
14 example, the California Supreme Court considered in *City of San Diego, et al. v. Board of*
15 *Trustees of California State University* (2015) 61 Cal.4th 945, the University’s “economic
16 infeasibility” argument in relation to making very substantial transfer payments to local
17 government to help fund local highway and transit infrastructure, which would be used in part by
18 the growing student, faculty and staff for the San Diego campus. Although the Court
19 acknowledged that the Trustees had expressly requested, and been denied, funding by the
20 Legislature to help pay for these local transportation projects, the Court did not agree this was
21 adequate to establish economic infeasibility under CEQA since the Trustees could have sought
22 alumni donations or funding from other sources, or elected to stop accommodating new students
23 in San Diego and instead grown other campuses with potentially lower costs. When CARB’s
24 “net zero” GHG measures are coupled with the “legal infeasibility” burden of proof, the result is a
25 legal morass that frustrates the efforts of local governments to implement the Legislature’s pro-
26 housing laws and policies, to the detriment of under-housed minorities, including Petitioners.

27 273. The second example of immediate and ongoing harm is CARB’s direct
28 intervention in projects already in CEQA litigation by opining on the acceptable CEQA

1 mitigation for GHG emissions from fuel use, which typically create the majority of GHG
2 emissions from new housing projects. In a long series of evolving regulations including most
3 recently the 2018 adoption of new residential Building Code standards¹²⁶, and in compliance with
4 the consumer protection and cost-effectiveness standards required for imposing new residential
5 Building Code requirements established by the Legislature (Pub. Resources Code §§
6 25402(b)(3), (c)(1); 25943(c)(5)(B)), California law requires new residences to be better
7 insulated, use less electricity, install the most efficient appliances, use far less water (especially
8 for outdoor irrigation), generate electricity (from rooftop solar or an acceptable alternative), and
9 transition to future electric vehicles. These and similar measures have substantially reduced the
10 GHG emissions from ongoing occupancy of new housing.

11 274. Under the CalEEMod methodology, however, gasoline and hybrid cars used by
12 new residents are also counted as “new” GHG emissions attributed to that housing project – and
13 these vehicular GHG emissions now account for the vast majority of a typical housing project’s
14 GHG emissions.¹²⁷

15 275. In 2017, the Legislature expanded its landmark “Cap and Trade” program
16 establishing a comprehensive approach for transitioning from fossil fuels to electric or other zero
17 GHG emission technologies, which already includes a “wells to wheels” program for taxing oil
18 and natural gas extraction, refinement, and ultimate consumer use.¹²⁸ CARB has explained that
19 the Cap and Trade Program requires fuel suppliers to reduce GHG emissions by supplying low
20

21 ¹²⁶ See California Building Standards Commission, 2018 Triennial Code Adoption Cycle,
22 available at:
23 <http://www.bsc.ca.gov/Rulemaking/adoptcycle/2018TriennialCodeAdoptionCycle.aspx>. See also
24 California Energy Code, California Code of Regulations, Title 24, Part 6; Building Energy
25 Efficiency Standards (2019 update).

26 ¹²⁷ In the Northlake project challenged in a comment letter citing noncompliance with the 2017
27 Scoping Plan discussed *supra* ¶ 42, for example, total project GHG emissions after mitigation
28 were 56,722 metric tons, of which mobile sources from vehicles comprised 53,863 metric tons.
Los Angeles County, Draft Supplemental EIR (May 2017), Table 5.7-3 (p. 5.7-26), available at
https://scvhistory.com/scvhistory/files/northlakehills_deir_0517/northlakehills_deir_0517.pdf

¹²⁸ A.B. 398, 2017 (California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption).

1 carbon fuels or purchasing allowances to cover the GHG emissions produced when the
2 conventional petroleum-based fuels they supply are burned.

3 276. Specifically, as part of the formal rulemaking process for the Cap and Trade
4 Legislation, CARB staff explained in its *Initial Statement of Reasons for the Proposed Regulation*
5 *to Implement the California Cap and Trade Program*, that:

6 To cover the emissions from transportation fuel combustion and that of other fuels by
7 residential, commercial, and small industrial sources, staff proposes to regulate fuel
8 suppliers based on the quantities of fuel consumed by their customers. ... Fuel suppliers
9 are responsible for the emissions resulting from the fuel they supply. In this way, a fuel
10 supplier is acting on behalf of its customers who are emitting the GHGs ... Suppliers of
11 transportation fuels will have a compliance obligation for the combustion of emissions
12 from fuel that they sell, distribute, or otherwise transfer for consumption in California. ...
13 [B]ecause transportation fuels and use of natural gas by residential and commercial users
14 is a significant portion of California’s overall GHG emissions, ***the emissions from these***
15 ***sources are covered indirectly through the inclusion of fuel distributors [in the Cap and***
16 ***Trade program].***”(emphasis added).¹²⁹

17 277. CARB’s express recognition of the fact that the Cap and Trade program “covers”
18 emissions from the consumption of fossil fuels in the Cap and Trade regulatory approval process,
19 in marked contrast with the challenged Housing Measures in the 2017 Scoping Plan, was subject
20 to its own comprehensive environmental and economic analysis – which in no way disclosed,
21 analyzed, or assessed the impacts of forcing residents of new housing to pay for GHG emission
22 reductions from their fossil fuel uses at the pump (and in electricity bills) like their already-
23 housed neighbors, and then paying *again – double-paying* – in the form extra GHG mitigation
24 measures for the *same emissions*, resulting in higher housing costs.

25 278. The 2017 Scoping Plan likewise entirely omitted any analysis of the double-
26 charging of residents of new homes for GHG emissions from the three million new homes the
27 state needs to build to solve the housing crisis. Simply put, CARB should not now be permitted
28 to use what purports to be only an “advisory” 2017 Scoping Plan to disavow and undermine its

29 ¹²⁹ CARB. October 2011. California’s Cap-And-Trade Program Final Statement of Reasons, p. 2:
30 <https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf>; (incorporating by reference CARB.
31 October 28, 2010. Staff Report: *Initial Statement of Reasons for the Proposed Regulation to*
32 *Implement the California Cap-and-Trade Program Part 1, Vol. 1*, pp. II-10, II-20, II-21, 11-53:
33 <https://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf>)

1 formal rulemaking statement for the Cap and Trade regulations, nor can CARB use this asserted
2 “advisory” document to invent the new CEQA GHG mitigation mandates (and preclude use of
3 Cap and Trade as CEQA mitigation) without going through a new regulatory process to amend its
4 Cap and Trade program.

5 279. Whether compliance with Cap and Trade for fossil fuels used to generate
6 electricity or power cars used by a particular project is an adequate mitigation measure for GHG
7 under CEQA has been hotly contested in past and pending CEQA lawsuits. In *Newhall, supra*, 62
8 Cal.4th 204, one of the approved GHG compliance pathways for CEQA identified by the Court
9 was compliance with applicable laws and regulations. That case was extensively briefed by
10 numerous advocates (*see* Opening Brief on the Merits, *Center for Biological Diversity v.*
11 *California Department of Fish and Game* (2015) 62 Cal.4th 204 (No. 5-S217763), and
12 Consolidated Reply Brief, *Center for Biological Diversity v. California Department of Fish and*
13 *Game*, (2015) 62 Cal.4th 204 (No. 9-S217763), which urged the Court to conclude as a matter of
14 law that CEQA requires “additive” mitigation beyond what is otherwise required to comply with
15 applicable environmental, health and safety laws.

16 280. Neither the appellate courts nor Supreme Court have imposed this novel
17 interpretation of the GHG mandates imposed by CEQA as a newly discovered legal requirement
18 lurking within this 1970 statute. As noted above, the Supreme Court declined to do so by
19 expressly recognizing that compliance with law was one of several compliance “pathways” for
20 addressing GHG impacts under CEQA. (*Newhall, supra*, 62 Cal.4th at 229). (*See also, Center for*
21 *Biological Diversity et al. v. Department of Fish and Game* (2014) 224 Cal.App.4th 1105.)¹³⁰

22 281. Consistent with this Supreme Court directive, and informed by both the
23 Legislative history of the Cap and Trade program and by CARB’s contemporaneous explanation
24 that compliance with Cap and Trade is indeed the sole GHG mitigation required for fossil fuel
25 use, several projects have mitigated GHG emissions from fossil fuel by relying on the legislated,
26

27 ¹³⁰ This appellate court decision, which was reversed and remanded by the Supreme Court
28 decision in the same case, is cited as evidence for the proposition that what constitutes adequate
mitigation for GHG impacts under CEQA has been hotly contested in the courts.

1 and regulated, Cap and Trade program and similar legislative as well as regulatory mandates to
2 reduce GHG emissions from fossil fuel. This has been accomplished through measures such as
3 the Low Carbon Fuel Standards, which collectively and comprehensively mandate prescribed
4 reductions in GHG emissions from fossil fuel use.

5 282. This approach has been expressly upheld by the Fifth District Court of Appeal in
6 *Association of Irrigated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708
7 (“AIR”). Although the project at issue was a refinery source that was itself clearly included within
8 the category of industrial operations directly regulated by the Cap and Trade Program, opponents
9 challenged that project’s reliance on the Cap and Trade program for non-refining GHG emissions
10 such as GHG emissions produced offsite by the electricity producers that provided power to the
11 consumer power grid, and by vehicles used by contractors and employees engaged in refinery
12 construction and operational activities. *See, e.g.,* Appellants’ Opening Brief, *AIR*, *5th Dist. Case
13 No. F073892 (December 9, 2016) at 29 (arguing that “[c]ap-and-trade does not apply to
14 greenhouse gas emissions from trains, trucks, and building construction”) and at 34-35
15 (arguing that participation in the cap and trade program is inadequate mitigation for project
16 emissions). The CEQA lead agency and respondent project applicant argued that reliance on Cap
17 and Trade as CEQA mitigation was lawful and sufficient under CEQA. *See* Joint Respondents’
18 Brief, *AIR*, 5th Dist. Case No. F073892 (March 10, 2017), at 52-56 (arguing that “The EIR
19 Properly Incorporated GHG Emission Reductions Resulting From Cap-and-Trade In The
20 Environmental Analysis”).

21 283. The Fifth District concluded that compliance with the Cap and Trade program for
22 the challenged project were adequate CEQA GHG mitigation. That case was then unsuccessfully
23 challenged, and unsuccessfully petitioned for depublication, by numerous advocates that
24 continued to assert that CEQA imposes an “additive” GHG mitigation obligation that could not
25 be met by paying the higher fuel costs imposed by the Cap and Trade program.¹³¹

26
27 ¹³¹ *See* Letter from CARB to City of Moreno Valley regarding Final Environmental Impact
28 Report for World Logistics Center, available at:
<https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf>.

1 284. California already has the highest gasoline prices of any state other than Hawaii.
2 CARB has consistently declined to disclose how much gasoline and diesel prices would increase
3 under the 2017 Cap and Trade legislation. The non-partisan LAO completed an independent
4 analysis of this question, and in 2017 concluded that under some scenarios, gasoline would
5 increase by about 15¢ per gallon – and in others by about 73¢ per gallon. The LAO also noted
6 that these estimated increases in gasoline prices “are an intentional design feature of the
7 program.”¹³²

8 285. By using CEQA mitigation mandates created by the Scoping Plan to require only
9 the disproportionately minority occupants of critically needed future housing to double-pay (both
10 at the pump and in the form of higher housing costs imposed as a result of CEQA mitigation for
11 the same fuel consumption), CARB has established a disparate new financial burden that is
12 entirely avoided by those generally whiter, wealthier, and older Californians who have the good
13 fortune of already occupying a home.

14 286. Both CARB and the Attorney General have acted in bad faith, and unlawfully, in
15 their public description of and subsequent conduct regarding the immediate effectiveness and
16 enforcement of the 2017 Scoping Plan.

17 287. First, in a written staff report distributed at the December 17, 2017 hearing at
18 which the CARB Board approved the Scoping Plan, CARB staff misled the public and its Board
19 by pretending that the challenged Housing Measures are simply not part of the Scoping Plan at
20 all, and thus need not be considered as part of the environmental or economic study CARB was
21 required to complete as part of the Scoping Plan approval process. This assertion flatly
22 contradicted an earlier description of the immediately-implementing status of these Housing
23 Measures made in a public presentation by a senior CARB executive.

24 288. Next, the Attorney General repeatedly advised this Court that the challenged
25 Housing Measures were merely “advisory” and explained “the expectation that new measures
26 proposed in the [Scoping] plan would be implemented through subsequent legislation or
27

28 ¹³² LAO, <https://lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf>.

1 regulations.” (Memorandum of Points and Authorities in Support of Demurrer to Plaintiff’s
2 Verified Petition for Writ of Mandate, Case No. 18-CECG-01494 (August 31, 2018), p. 8:18-19
3 (“AG Memo”). The AG Memo argued that the disparate harms caused by such measures are not
4 ripe because such subsequent implementing legislative or regulatory actions “have yet to be
5 taken” (Reply Memorandum in Support of Defendants California Air Resources Board and
6 Richard Corey’s Demurrer to Plaintiffs’ Verified Petition for Writ of Mandate *etc.*, Case No. 18-
7 CECG-01494(October 16, 2018), p. 2:6-7 (“AG Reply Memo”), and that Petitioners’ assertions
8 that the challenged Housing Measures would result in litigation disputes aimed at stopping or
9 increasing the cost of housing was “wildly speculative” (AG Memo, p. 10:7). Further the
10 Attorney General argued that the 2017 Scoping Plan “cannot be reasonably viewed as providing a
11 valid basis for filing suit under CEQA.” (AG Memo, p. 14:15) The same arguments were
12 advanced in this Court’s hearing on October 26, 2018.

13 289. Meanwhile, however, and virtually simultaneously with making contrary
14 assertions to this Court, both the Attorney General and CARB were filing comment letters
15 (precedent to CEQA lawsuits), and the Attorney General filed an amicus brief in a CEQA lawsuit,
16 to challenge the legality of a CEQA lead agency’s mitigation measure (in one case) and proposed
17 General Plan element approval (in another case) *based on alleged failure to comply with*
18 *applicable Housing Measures in the Scoping Plan.*

19 290. CARB’s (and the Attorney General’s) claims that the 2017 Scoping Plan is merely
20 “advisory” and that its future effects are merely “speculative” (as well as its express denial at
21 the December 2017 hearing on the 2017 Scoping Plan that the four challenged GHG Housing
22 Measures are even part of the Plan), have been belied by the actual use of the 2017 Scoping Plan
23 by CARB and the Attorney General themselves, as well as by third party agencies and anti-
24 housing project CEQA litigants. Among the recent examples of the use of the Scoping Plan are
25 the following:

- 26 A. **CARB September 7, 2018 Comment Letter:** Before even completing its
27 Demurrer briefing to this Court, on September 7, 2018, CARB filed a comment
28 letter criticizing the revised Final Environmental Impact Report for the World

1 Logistics Center project. A copy of this letter can be found at
2 <https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf>. CARB’s comment
3 letter opines that as an absolute and unambiguous matter of law, compliance with
4 the Cap and Trade program is not a permissible mitigation under CEQA. CARB’s
5 comment dismisses as “novel” the contention that compliance with laws and
6 regulations requiring reductions in GHG can be, and is in fact, a permissible and
7 legally sufficient mitigation measure under CEQA. Strikingly, CARB’s letter
8 simply ignores the *Newhall* decision. As for the Fifth District’s on-point decision
9 in *AIR*, CARB’s letter states (at p. 11, note 23) that, “[i]n CARB’s view this case
10 was wrongly decided as to the Cap-and-Trade issue” Thus, CARB in its
11 public comments is urging permitting agencies to *disregard* court decisions on
12 GHG issues and instead to follow CARB’s supposedly “advisory” Scoping Plan
13 policies, which it cites extensively . This type of CEQA “expert agency” letter can
14 be used by the agency itself, if it chooses to file a lawsuit against an agency
15 approving a project in alleged noncompliance with CEQA, or it can be used for its
16 evidentiary value (and expert agency opinions are presumptively entitled to greater
17 deference) by any other third party filing a CEQA lawsuit against that project, or
18 even in another lawsuit raising similar issues provided that the CARB comment
19 letter is submitted in the agency proceeding that is targeted by such second and
20 subsequent lawsuits.

21 B. **Attorney General’s September 7, 2018 Comment Letter:** Also on September 7,
22 2018, the Attorney General (“AG”) joined CARB in criticizing the World
23 Logistics Project’s GHG analysis in a comment letter that prominently featured the
24 2017 Scoping Plan. A copy of this letter can be found at
25 [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf)
26 [sections-feir.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf). Like CARB, the AG relied on the Scoping Plan to measure the
27 adequacy of GHG measures under CEQA. Also like CARB, the AG sought to
28 sidestep the Fifth District’s *AIR* decision, but did so “[w]ithout commenting on

1 whether or not that case was rightly decided” in the AG’s opinion (p. 6). The
2 Attorney General’s comment letter relies on the 2017 Scoping Plan in opining that
3 “CEQA requires” the CEQA lead agency to “evaluate the consistency of the
4 Project’s substantial increases in GHG emissions with state and regional plans and
5 policies calling for a dramatic reduction in GHG emissions” The AG goes on to
6 conclude that the lead agency engaged in a “failure to properly mitigate” impacts
7 as required by CEQA because the project’s “increase in GHG emissions conflicts
8 with the downward trajectory for GHG emissions necessary to achieve state
9 climate goals.” The AG again cites the 2017 Scoping Plan text in explaining that,
10 unless they mandate CEQA GHG mitigation measures that go beyond compliance
11 with applicable GHG reduction laws and regulations, “local governments would
12 . . . not be doing their part to help the State reach its ambitious, yet necessary,
13 climate goals.” [AG letter at p. 7-11]

14 C. **Attorney General’s November 8, 2018 Amicus Filing:** A third example is
15 provided by the AG’s November 8, 2018 filing of an “Ex Parte Application of
16 People of the State of California for Leave to File Amicus Curiae Brief in Support
17 of Petitioners” in *Sierra Club, et al. v. County of San Diego* (Nov. 8, 2018) No. 37-
18 2018-00014081-CU-TT-CTL (San Diego Superior Court). A true copy of this Ex
19 Parte Application and accompanying AG memorandum is attached hereto as
20 **Exhibit 1**. A copy of the underlying Sierra Club petition, into which the AG has
21 sought to inject the Scoping Plan, is attached hereto as **Exhibit 2**. In the amicus
22 filing (Exhibit 1), the Attorney General asserts that he “has a special role in
23 ensuring compliance with CEQA”, and that he “has actively participated in CEQA
24 matters raising issues of greenhouse gas (“GHG”) emissions and climate change.”
25 (Application at 3:16, 24-25.) The challenged San Diego County Climate Action
26 Plan actually includes and requires implementation of the 2017 Scoping Plan’s
27 “recommended” Net Zero GHG CEQA threshold for new projects, but was
28 nevertheless challenged in this lawsuit the grounds that it did not also mandate a

1 reduction in Vehicle Miles Traveled because it allowed the County to approve new
2 housing projects that fully mitigated (“Net Zero GHG”) all GHG emissions but
3 still resulted in an increase in VMT from residents living in this critically needed
4 new housing. Petitioners in the consolidated proceedings in this case have claimed
5 that based on the state’s climate laws including the 2017 Scoping Plan, the County
6 could not lawfully approve any amendment to its General Plan to accommodate
7 any of the state’s three million home shortfall unless such housing was higher
8 density (e.g., apartments) and located inside or immediately adjacent to existing
9 urban areas served by transit, because only that type of housing and location could
10 result in the required reduction in VMT. Petitioners in these cases further
11 identified the pending housing projects they believed could not be approved by the
12 County. Petitioners sought (and obtained) injunctive relief to prevent such
13 housing projects from relying on this “Net Zero” GHG Climate Action Plan as
14 allowed by one of the CEQA compliance pathways identified by the Supreme
15 Court in its *Newhall* decision, and identified by the Legislature itself in CEQA
16 compliance provisions set forth in SB 375. In his amicus brief, the Attorney
17 General repeatedly cites CARB’s 2017 Scoping Plan as the legal basis for a new
18 mandate that allegedly prohibits San Diego County (and all other counties) from
19 meeting any part of the housing shortfall with more traditional homes (e.g., small
20 “starter” homes and duplexes, which cost less than a third to build than higher
21 density apartment units), or from locating these new homes anywhere other than
22 an existing developed city or unincorporated community. The Attorney General
23 also falsely argues that VMT reductions are mandated by other state laws;
24 however, no law enacted by the California Legislature mandates any VMT
25 reduction, and the Legislature has repeatedly rejected enacting such a mandate.¹³³

27 ¹³³ The Attorney General further argues that VMT reductions are required by SB 375,
28 which is designed to reduce GHG (not VMT) with land use and transportation plans, even
though SB 375 specifically directs CARB to develop compliance metrics and CARB has

1 291. CARB cannot have it both ways: it cannot coyly claim that the 2017 Scoping Plan
2 is merely “advisory” and then fire into the end of a second round of CEQA documentation for a
3 single project a new legal conclusion that upends the published judicial precedents of our courts.
4 The AG similarly cannot assure this Court that it is “wildly speculative” for a CEQA lawsuit to be
5 filed in reliance on the challenged measures in the 2017 Scoping Plan, and then six days later file
6 an amicus in a CEQA lawsuit that does just that. If CARB wants to change Cap and Trade laws
7 and regulations, and other GHG reduction laws and regulations applicable to fossil fuels, to make
8 those not already fortunate enough to have housing pay both at the pump, and in their down-
9 payment/mortgage and rent check, for “additive” GHG reductions above and beyond what their
10 more fortunate, generally whiter, wealthier and older well-housed residents have to pay, then that
11 is first and foremost a new mandate that can only be imposed by the Legislature given direct court
12 precedent on this issue.

13 292. If such a mandate were proposed by the Legislature, a full and transparent debate
14 about the disparate harms such a proposal would confirm that those most affected by the housing
15 crisis, including disproportionately our minority communities, would suffer the equivalent of yet
16 another gasoline tax on those least able to pay, and most in need of new housing. Petitioners are
17 confident that the Legislature would not approve such a proposal.

18 293. Even these few examples of direct CARB and Attorney General implementation
19 actions of the 2017 Scoping Plan to require more mitigation or block new housing demonstrate
20 the immediate and ongoing harm of the 2017 Scoping Plan’s challenged Housing Measures,
21 which CARB and the Attorney General have opined impose higher CEQA “mitigation” costs on
22 housing under a “net zero” GHG mitigation framework, and block otherwise lawful new housing
23 altogether under the Scoping Plan’s “VMT reduction” framework. The harms caused by these
24 Housing Measures is not “wildly speculative”— they are already underway. They already
25 disproportionately affect California minority communities not already blessed with wealth and
26

27 itself repeatedly declined to require VMT reduction compliance metrics under SB 37 as
28 late as December of 2017 and March of 2018.

1 homeownership, and they are already the subject of both administrative and judicial proceedings.
2 They are properly and timely before this Court. The following paragraphs provide additional
3 evidence of ripeness in the context of the three other challenged Housing Measures, beyond the
4 “Net Zero” GHG threshold and corresponding mitigation mandates described above.

5 294. The 2017 Scoping Plan’s new numeric thresholds for local climate action plans
6 present similarly immediate and ongoing harms to Petitioner/Plaintiffs. In its *Newhall* decision,
7 the California Supreme Court concluded that one of the “pathways” for CEQA compliance was
8 designing projects that complied with a local Climate Action Plan (“CAP”) having the then-
9 applicable GHG statutory reduction mandate of reducing GHG emissions to 1990 levels by 2020.

10 295. Housing projects that complied with a local CAP had been duly approved by the
11 same local governments responsible for planning and approving adequate housing for our
12 minority communities. This provided a judicially streamlined pathway for GHG CEQA
13 compliance for housing. Local CAPs include community-scale GHG reduction strategies such as
14 pedestrian, bicycle and transit improvements that are beyond the ability of any single housing
15 project to invent or fully fund, and thus CAP compliance is a known and legally-defensible
16 CEQA GHG compliance pathway. The Scoping Plan destroyed that pathway, and accordingly
17 caused and is causing immediate harm to new housing projects that could otherwise rely on the
18 CAP compliance pathway for CEQA.

19 296. There is no statutory obligation for a city or county to adopt a CAP, nor are there
20 any regulations prescribing the required contents of a CAP; instead, a CAP’s primary legal
21 relevance to proposed new housing projects occurs within the CEQA compliance context.

22 297. There has been a flurry of unresolved and ongoing CEQA interpretative issues
23 with respect to CAPs that have been and remain pending in courtrooms throughout California.
24 For example, in the City of San Diego and the County of Sonoma, multi-year lawsuits have
25 resulted in two judicial decisions that make clear that any jurisdiction electing to voluntarily
26 approve a CAP must assure that the CAP has clear, adequate and enforceable measures to achieve
27 the GHG reduction metric included in the CAP. *See Sierra Club v. County of San Diego* (2014)
28 231 Cal.App.4th 1152; *California Riverwatch v. County of Sonoma* (July 20, 2017) Case No.

1 SCV-259242 (Superior Court for the County of Sonoma)¹³⁴; *see also Mission Bay Alliance, et. al.*
2 *v. Office of Community Investment and Infrastructure, et. al.* (2016) 6 Cal.App.5th 160
3 (upholding the adequacy of a CAP as CEQA compliance for a new professional sports facility).

4 298. The new numeric GHG per capita metric that the 2017 Scoping Plan prescribes as
5 the presumptively correct GHG reduction target for CAPs places the entire burden of achieving
6 the state’s legislated 40% reduction target by 2030, and the unlegislated 80% reduction target by
7 2050, on local governments, with for example a numeric GHG reduction target of 2 tons per
8 person per year by 2050. However, as the 2017 Scoping Plan itself makes clear, the vast majority
9 of GHG emissions derive from electric power generation, transportation, manufacturing, and
10 other sectors governed by legal standards, technologies, and economic drivers that fall well
11 beyond the land use jurisdiction and control of any local government. The Scoping Plan does not
12 even quantify the GHG reductions to be achieved by local governments, in their voluntary caps or
13 otherwise: it seeks to define and achieve the state’s GHG reduction mandates with measures
14 aimed at specific GHG emission sectors.

15 299. The 2018 San Diego County CAP, adopted after the County lost its first CEQA
16 lawsuit, adopts both CARB’s numeric GHG targets—and the mandate that new housing projects
17 entirely absorb the additional cost of fully offsetting GHG emissions in compliance with the “net
18 zero” standard by paying money to fund GHG reduction projects somewhere on earth. The San
19 Diego CAP both proves the immediacy of the disparate mitigation cost harms of the Scoping
20 Plan’s imposition of even higher costs to housing critically needed by California’s minority
21 communities, and provides a case study in the anti-housing legal morass created by the 2017
22 Scoping Plan’s ambiguous—and unexamined from an equity, environmental, economic
23 disclosure or public review process—new CEQA “net zero” threshold and CAP per capita
24 numeric standards.

25
26 _____
27 ¹³⁴ The trial court order in *California Riverwatch v. County of Sonoma* is cited herein as evidence
28 for the existence of CEQA litigation challenges to local climate action plans and not as legal
precedent. The order is available at: <http://transitionsonomavalley.org/wp-content/uploads/2017/07/Order-Granting-Writ-7-20-17.pdf>.

1 300. San Diego County faces its third round of CAP litigation (with the prior two
2 rounds still ongoing in various stages of judicial remand and review) in a lawsuit filed in 2018, in
3 which the same group of petitioners allege that the County again failed to include sufficient
4 mandatory measures to achieve the 2017 Scoping Plan per capita GHG reduction metric because
5 it continued to allow new housing to be built if offsetting GHG reductions were funded by the
6 housing project in or outside the County. A copy of one such lawsuit (consolidated with others)
7 is attached for reference as Exhibit 2. This lawsuit seeks a blanket, County-wide writ of mandate
8 that would block “processing of permits for development projects on unincorporated County
9 lands” unless these new housing-blocking measures are included. (See Exhibit 2 at p. 17:3-7.)
10 The petitioners in these consolidated cases against San Diego County have further made clear that
11 their ongoing objections to the County’s CAP were so severe that they had also been compelled
12 to file CEQA lawsuits *against individual housing projects*, and in their lawsuit, they have
13 included a list of nearly a dozen pending housing projects that in their judgment should not be
14 allowed to proceed. As described above, the Attorney General filed a request for leave to file an
15 amicus brief in this case, accompanied by an amicus brief. See Exhibit 1. Based on CARB’s
16 2017 Scoping Plan, the AG has sought to bolster to the petitioners’ anti-housing CEQA lawsuits,
17 including their claims that designated housing projects in unincorporated San Diego County
18 cannot lawfully be approved or built based on VMT impacts, even if all GHG impacts are
19 mitigated to “net zero.”

20 301. This CEQA morass of extraordinary GHG reduction costs imposed only on
21 residents of newly constructed housing, with still pending and unresolved CEQA lawsuit
22 challenges against the CAP and specific housing projects, for GHG reductions that are not even
23 quantified, let alone critical to California’s climate leadership, is itself an ample demonstration of
24 the disparate harms of CARB’s poorly-conceived and discriminatory GHG Housing Measures.

25 302. The Scoping Plan’s VMT reduction measure is likewise causing immediate,
26 ongoing, and disparate harm to California’s minority communities who are forced to drive ever-
27 greater distances to find housing they can afford to buy or rent. As in the case of local climate
28 action plans, there is no statewide statutory or regulatory mandate for reducing VMT. The

1 Legislature considered and rejected imposing a VMT reduction mandate, and CARB considered
2 and rejected imposing a VMT reduction mandate as part of the regional land use and
3 transportation planning mandated under SB 375 (first postponing its decision in December of
4 2017, at the same hearing CARB approved the Scoping Plan – and then definitively rejecting it in
5 March of 2018).

6 303. At these hearings, CARB was informed that VMT had increased in California
7 while transit utilization had fallen dramatically notwithstanding billions of dollars in new transit
8 system investments. VMT reduction thus could not appropriately be included as SB 375
9 compliance metrics and with increases in electric and high efficiency hybrid vehicles, the
10 correlation between VMT and GHG emissions is increasingly weak.

11 304. Even more than CARB’s other GHG Housing Measures, the VMT reduction
12 mandate is uniquely targeted to discriminate against minority workers. The American Community
13 Survey (“ACS”) is a project of the U.S. Census Bureau and tracks a wide range of data over
14 time—including the ethnicity, transportation mode, and times of California commuters. The ACS
15 data demonstrate that in the 10 year period between 2007 and 2016, 1,117,273 *more* Latino
16 workers drove to their jobs, 377,615 *more* Asian workers drove to their jobs, and 18,590 *more*
17 African American workers drove to their jobs.¹³⁵ During the same period, 447,063 *fewer* white
18 workers drove to their jobs. Transit utilization increased for white and Asian workers, but fell for
19 Latino and African American workers. During the same period, commute times lengthened
20 substantially as more people—again disproportionately minorities—were forced to commute
21 longer distances to housing they could afford.

22 305. By 2016, about 445,000 people in the Bay Area were commuting more than an
23 hour each direction—an increase of 75% over the 2006 count of long distance Bay Area
24 commuters. Anyone driving between the Bay Area and Central Valley during commute times
25 vividly experiences the gridlock conditions, adverse personal health (e.g., stress, high blood
26

27 ¹³⁵ David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate
28 Change, Holland & Knight, Chapman University Press (2018), Table 3.7, p. 84,
https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

1 pressure, back pain), and adverse family welfare (e.g., missed dinners, homework assistance, and
2 exhaustion) consequences of these commutes.

3 306. CARB (and the Attorney General) also have no support for their argument
4 disputing the fact that the challenged Housing Measures disproportionately affect minority
5 community members. As early as 2014, CARB received a comprehensive report from NextGen,
6 a firm closely aligned with the strongest supporters of California’s climate leadership, urging
7 CARB to restructure its electric car subsidy program, which was found to be disproportionately
8 benefitting those in Marin County and other wealthier and whiter areas that could afford to
9 purchase costly new electric vehicles. In “No Californian Left Behind,” Next Gen noted the
10 obvious: “the overwhelming majority of Californians still use cars to get to work,” including 77%
11 who commute alone and 12% who carpool. Further, “[i]n less densely developed and rural areas
12 like California’s San Joaquin Valley, commuters often have long distances to drive between
13 home, school, work and shopping; as a result, car ownership is often not a choice, but a
14 necessity.” Even more specifically, the report found that in Fresno County, even for workers
15 earning less than \$25,000, fewer than 3 percent of commuters take public transportation to work;
16 in Madera County, only 0.3% of low-income workers took transit, and the results were
17 comparable in in the rest of the San Joaquin Valley. Next Generation, *No Californian Left*
18 *Behind: Clean and Affordable Transportation Options for all through Vehicle Replacement*,
19 *http://www.thenextgeneration.org/files/No_Californian_Left_Behind_1.pdf (February 27, 2014)
20 at p. 9. NextGen advocated a restructured vehicle program designed to equitably retire and
21 replace the oldest most polluting cars, and to shift subsidy and incentive programs to help those
22 who are either low income or need rural transport to obtain cleaner, lower-GHG emitting cars.
23 (*Id.* p. 5) NextGext noted:

24 “California is already a leader in advanced and high tech transportation and transit
25 solutions. It is time we also became a leader in pragmatic solutions for a population that
26 is sometimes left behind in these discussions: non-urban, low-income, car-dependent
27 households.”
28

1 The VMT reduction mandate in the 2017 Scoping Plan was specifically identified as CARB was
2 fully on notice of the disparate harms caused to minority communities by its approach. In a
3 report submitted to CARB by the climate advocacy group NextGen in February 2014, CARB was
4 informed that Central Valley Latinos drive longer distances than any other ethnic group in any
5 other part of California—and live in communities and households with the highest poverty rates.

6 307. Notwithstanding CARB’s express acknowledgement in March of 2018 (and
7 preview in December of 2017) that even the regional transportation and housing plans required by
8 SB 375 cannot attain a VMT reduction target, CARB and its fellow “Vibrant Communities
9 Appendix” agencies, remain committed to using CEQA to require new projects—including
10 housing that is affordable and critically needed for California’s minority communities—to pay
11 higher costs to fund VMT reductions through CEQA.

12 308. As with the “net zero” GHG mitigation mandate, the immediate and ongoing effect
13 of this VMT reduction measure is to increase housing costs to even less affordable and attainable
14 levels for California’s minority communities.

15 309. Even before enactment of the 2017 Scoping Plan, OPR (the Vibrant Communities
16 agency that has the responsibility for adopting regulatory updates to CEQA) had been proposing
17 to regulate the act of driving a car (even an electric vehicle or carpool) one mile (one VMT) as a
18 new CEQA “impact” requiring “mitigation”— independent of whether the mile that was driven
19 actually caused any air quality, noise, GHG, safety, or other impacts to the physical environment.

20 310. This expansion of CEQA was prompted in 2013, when OPR was directed by the
21 Legislature in SB 743 to adopt a metric other than congestion-related traffic delay in transit-
22 served “infill” areas as the appropriate transportation impact required to be evaluated and
23 mitigated under CEQA, since these neighborhoods were intentionally being planned for higher
24 density, transit/bike/pedestrian rather than automobile-dependent, neighborhoods. Pub. Res. Code
25 § 21099(b).

26 311. In SB 743, the Legislature authorized but did not require the state Office of
27 Planning and Research (OPR) to use VMT as the replacement metric for transit-served areas, and
28 authorized but did not require OPR to apply an alternate transportation impact metric outside

1 designated urban infill transit neighborhoods. OPR responded with three separate rounds of
2 regulatory proposals, each of which proposed expanding CEQA by making VMT a new CEQA
3 impact, and requiring new mitigation to the extent a VMT impact was “significant.” OPR further
4 proposed a series of VMT significance thresholds, analytical methodologies, and potential
5 mitigation measures, which varied over time but included a “road diet” and measures to
6 discourage reducing congestion, on the theory that such congestion could somehow “induce”
7 transit use and VMT reductions.

8 312. Under all three sets of OPR proposals, projects would be required to do more
9 mitigation to reduce significant VMT impacts—by reducing VMT (i.e., reducing GHG or other
10 air pollutants is not a valid CEQA mitigation approach for a new VMT impact). OPR received
11 scores of comments objecting to expanding CEQA by making driving a mile a new “impact”
12 requiring “mitigation,” particularly given the disparate impact such a metric has on minority
13 communities and the many adverse impacts to the environment, and public health and welfare,
14 caused by the housing crisis and the state’s worst-in-the-nation commutes.

15 313. OPR, again and repeatedly citing to the asserted need to reduce VMT to meet
16 California’s GHG reduction and climate leadership commitments, held a recent round of
17 workshops on VMT mitigation strategies, working in close coordination with CARB’s earlier and
18 since-abandoned proposal to include VMT reductions as a required SB 375 regional
19 transportation plan compliance measures.

20 314. At these workshops, OPR and its outside experts from an Oregon university
21 conceded that VMT could likely not be “mitigated” by reducing miles driven by the future
22 residents of any particular housing project (e.g., by adding secure bike racks or charging extra for
23 parking), since whether people drive a mile or call an Uber—or hop on a bike or bus—is a
24 function of available, cost- and time-effective transportation modes as well as the incomes and
25 planned destinations of future residents. Agency workshop participants expressly acknowledged
26 that VMT had increased 6% over 2011 levels, even though California’s primary climate statutes
27 (including many programs designed to promote transit and higher density development, and many
28

1 billions of dollars in completed transit systems improvements) were in effect during this same
2 period.

3 315. These experts also conceded that with the success of on-demand ride services like
4 Uber and Lyft, including the increasing cost-effectiveness and popularity of voucher-based on-
5 demand rides by transit agencies in lieu of operating fixed route buses with low and still-declining
6 utilization levels, there was *no evidence* that VMT could be substantially reduced by a particular
7 project in a particular location as part of the CEQA review process for that project.

8 316. Instead, the VMT mitigation proposals shared during the workshops required that
9 new housing pay others to operate school buses, bikeshare, and make improvements to bike and
10 pedestrian pathways to the extent these measures could be demonstrated to reduce VMT. The
11 suggested VMT mitigation measures had in common the payment of substantial fees (with some
12 options suggested requiring annual payments, in perpetuity, of \$5000 per apartment or home).

13 317. A recent academic study of VMT mitigation under CEQA likewise concedes the
14 difficulty of a particular project achieving VMT reductions, and endorses the concept of adding to
15 housing and other project costs payments to VMT “banks” or “exchanges” to fund third party
16 VMT reductions – VMT reductions that occur somewhere, by someone.

17 318. This OPR VMT saga, like CARB’s ultimate decision not to require a VMT
18 compliance metric under SB 375, further demonstrates that the 2017 Scoping Plan’s VMT
19 reduction mandate measure – which CARB’s senior executive expressly acknowledged was
20 intended to be “self-executing” - is a fundamentally flawed “throw-away” measure that was
21 neither acknowledged nor given an equity, environmental, or economic evaluation before being
22 included in CARB’s 2017 Scoping Plan.

23 319. The last of the challenged GHG Housing Measures is the Vibrant Communities
24 Appendix, in which eight state agencies (including OPR) join with CARB in committing to
25 undertake a series of actions to implement the approved Scoping Plan. Some of these agencies
26 already have begun implementing the Scoping Plan, to the immediate and ongoing harm of
27 California minority communities who are already disproportionately suffering from the housing
28 crisis.

1 320. The Vibrant Communities appendix is an “interagency vision for land use, **and** for
2 discussion” (emphasis added) of “State-Level Strategies to Advance Sustainable, Equitable
3 Communities and Reduce Vehicles Miles of Travel (VMT).” 2017 Scoping Plan Appendix C, p.
4 1.

5 321. **First**, all of disparate and unlawful current and ongoing harms described in
6 connection with the Scoping Plan’s VMT Reduction measure apply equally to the actions of other
7 State agencies based on the Vibrant Communities appendix measures. None have a rational basis
8 for claiming any actual success in reducing VMT through their respective direct regulatory
9 activities.

10 322. **Second**, there is no constraint in the “Vibrant Communities Appendix” preventing
11 any of the eight state agency signatories from taking immediate steps to directly enforce these
12 “land use” policies, while claiming to “work together to achieve this shared vision and to
13 encourage land use and transportation decisions that minimize GHG emissions.” 2017 Scoping
14 Plan Appendix C, p. 2.

15 323. OPR’s VMT expansion of CEQA, discussed above, is an example of an agency
16 action to reduce VMT and GHG that is at least subject to formal rulemaking procedures and is
17 thus not yet being “implemented.”

18 324. In contrast, in June of 2018, a combination of four Vibrant Communities Appendix
19 implementing agencies joined by one other agency¹³⁶ announced that they would henceforth
20 implement – without benefit of any further Legislative or regulatory action – the “December 2017
21 Scoping Plan directive”. This announcement was made at the San Francisco Bay Area Regional
22 Meeting announcing the “California’s 2030 Natural and Working Lands Climate Change
23 Implementation Plan.” Consistent with the anti-housing bias built into CARB’s GHG Housing
24 Measures, these agencies collectively promised to avoid “conversion of land for development.”
25
26

27 ¹³⁶ The five agencies are: the California Environmental Protection Agency, the California
28 Natural Resources Agency, CARB, the California Department of Food and Agriculture, and the
Coastal Conservancy.

1 325. These five agencies made no exception for developing housing, even for housing
2 that CARB has already concluded as part of the SB 375 regional plan process meets California’s
3 legislated GHG emission reduction requirements. These agencies likewise made no exception for
4 transportation or other critical infrastructure, even if consistent with local and regional plans, even
5 if approved by federal or state agencies other than this five-agency consortium, even if within an
6 approved city limit, and even if approved by voters. *Simply put, these agencies – which have*
7 *combinations of funding, permitting, planning and enforcement obligations – have signaled that*
8 *they are not going to approve new development on land that is not already developed.*

9 326. The sole reed upon which this vast new legal prohibition rests is the 2017 Scoping
10 Plan, and more specifically the Vibrant Communities Appendix. See SF Bay Area Regional
11 Meeting, *California’s 2020 Natural and Working Lands Climate Change Implementation Plan*,
12 available at [http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-](http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf)
13 [presentation-6.18.pdf](http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf).

14 327. Less than 6% of California is urbanized, and each city and county is charged by
15 state law with adopting a General Plan that must accommodate the housing, transportation, and
16 infrastructure needs of its existing and planned future residents. Under SB 375, these local land
17 use plans are effectively consolidated into regional transportation and land use plans that must
18 accommodate future population and economic growth as well as meet CARB targets for reducing
19 GHG from the land use sector. Every regional Sustainable Communities Strategy (“SCS”) plan
20 includes some combination of housing, infrastructure (including transportation improvements),
21 schools and other land uses that are carefully and deliberatively sited within each jurisdiction’s
22 boundaries – and adopted only after each local government first complies with CEQA and
23 completes an extensive public notice, comment, and hearing process before appointed and elected
24 officials.

25 328. The decision of the California Department of Fish & Wildlife (“CDFW”) to
26 simply stop issuing permits for housing and related infrastructure projects that have already been
27 approved by local elected officials, after community input, in compliance with all applicable
28 laws—and have further already been approved by CARB, as part of the SB 375 regional plan

1 approval process—is a blatant example an announced harm being committed against housing by a
2 state agency in furtherance of CARB’s 2017 Scoping Plan.

3 329. **Third**, consistent with normal practice for lawsuits that include a claim that the
4 respondent agency has failed to comply with CEQA, Petitioners elected to prepare the
5 administrative record that is relevant to the disposition of this CEQA cause of action. The
6 Legislature has specifically prescribed the content of the CEQA administrative record, which
7 includes in part: “Any other written materials relevant to the respondent public agency’s
8 compliance with this division or to its decision on the merits of the project” and “all . . . internal
9 agency communications, including staff notes and memoranda relating to the project.” Pub. Res.
10 Code § 21167.6(c)(10).

11 330. Petitioners timely sought the administrative record from CARB, and in another
12 normal practice for CEQA lawsuits submitted requests filed under the California Public Records
13 Act (“CPRA”) to each of the Vibrant Communities Appendix agencies in relation to each
14 agency’s Scoping Plan and Vibrant Communities Appendix, and VMT or other Scoping Plan
15 documents.

16 331. Many months later, only incomplete responses have been provided by CARB
17 (which sought to limit the administrative record in this case to select excerpts from its Scoping
18 Plan docket).

19 332. Several of the Vibrant Communities Appendix agencies, including CDFW, OPR,
20 parent and affiliated agencies of each (Natural Resources Agency and Strategic Growth Council),
21 and CalSTA, responded with minimal documents and instead asserted that the requested
22 documents were exempt from disclosure under the CPRA because they could result in public
23 “controversy.”

24 333. One of these partially-responsive agencies admitted that the withheld documents
25 involved the highest level of state government, and included legislative proposals. All of these
26 partially-responsive agencies declined a second letter request to disclose the withheld documents,
27 or provide a privilege log describing each withheld document and the reason for its concealment.
28

1 334. There is no centralized or otherwise public repository of Vibrant Communities
2 Appendix agency documents that disclose to the public their current, planned, or future activities
3 with respect to implementing the Scoping Plan. There is likewise no centralized or otherwise
4 public repository of which implementing activities are being (or will be) directly undertaken, and
5 which will not be undertaken without future rulemaking or authorizing legislation.

6 335. From just the “direct” implementation activities noted above—and in particular
7 CARB’s intervention in an ongoing CEQA project-level review to opine on GHG mitigation
8 requirements in a manner that is contrary to published judicial opinions, and CDFW’s announced
9 intention to cease authorizing activities that would convert land to development with no exception
10 for new housing or related infrastructure that is already included in approved General Plans,
11 infrastructure plans, voter-approved bonds, or CARB-approved Sustainable Communities
12 Strategies implementing SB 375, is ample evidence of the immediate and ongoing new costs and
13 regulatory obstacles already being imposed by these agency Scoping Plan implementing actions.

14 336. CARB’s GHG reduction compliance metric is arbitrary, not supported by science,
15 has no rational basis, and is racially discriminatory. In California’s GHG and climate leadership
16 laws, the Legislature did not prescribe any specific measurement methodology or compliance
17 metric for meeting California’s GHG reduction goals. The methodology and metrics that CARB
18 has chosen completely ignore massive GHG emissions that occur when California’s forests burn,
19 as has tragically occurred at a large scale for several of the past years, notwithstanding estimates
20 that just one major forest fire wipes out an entire year of GHG reductions achieved by CARB’s
21 regulatory actions.¹³⁷

22 337. Similarly, CARB does not count—or require reductions of—GHG emissions
23 associated with imported foods or other goods, or with a multitude of other activities such as
24 airplane trips. However, every time a California resident (or job) leaves California, CARB counts
25 that as a GHG reduction—even though the top destinations for the hundreds of thousands of

26 ¹³⁷ David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate
27 Change, Holland & Knight, Chapman University Press (2017), p. 60-61,
28 https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

1 Californians who have migrated to lower cost states in recent years, notably including Texas,
2 Arizona and Nevada—have per capita GHG emissions that are more than double the emissions
3 those same individuals would have if they remained in California.

4 338. Climate change and GHG emissions are a global challenge, and nearly tripling the
5 GHG emissions of a California family that needs to move to Texas or Nevada to find housing
6 they can afford to rent or buy, increases global GHG.

7 339. It may be that there are other environmental priorities favored by CARB and its
8 allies that justify policies that are in fact resulting in the displacement and relocation of
9 California’s minority communities, that reduce the state’s population, and that eliminate higher
10 energy production jobs like manufacturing that traditionally provided a middle class income (and
11 home ownership) to a hard worker without a college degree. These discriminatory anti-minority
12 policies cannot, however, be scientifically, politically, or legally justified in the name of global
13 reductions of GHG.

14 340. CARB’s International Policy Director on climate, former Obama administration
15 senior climate team Lauren Sanchez, admitted that the GHG reduction metrics used by CARB –
16 that simply and completely ignores the increased global GHG emissions from forcing
17 Californians to live in high GHG states to find housing they can afford to buy with commute
18 times that did not damage driver health, family welfare, and the environment - were “flawed” at
19 the recent (October 2018) Environmental Law Conference in Yosemite. This admission rebuts the
20 politically shocking and legally invalid assertion that it is constitutional for CARB to implement
21 racially discriminatory measures (because CARB’s discriminatory objective is merely to force
22 minority Californians to either try to live in housing they cannot afford located nowhere near their
23 job, or migrate to another state).

24 341. The 2017 Scoping Plan is required to reduce California’s share of *global* GHG
25 emissions, but it completely ignores massive emission sources that are controversial within the
26 environmental community (e.g. managing California’s massive wildfire risks which result in
27 GHG emissions that dwarf CARB’s regulatory GHG reductions, based on what the non-partisan
28

1 Little Hoover Commission reported in February 2018 as a century of forest mismanagement
2 including clashes between environmental agencies).¹³⁸

3 342. The 2017 Scoping Plan also completely ignores other massive GHG emissions
4 attributed to the behavior of wealthier Californians (e.g., airplane rides, and consumption of
5 costly imported consumer products).¹³⁹ Instead, as summarized a Chapman University Research
6 Brief, CARB has administered California’s climate laws with actions such as the 2017 Scoping
7 Plan that drive up the fundamental costs of living for ordinary Californians—housing, electricity,
8 transportation—and thereby drive more people (and disproportionately minorities) into poverty,
9 and out of the state.¹⁴⁰

10 343. The 2017 Scoping Plan fails even the most rudimentary “rational basis”
11 constitutional test, and it is being implemented today by organizations and agencies including
12 CARB that are driving up housing costs and blocking housing projects today. To cause this much
13 pain and hardship to this many people, and to place the greatest burdens on those already
14 disparately harmed by the housing crisis, is unconscionable. It is also ongoing, illegal, and
15 unambiguously intentional, for CARB to impose these “flawed” GHG reduction metrics that
16 cause disparate harms to racial minorities living in California.

17 344. The foregoing paragraphs describe agency actions that are exacerbating the State’s
18 extreme poverty, homelessness and housing crisis while *increasing* global GHG emissions by
19 driving Californians to higher per capita GHG states.¹⁴¹

21 ¹³⁸ Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the*
22 *Sierra Nevada* (February 2018), available at <https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada>.

23 ¹³⁹ Bay Area Air Quality Management District and Cool Climate Network at UC Berkeley,
24 *Consumption-Based GHG Emissions Inventory: Prioritizing Climate Action for Different*
25 *Locations* (December 15, 2015), available at <https://escholarship.org/uc/item/2sn7m83z>

25 ¹⁴⁰ Friedman, Id., Summary at p. 7-9.

26 ¹⁴¹ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People*
27 *Move In*, The Sacramento Bee (Mar. 5, 2017), available at
28 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
Consider Moving Due to Rising Housing Costs, Poll Finds, Cal Watchdog (Sept. 21, 2017),
available at <https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising->

1 345. CARB’s new GHG Housing Measures, individually and collectively, on their face
2 and as applied, deprive Petitioners, including but not limited to RODRIGUEZ, MURILLO and
3 PEREZ, and other historically-disadvantaged minorities, of the fundamental right to live in
4 communities that are free from arbitrary, government-imposed standards whose inevitable effect
5 is to perpetuate their exclusion from participation in the housing markets in or near the
6 communities in which they work. CARB’s new GHG Housing Measures, individually and
7 collectively, on their face and as applied, have a disparate adverse impact on Petitioners,
8 including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-
9 disadvantaged minorities, as compared to similarly-situated non-minorities who currently enjoy
10 affordable access to housing near their workplaces.

11 346. CARB’s new GHG Housing Measures, on their face and as applied to the sorely-
12 needed development of new, affordable housing, are arbitrary and not rationally related to the
13 furtherance of their purported regulatory goal of reducing overall GHG emissions.

14 **H. CARB’S GHG Housing Measures Are “Underground Regulations” and Ultra**
15 **Vires**

16 347. A regulation is defined as “every rule, regulation, order, or standard of general
17 application or the amendment, supplement, or revision of any rule, regulation,
18 order, or standard adopted by any state agency to implement, interpret, or make specific the law
19 enforced or administered by it, or to govern its procedure.” Gov. Code § 11342.600.

20 348. State agencies are required to adopt regulations following the procedures
21 established in the APA and are prohibited from issuing and enforcing underground regulations.
22 Gov. Code § 11340.5. Under the APA, an underground regulation is void.

23 349. Each of CARB’s new GHG Housing Measures are being implemented by CARB,
24 and other state and local agencies, without further rulemaking or compliance with the APA. The
25 GHG Housing Measures are underground regulations requiring APA compliance, and cannot be
26

27 housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions
28 Data, October 2017, available at <https://www.eia.gov/environment/emissions/state/>.

1 lawfully implemented absent authorizing Legislation or formal rulemaking (inclusive of
2 environmental and economic review as required by the APA).

3 350. CARB’s new GHG Housing Measures infringe on areas reserved for other State
4 agencies in two ways:

5 A. Senate Bill (“SB”) 97 directs OPR to develop CEQA significance thresholds via
6 the CEQA Guidelines. OPR’s update does not include the Scoping Plan’s
7 presumptive CEQA GHG threshold. CARB was expressly allowed by the
8 Legislature in SB 97 to adopt a CEQA significance threshold only in the context
9 of updates to the CEQA Guidelines, which must undergo a rigorous rulemaking
10 process. CARB has acted *ultra vires* and contrary to the express command of the
11 Legislature in adopting its recommended CEQA significance threshold in the
12 Scoping Plan.

13 B. California has adopted new building standards, which are designed to assure that
14 new building code requirements are cost effective (with payback to the
15 consumer). “Net zero” new home building standards were not included. CARB has
16 no Legislative authority to bypass and frustrate this consumer protection law by
17 using CEQA as a workaround to require “net zero”.¹⁴²

18 351. In articulating and publishing its new GHG Housing Measures, CARB has not
19 complied with the APA’s rulemaking procedures and requirements. As a consequence, CARB’s
20 new GHG Housing Measures are unlawful underground regulations, and should be held to be
21 void and of no effect.

22 **FIRST CAUSE OF ACTION**

23 **(Fair Employment and Housing Act, Gov. Code § 12955 *et seq.*)**

24 352. Petitioners hereby re-allege and incorporate herein by reference the allegations
25 contained in paragraphs 1-351 above, as well as in paragraphs 358-458.

26 _____
27 ¹⁴² See generally California Department of Housing and Community Development, State Housing
28 Law Program Laws and Regulations, <http://www.hcd.ca.gov/building-standards/state-housing-law/state-housing-laws-regulations.shtml>.

1 concluded that the FHA is violated by facially neutral practices that have an unjustified
2 discriminatory effect on the basis of a protected characteristic, regardless of intent.

3 361. Pursuant to its authority under the FHA, HUD has duly promulgated and published
4 nationally-applicable federal regulations implementing the FHA’s Discriminatory Effects
5 Standard at 24 C.F.R. Part 100 (*see* 78 Fed.Reg. 11460-01 (February 15, 2013)) (“HUD
6 Regulations”). These HUD Regulations continue to apply, and have the force and effect of law.

7 362. HUD Regulations provide, *inter alia*, that liability under the FHA may be
8 established “based on a practice’s discriminatory effect . . . even if the practice was not motivated
9 by a discriminatory intent.” 24 C.F.R. § 100.500.

10 363. HUD Regulations further provide that: “A practice has a discriminatory effect
11 where it actually or predictably results in a disparate impact on a group of persons or perpetuates
12 segregated housing patterns because of race, color, . . . or national origin.”

13 364. CARB’s GHG Housing Measures actually and predictably result in a disparate
14 impact on members of minority communities, including but not limited to Petitioners, and
15 perpetuates segregated housing patterns because of race, color, and/or national origin within the
16 meaning of the FHA and HUD Regulations.

17 365. Because of the discriminatory effect of CARB’s GHG Housing Measures, CARB
18 has the burden of proving that these GHG Housing Measures do not violate the FHA as
19 interpreted and implemented through the HUD Regulations.

20 366. CARB has not met, and cannot meet, its burden of trying to justify the
21 discriminatory effect of its challenged GHG Housing Measures, which are not necessary to
22 achieve the stated goals, which could and should be pursued through other measures having a less
23 discriminatory effect.

24 367. Because CARB’s GHG Housing Measures have an unjustified discriminatory
25 effect on members of minority communities, including Petitioners, they violate the FHA as
26 implemented though HUD Regulations. Consequently, CARB’s GHG Housing Measures should
27 be declared unlawful and enjoined, and Petitioners are entitled to other and further relief pursuant
28 to 42 U.S.C. § 1983.

1 **THIRD CAUSE OF ACTION**

2 **(Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1)**

3 368. Petitioners hereby re-allege and incorporate herein by reference the allegations
4 contained in paragraphs 1-367 above, as well as paragraphs 373-448.

5 369. Petitioners have a right to be free of arbitrary State regulations that are imposed
6 without having first been presented to the public through duly-authorized rulemaking processes
7 by Legislatively-authorized State agencies.

8 370. CARB's new GHG Housing Measures, individually and collectively, will
9 inevitably cause serious harm to the ability of Petitioners and other members of disadvantaged
10 minority communities to gain access to affordable housing, and have a disproportionate adverse
11 impact on them.

12 371. CARB's new GHG Housing Measures are not rationally calculated to further the
13 State's legitimate interest in reducing GHG emissions, on their face or as applied to housing
14 projects in California. Instead, CARB's new GHG Housing Measures are both arbitrary and
15 counterproductive in terms of actually achieving their purported goals of GHG emission
16 reductions.

17 372. For these reasons, CARB's GHG Housing Measures have been issued in violation
18 of, and constitute substantive violations of, the Due Process Clauses of the California and United
19 States Constitutions. (Cal. Const. Art. 1, § 7; U.S. Const. Amd. 14, § 1,)

20 **FOURTH CAUSE OF ACTION**

21 **(Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1)**

22 373. Petitioners hereby re-allege and incorporate herein by reference the allegations
23 contained in paragraphs 1-372 above, as well as 382-458.

24 374. Non-discriminatory access to housing is a fundamental interest for purposes of
25 evaluating regulations under the equal protection provisions of the California Constitution. Art. I,
26 § 7 and Art. IV, § 16.

1 384. CARB did not write its Final EA in plain language so that members of the public
2 could readily understand the document.

3 385. CARB did not assess the “whole of the project” as required by CEQA. The GHG
4 Housing Measures are included in the 2017 Scoping Plan and thus the “project” for CEQA
5 purposes should have included potential direct and indirect impacts on the environment from the
6 four GHG Housing Measures. CARB did not include an analysis of the four GHG Housing
7 Measures in the EA.

8 386. CARB did not base its Final EA on an accurate, stable, and finite project
9 description. The EA did not include the four GHG Housing Measures in its project description.
10 For this reason CARB applied an unreasonable and unlawful “project” definition and undermined
11 CEQA’s informational and decision-making purposes. The project description was misleading,
12 incomplete, and impermissibly vague.

13 387. CARB did not properly identify the Project objectives in its EA.

14 388. CARB’s unlawful use of the “cumulative gap” methodology created multiple legal
15 deficiencies in the EA, including in the project description, project objectives, and impact
16 analysis. Had CARB used the appropriate project objective—reducing GHG 40% below the 1990
17 California GHG inventory by 2030—the estimated 1% of GHG reductions (1.79 tons per year)
18 achieved by the GHG Housing Measures would have been entirely unnecessary, and all disparate
19 and unlawful adverse civil rights, environmental, housing, homelessness, poverty, and
20 transportation consequences of the GHG Housing Measures could have been avoided.

21 389. At most, CARB could have clearly identified its “cumulative gap” methodology as
22 an alternative to the project that would have further reduced GHG emissions beyond the SB 32
23 statutory mandate, to further inform the public and decisionmakers of the comparative impacts
24 and consequences of SB 32’s legislated GHG reduction mandate, and the more substantial GHG
25 reductions sought by CARB staff. CARB’s failure to use the SB 32 statutory mandate of
26 achieving 40% GHG reduction from 1990 levels as of 2030 is a fatal legal flaw.

27 390. CARB also failed to adequately evaluate the direct, indirect, and cumulative
28 environmental impacts of the 2017 Scoping Plan in its Final EA, even after commenters identified

1 numerous review gaps in their comments on the Draft EA. As discussed above, CARB was fully
2 on notice of the scale and nature of the impacts associated with the GHG Housing Measures
3 based on CARB's review and approval of more than a dozen regional plans to intensify housing
4 densities near transit, and improve public transit, from all of California's most significant
5 population centers; each of these regional plans identified multiple unavoidable significant
6 adverse environmental impacts from implementation of current plans. The deficiencies in the
7 Final EA include but are not limited to the following:

- 8 • Aesthetic impacts such as changes to public or private views and character of existing
9 communities based on increased building intensities and population densities;
- 10 • Air quality impacts from increases in GHG, criteria pollutants, and toxic air
11 contaminant emissions due to longer commutes and forced congestion that will occur
12 from the implementation of the VMT limits in the 2017 Scoping Plan;
- 13 • Biological impacts from increased usage intensities in urban parks from substantial
14 infill population increases;
- 15 • Cultural impacts including adverse changes to historic buildings and districts from
16 increased building and population densities, and changes to culturally and religiously
17 significant resources within urbanized areas from increased building and population
18 densities;
- 19 • Urban agriculture impacts from the conversion of low intensity urban agricultural uses
20 to high intensity, higher density uses from increasing populations in urban areas,
21 including increasing the urban heat island GHG effect;
- 22 • Geology/soils impacts from building more structures and exposing more people to
23 earthquake fault lines and other geologic/soils hazards by intensifying land use in
24 urban areas;
- 25 • Hazards and hazardous materials impacts by locating more intense/dense housing and
26 other sensitive uses such as schools and senior care facilities near freeways, ports, and
27 stationary sources in urbanized areas;

- 1 • Hydrology and water quality impacts from increasing volumes and pollutant loads
2 from stormwater runoff from higher density/intensity uses in transit-served areas as
3 allowed by current stormwater standards;
- 4 • Noise impacts from substantial ongoing increases in construction noise from
5 increasing density and intensity of development in existing communities and ongoing
6 operational noise from more intensive uses of community amenities such as extended
7 nighttime hours for parks and fields;
- 8 • Population and housing impacts from substantially increasing both the population and
9 housing units in existing communities;
- 10 • Recreation and park impacts from increasing the population using natural preserve and
11 open space areas as well as recreational parks;
- 12 • Transportation/traffic impacts from substantial total increases in VMT in higher
13 density communities, increased VMT from rideshare/carshare services and future
14 predicted VMT increases from automated vehicles, notwithstanding predicted future
15 decrease in private car ownership;
- 16 • Traffic-gridlock related impacts and multi-modal congestion impacts including noise
17 increases and adverse transportation safety hazards in areas of dense multi-modal
18 activities;
- 19 • Public safety impacts due to impacts on first responders such as fire, police, and
20 paramedic services from congested and gridlocked urban streets; and
- 21 • Public utility and public service impacts from substantial increases in population and
22 housing/employment uses and demands on existing water, wastewater, electricity,
23 natural gas, emergency services, libraries and schools.

24 391. As stated above, although the Scoping Plan’s CEQA threshold is not binding on a
25 lead agency, it nevertheless has immediate evidentiary weight as the expert conclusion of the
26 state’s expert GHG agency. Thus, the Scoping Plan’s CEQA threshold is appropriately
27 justiciable, and should be vacated for the reasons set forth herein.
28

1 industry relationships that are equivalent in structure to the Regional Industry Modeling
2 System published by the Bureau of Economic Analysis.

3 (3) Can produce (to the extent possible) quantitative estimates of economic variables that
4 address or facilitate the quantitative or qualitative estimation of the following.

5 (A) The creation or elimination of jobs within the state;

6 (B) The creation of new businesses or the elimination of existing businesses within the
7 state;

8 (C) The competitive advantages or disadvantages for businesses currently doing business
9 within the state;

10 (D) The increase or decrease of investment in the state;

11 (E) The incentives for innovation in products, materials, or processes; and

12 (F) The benefits of the regulations, including but not limited to benefits to the health,
13 safety, and welfare of California residents, worker safety, and the state's environment and
14 quality of life, among any other benefits identified by the agency.”

15 399. DOF regulations require that DOF's "most current publicly available economic
16 and demographic projections, which may be found on the department's website, shall be used
17 unless the department approves the agency's written request to use a different projection for a
18 specific proposed major regulation." 1 C.C.R. § 2003(b).

19 400. DOF regulations also provide that: "An analysis of estimated changes in behavior
20 by businesses and/or individuals in response to the proposed major regulation shall be conducted
21 and, if feasible, an estimate made of the extent to which costs or benefits are retained within the
22 business and/or by individuals or passed on to others, including customers, employees, suppliers
23 and owners." 1 C.C.R. § 2003(f).

24 401. In grafting its new GHG Housing Measures onto the 2017 Scoping Plan, CARB
25 has failed to comply with the APA, including DOF regulations applicable to CARB.

26 402. More significantly, and consistent with the LAO's repeated findings that the
27 CARB analysis methodology fails to provide sufficiently detailed information about impacts to
28 individuals, households and businesses, CARB's 2017 Scoping Plan completely ignores the fact

1 that California has the greatest inequality in the United States, and that energy costs, loss of
2 energy-intensive jobs and housing costs related to Scoping Plan policies play a major role in that
3 unwanted outcome. To fulfill its statutory mandates, CARB must start by recognizing that, as
4 meticulously documented in a United Way Study, more than 30% of all California households
5 lack sufficient means to meet the real cost of living in the state.

6 403. In addition, as described above, by using the unlawful “cumulative gap”
7 methodology to calculate the GHG reductions it claims are needed in the 2017 Scoping Plan,
8 CARB improperly created inputs for the FA that render the entire document invalid.

9 404. In its present form, the Scoping Plan embodies multiple violations of the APA and
10 should be set aside as unlawful and void.

11 **SEVENTH CAUSE OF ACTION**

12 **(Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500**
13 ***et seq.*)**

14 405. Petitioners hereby re-allege and incorporate herein by reference the allegations
15 contained in paragraphs 1-404 above, as well as paragraphs 413-458.

16 406. The GWSA provides in pertinent part that, in promulgating GHG regulations,
17 CARB “shall do all of the following:

- 18 (1) Design the regulations, including distribution of emissions allowances where appropriate,
19 in a manner that is equitable, seeks to minimize costs and maximize the total benefits to
20 California, and encourages early action to reduce greenhouse gas emissions.
- 21 (2) Ensure that activities undertaken to comply with the regulations do not disproportionately
22 impact low-income communities.
- 23 (3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to
24 the implementation of this section receive appropriate credit for early voluntary
25 reductions.
- 26 (4) Ensure that activities undertaken pursuant to the regulations complement, and do not
27 interfere with, efforts to achieve and maintain federal and state ambient air quality
28 standards and to reduce toxic air contaminant emissions.

1 (5) Consider cost-effectiveness of these regulations.

2 (6) Consider overall societal benefits, including reductions in other air pollutants,
3 diversification of energy sources, and other benefits to the economy, environment, and
4 public health.”

5 407. In responses to Petitioners’ comments on the 2017 Scoping Plan, CARB has
6 acknowledged that Chapter 5 of the Scoping Plan (which sets out the new GHG Housing
7 Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB’s words,
8 “These recommendations in the ‘Enabling Local Action’ subchapter of the Scoping Plan are not
9 part of the proposed ‘project’ for purposes of CEQA review.”¹⁴³ Thus, CARB admits that it did
10 not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

11 408. CARB’s assertion that the new GHG Housing Measures set out in Chapter 5 of the
12 Scoping Plan do not constitute “major regulations” is belied by their content and the legal and
13 regulatory setting in which they were issued, as described above.

14 409. Each scoping plan update must also identify for each emissions reduction measure,
15 the range of projected GHG emission reductions that result from the measure, the range of
16 projected air pollution reductions that result from the measure, and the cost-effectiveness,
17 including avoided social costs, of the measure. H&S Code § 38562.7.

18 410. The 2017 Scoping Plan contains no such analysis for CARB’s new GHG Housing
19 Measures. The Plan lists potential emission reductions from the “Mobile Source Strategy” which
20 includes the VMT reduction requirements, but does not analyze proposed emission reductions,
21 projected air pollution reductions, or cost-effectiveness of the other measures.

22 411. CARB’s new GHG Housing Measures, as set out in its 2017 Scoping Plan, were
23 issued in violation of some or all of the specific statutory requirements set out in the GWSA, as
24 described above.

25
26
27 ¹⁴³ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
28 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

1 district is not taking reasonable efforts to achieve and maintain ambient air quality standards.
2 H&S Code § 41505.

3 420. Fresno County is part of the San Joaquin Valley Air Pollution Control District
4 (“SJVAPCD”). The SJVAPCD is currently nonattainment/severe for the CAAQS for ozone and
5 nonattainment for PM.

6 421. The vast majority of California is designated nonattainment for the CAAQS for
7 ozone and PM.

8 422. Nitrogen oxides, including NO₂, CO, and volatile organic compounds (“VOCs”)
9 are precursor pollutants for ozone, meaning they react in the atmosphere in the presence of
10 sunlight to form ozone.

11 423. PM is a complex mixture of extremely small particles and liquid droplets found in
12 the air which can cause serious health effects when inhaled, including asthma and other lung
13 issues and heart problems. Some particles are large enough to see while others are so small that
14 they can get into the bloodstream. PM is made up of PM₁₀ (inhalable particles with diameters 10
15 micrometers and smaller) and PM_{2.5} (fine inhalable particles with diameters 2.5 micrometers and
16 smaller).

17 424. PM emissions in California and in the SJVAPCD increased in 2016 as compared
18 to prior years.

19 425. As detailed above, the VMT reduction requirements in the 2017 Scoping Plan will
20 result in increased congestion in California.

21 426. Increasing congestion increases emissions of multiple pollutants including NO_x,
22 CO, and PM. This would increase ozone and inhibit California’s ability to meet the CAAQS for
23 ozone, NO₂, and PM, among others.

24 427. Because CARB intends to achieve the VMT reduction standard by intentionally
25 increasing congestion, which will increase emissions of criteria pollutants such as NO₂ and PM,
26 CARB is violating its statutory duty to ensure that every reasonable action is taken to
27 expeditiously achieve attainment of the CAAQS.
28

1 428. In addition to a responsibility under the CCAA to meet the CAAQS, CARB has a
2 statutory duty under the Health & Safety Code to ensure that California meets the National
3 Ambient Air Quality Standards (“NAAQS”) set by the EPA.

4 429. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions which
5 each air district must attain and maintain. EPA has set NAAQS for CO, lead, NO₂, ozone, PM,
6 and SO₂.

7 430. CARB is designated the air pollution control agency for all purposes set forth in
8 federal law. H&S Code § 39602. CARB is responsible for preparation of the state implementation
9 plan (“SIP”) required by the federal Clean Air Act (“CAA”) to show how California will attain
10 the NAAQS. CARB approves SIPs and sends them to EPA for approval under the CAA. H&S
11 Code § 40923.

12 431. While the local air districts have primary authority over nonmobile sources of air
13 emissions, adopt rules and regulations to achieve emissions reductions, and develop the SIPs to
14 attain the NAAQS (H&S Code § 39602.5), CARB is charged with coordinating efforts to attain
15 and maintain ambient air quality standards (H&S Code § 39003) and to comply with the CAA
16 (H&S Code § 39602).

17 432. CARB also must adopt rules and regulations to achieve the NAAQS required by
18 the CAA by the applicable attainment date and maintain the standards thereafter. H&S Code §
19 39602.5. CARB is thus responsible for ensuring that California meets the NAAQS.

20 433. SJVAPCD is nonattainment/extreme for the ozone NAAQS and nonattainment for
21 PM_{2.5}.

22 434. The vast majority of California is nonattainment for the ozone NAAQS and much
23 of California is nonattainment for PM₁₀.

24 435. It is unlawful for CARB to intentionally undermine California’s efforts to attain
25 and maintain the NAAQS by adopting measures in the 2017 Scoping Plan that will increase NO_x
26 and PM by intentionally increasing congestion in an attempt to lower VMT to purportedly
27 achieve GHG emission reductions.
28

1 **TENTH CAUSE OF ACTION**

2 **(Ultra Vires Agency Action, Code of Civil Proc. §1085)**

3 442. Petitioners hereby re-allege and incorporate herein by reference the allegations
4 contained in paragraphs 1-441 above.

5 443. In adopting the 2017 Scoping Plan, including the GHG Housing Measures, CARB
6 has acted beyond its statutorily delegated authority and contrary to law.

7 **CEQA Net Zero GHG Threshold**

8 444. The 2017 Scoping Plan would apply a CEQA net zero GHG emissions threshold
9 to all CEQA projects. CEQA applies to the “whole of a project”, which includes construction
10 activities, operation of new buildings, offsite electricity generation, waste management,
11 transportation fuel use, and a myriad of other activities.

12 445. This threshold is unlawful under *Newhall, supra*, 62 Cal.4th 204, and other current
13 California precedent affirming that compliance with law is generally an acceptable CEQA
14 standard. This includes, but is not limited to, using compliance with the cap-and-trade program as
15 appropriate CEQA mitigation for GHG and transportation impacts. *Association of Irrigated*
16 *Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708.

17 446. This threshold is also unlawful under OPR’s GHG CEQA rulemaking package
18 which stated that there was not a CEQA threshold requiring no net increase in GHG emissions
19 (i.e., no one molecule rule). *See* “Final Statement of Reasons for Regulatory Action”,
20 Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse
21 Gas Emissions Pursuant to SB 97, Dec. 2009, p. 25 ([n]otably, section 15064.4(b)(1) is not
22 intended to imply a zero net emissions threshold of significance. As case law makes clear, there is
23 no “one molecule rule” in CEQA. (CBE, *supra*, 103 Cal.App.4th 120”).

24 **Regulating In An Attempt to Achieve the 2050 GHG Emission Reduction Goal**

25 447. CARB also acted ultra vires by attempting to mandate GHG Housing Measures
26 that purportedly would help California achieve the 2050 GHG reduction goal in Executive Order
27 S-3-05.

28

1 448. CARB has no Legislative authority to regulate towards achieving the 2050 goal, a
2 GHG emission reduction target which has not been codified and which the Legislature has
3 repeatedly refused to adopt. Mandating actions in an attempt to reach the 2050 goal is outside
4 CARB’s statutory authority under the GWSA which only contains GHG emission reduction
5 standards for 2020 and 2030.

6 449. The Legislative Analyst’s Office has stated that, based on discussions with
7 Legislative Counsel, it is unlikely that CARB has authority to adopt and enforce regulations to
8 achieve more stringent GHG targets. LAO report, p. 7.

9 **VMT Reduction Requirements**

10 450. In addition, the VMT reduction standards mandated in the Scoping Plan are ultra
11 vires and beyond CARB’s statutory authority.

12 451. The Legislature rejected legislation as recently as 2017 requiring VMT
13 reductions/standards.

14 452. The only agency authorized to consider VMT under CEQA is OPR under SB 743.
15 OPR’s proposed SB 743 regulations are going through a formal rulemaking process now and
16 CARB cannot jump the gun and, with zero statutory authority, adopt VMT regulations in the
17 2017 Scoping Plan.

18 **SB 97 and OPR Promulgation of CEQA Guidelines**

19 453. Similarly, the only method by which the Legislature authorized OPR (with
20 CARB’s permissive but not mandatory cooperation) to adopt new CEQA significance thresholds
21 is via updates to the CEQA Guidelines.

22 454. OPR has not included CARB’s new GHG Housing Measures in its proposed new
23 Guidelines, and CARB has no authority to make an “end run” around the rulemaking process
24 established by the Legislature.

25 **New Building Code Requirements**

26 455. The Legislature has enacted new consumer protection requirements, including new
27 building standards, designed to assure that new building code requirements are cost effective.
28

1 CARB’s “net zero” new home building standard was not included in these new building
2 standards.

3 456. CARB has no Legislative authority to impose new “net zero” building standards.

4 457. CARB’s new “net zero” building standards are contrary to, and will substantially
5 frustrate, the Legislature’s purpose in adopting new building code requirements.

6 458. CARB’s decision to adopt the 2017 Scoping Plan and the GHG Housing Measures
7 within it was also fraught with procedural defects, including violations of the APA, CEQA, and
8 GWSA, as explained above. These procedural defects are further actions that are *ultra vires* and
9 were taken contrary to law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE Petitioners THE TWO HUNDRED, including LETICIA RODRIGUEZ,
12 TERESA MURILLO and EUGENIA PEREZ, request relief from this Court as follows:

13 A. For a declaration, pursuant to Code of Civil Procedure § 1060, that the following
14 GHG regulations and standards, as set out in CARB’s Scoping Plan, are unlawful, void, and of no
15 force or effect:

- 16 • The Vehicle Miles Traveled (“VMT”) mandate.
- 17 • The Net Zero CEQA threshold
- 18 • The CO2 per capita targets for local climate action plans for 2030 and 2050

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- The “Vibrant Communities” policies in Appendix C.

B. For a writ of mandate or peremptory writ issued under the seal of this Court pursuant to Code of Civil Procedure § 1094.5 or in the alternative § 1085, directing Respondents to set aside the foregoing provisions of the Scoping Plan and to refrain from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

C. For permanent injunctions restraining Respondents from issuing any further GHG standards or regulations that address the issues described in subsection A. above until such time as CARB has complied with the requirements of the APA, CEQA, and the requirements of the Due Process and Equal Protection clauses of the California and United States Constitutions;

D. For an award of their fees and costs, including reasonably attorneys’ fees and expert costs, as authorized by Code of Civil Procedure § 1021.5, and 42 U.S. Code section 1988.

E. That this Court retain continuing jurisdiction over this matter until such time as the Court has determined that CARB has fully and properly complied with its Orders.

F. For such other and further relief as may be just and appropriate.

Dated November 21, 2018

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 

Jennifer L. Hernandez
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David I. Holtzman

Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, LETICIA RODRIGUEZ,
TERESA MURILLO, GINA PEREZ, *et al.*

VERIFICATION

1
2 I, Jennifer L. Hernandez, am one of the attorneys for, and am a member of, THE TWO
3 HUNDRED, an unincorporated association, Plaintiffs/Petitioners in this action. I am authorized
4 to make this verification on behalf of THE TWO HUNDRED and its members named herein. I
5 have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF
6 MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the
7 contents thereof. I am informed and believe and on that ground allege that the matters stated
8 therein are true. I verify the foregoing Petition and Complaint for the reason that
9 Plaintiffs/Petitioners named in the Petition/Complaint are not present in the county where my
10 office is located.

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

13 Executed this 21st day of November, 2018, at San Francisco, California.

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16 _____
17 JENNIFER L. HERNANDEZ
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December 3, 2018

CHAIRWOMEN INMAN AND NICHOLS, AND MEMBERS OF THE CALIFORNIA TRANSPORTATION COMMISSION AND CALIFORNIA AIR RESOURCES BOARD

Re: CARB 2018 Progress Report on California's Sustainable Communities and Climate
Protection Act

Dear Chairwomen and Members:

We are honored to represent The 200, a distinguished group of California's civil rights leaders who have spent their entire careers – with some careers spanning more than 50 years – fighting racial discrimination by public agencies blind to the disparate harm to minority communities caused by the policy preferences advanced by the political elite of their day.

The 200 formed to respond to California's extreme poverty, homelessness, and housing crisis with a simple objective: homeownership must be attainable for California's minority workers and families. Homeownership has been recognized as the most effective means of entering and remaining in the middle class, but for decades minority communities were “redlined” – by discriminatory lending, insurance, zoning, and other government-imposed or sanctioned barriers – and denied access to the better health, education, economic security, and welfare benefits that derive from home ownership.

The California Air Resources Board (CARB) is the latest in a long line of public agencies to use purportedly race-neutral goals to unlawfully discriminate against California's minority communities. The 200 has filed a civil rights lawsuit against four anti-housing measures in CARB's 2017 Scoping Plan, including its expansion of CEQA, its mandated reduction in vehicle miles travelled (VMT), and its “Vibrant Communities Appendix C” which includes multiple new barriers to building housing that California's minority workers can actually afford to buy. A copy of that lawsuit, which includes a detailed description of CARB's discriminatory conduct, is included as Attachment A to this letter. That lawsuit seeks to compel CARB to rescind the four challenged housing measures, and to halt implementation of any Scoping Plan action not expressly required by legislation or existing regulations until a comprehensive environmental and economic assessment is completing that documents the cost and environmental consequences of Scoping Plan measures on existing Californians.

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The 200 filed a second lawsuit against several of the other state agencies that comprise the “Vibrant Communities” implementing agencies (referenced in Footnote 9 of the above-referenced CARB report) declined to disclose documents responsive to our Public Records Act request, claiming that such documents would be too “controversial” and should thus be concealed under the deliberative process privilege, to compel disclosure of the withheld documents. A copy of this lawsuit is included as Attachment B to this letter.

CARB has distorted and mismanaged California’s climate mandates into a regressive regime that has and will continue to worsen the state’s poverty, homelessness, and housing crises. More than 1,000,000 Californians have moved out of California because of high housing costs, and most of them – our children, our grandchildren, and our treasured teachers and valued craftsmen – move to states like Texas, Nevada and Arizona, all of which have much higher per capita greenhouse gas emissions than California. With its unique brand of math and metrics, CARB has managed to achieve the twin objectives of harming our young minority workforce while actually increasing global GHG emissions. A one-page summary of the GHG “math” behind CARB’s proposed agenda to engage in still more study of how and where to build critically needed housing and mandate reductions in VMT is included as Attachment C, and a detailed study of California’s GHG reduction programs in relation to the GHG reduction progress made by other countries and states, as well as a focused examination on the disparate racial and regional impacts of CARB’s GHG reduction programs, is included as Attachment D.

Because this is a joint meeting of the California Transportation Commission and the California Air Resources Board, we address our comments to each agency below:

California Transportation Commission.

We first take this opportunity to commend the staff of the California Transportation Commission, which timely and completely responded to our California Public Records Act (CPRA) request. We have not named CTC as a party to our CPRA lawsuit, but regret to report that CalSTA is a party based on that agency’s decision to conceal responsive documents, including the fact that these issues were considered at the highest level of state government and consideration of potential legislation. Neither of these reasons is a lawful basis for concealing public records.

We next want to commend CTC for its work in managing California’s complex transportation systems in compliance with your agency’s statutory obligations, including support for voter-approved transportation projects and funding priorities, and for your tradition of working collaboratively with and respecting the legal obligations of the state’s regional transportation authorities, as well as cities and counties.

California Air Resources Board.

First, CARB's 2018 Progress Report is a wish list of power over local land use generally, and mandating reductions in VMT in particular, that CARB sought, but did not receive, from the Legislature.

Second, the Report also demonstrates CARB's ongoing and intentional discrimination against California's minority communities.

The detailed reasons for both of these conclusions are set forth in the attachments to this letter, such as The 200's lawsuit against CARB, and are not repeated here.

Four points warrant highlighting for the combined attention of CTC/CARB.

1. CARB Has Zero Legal Authority to Mandate Reductions In Vehicle Miles Travelled (VMT), and Its Efforts to Do So Are Both Unlawful and Discriminatory

CARB and its environmental (open space and species protection, and more recently climate) allies have long sought legislative authority to mandate reductions in VMT. There is zero evidence, available anywhere in the world and anywhere in history, that a growing population with more jobs can ever be accommodated while reducing VMT. On the contrary, there is ample evidence, including in reports submitted to CARB by climate advocacy organizations like NextGen, that for lower income and rural workers – who are disproportionately minorities – public transit is not a practicable option, and cleaner automobiles – electric and fuel efficient cars, and equitable replacement of the state's oldest and most polluting cars – is the “right” climate solution for California's majority-minority workforce.

In sharp contrast to CARB's invented VMT reduction mandate “metric” dominating this SB 150 report, the Legislature has repeatedly, and expressly, rejected imposing a VMT mandate on California communities:

- The earliest versions of SB 375 included a VMT reduction mandate, which was quickly deleted in subsequent versions of that bill. SB 375 requires GHG reductions, not VMT reductions.
- The first versions of SB 743 also included a VMT reduction mandate, which was likewise deleted. Through the CEQA Guidelines, a different state agency was directed to develop a metric other than traffic delay in high quality transit-served areas – and one such possible metric was VMT. The CEQA Guidelines have in fact not been amended, and the Legislature did not direct that separate agency to adopt a VMT at all, or any alternative metric, outside such transit-served areas.

- The first version of SB 150, the Legislation directing CARB to develop this report, likewise started with a mandated VMT reduction that was separate and apart from CARB's GHG reduction mandate. VMT was again rejected in the enacted version of SB 150.
- In fact, SB 1014 is only Legislation requiring consideration of VMT, and it establishes a framework for evaluating GHG per VMT (with electric and more fuel-efficient cars having lower GHG per VMT), for app-based ride companies like Uber and Lyft. Neither this bill, nor any other, authorizes any California agency to mandate reductions in VMT.
- Similarly, the Legislature has repeatedly rebuffed "Vibrant Communities" top-down state land use mandates like imposing statewide urban growth boundaries, or directing one or more state agencies (other than the Coastal Commission) to assume responsibility for permitting local land use and transportation plans statewide. CARB does have an assigned role in reviewing regional Sustainable Communities Strategies under SB 375, and has as part of that statutory role itself declined to impose a VMT reduction target that is independent of a GHG reduction target just a few months ago, in March of 2018 – four months after approving the 2017 Scoping Plan CARB now cites as the basis for requiring a VMT reduction mandate. The SB 375 Target Update process included extensive and collaborative studies that showed, among other conclusions, why VMT was not a reliable or necessary metric for achieving GHG reduction targets. The SB 375 Target Update also included numerous studies, and scores of comments from stakeholders, explaining why VMT reductions were not feasible with a growing population and jobs base. (The 200 spoke in support of the updated GHG reduction SB 375 targets at the CARB meeting approving these standards, in March of 2018.)

It is not surprising that the Legislature has declined to mandate VMT reductions, or otherwise enshrine CARB or any other state agency as a new statewide Coastal Commission in charge of local land use and transportation approvals in California's complex and diverse communities.

Simply put, those who drive the farthest are priced out of more proximate homes, and are disproportionately minorities. Many live in poverty or near-poverty, and have – as NextGen reported to CARB – no option to driving to their jobs. NextGen urged CARB to reorient its electric car incentives that had disproportionately favored wealthy Tesla buyers in Marin and other coastal enclaves, who live closer to work – and in any event are wealthy enough to have food delivered and children shuttled by drivers who aren't part of their household. NextGen advocated incentives for getting more electric cars and infrastructure into lower income areas, and for accelerating equitable retirement/replacement of the oldest and most polluting vehicles on the road. CARB has made some progress toward achieving these goals, but is insisting on ever-escalating VMT reductions in a concealed math exercise that defies common sense given our emphasis on electric vehicle fleets. This "CARB Math" is discussed further in Part 4 below.

2. CARB's Transportation Vision is Infeasible, and Discriminatory

CARB's fixation on reducing VMT makes the act of being in a car for a mile – even in an electric car or a carpool – an assault on California's climate leadership. CARB wants to achieve its VMT reduction mandate by making people walk or bike, or ride a bus (or for a tiny fraction of California commuters, ride a ferry or rail).

CARB's Report shows that transit ridership is generally down in California regions, and transportation mode shifts continue to rapidly evolve. Electric scooters and bikes have become a viable business model in some of California's densest communities, while app-based and on-demand carpooling, rideshare, and driver options have emerged as a popular and effective (for at least some trips, some of the time) transportation option. None of these transportation options existed or had been deployed at scale when SB 375 was enacted and therein decreed that quality transit service meant four buses, operating at 15 minute intervals, on fixed routes during peak hours (with similar prescriptive mandates for weekend bus service).

Deployment of partially and eventually more fully automated vehicles, technology improvements that lower costs and increase ranges for electric vehicles, public private partnerships between transit agencies and hundreds of new transportation service and technology companies, and other evolutions in transportation, continue at a remarkable pace. Hostile to all VMT, however, CARB is attempting to lock in land use and transportation patterns for the next century with technology that existed two centuries ago – fixed-route buses, trains and boats.

Fixed route bus lines – especially the four-bus (and typically six or more bus driver shifts) routes required to provide the required SB 375 frequency of bus ridership – cost transit agencies (and taxpayers) millions of dollars to maintain. On-demand ride services, including carpool and other multi-passenger systems, provide more nimble, fast, and far less costly transportation options for those who cannot “walk or bike” between home and work. Transit agencies have begun using these evolving transportation services, including both agency-run services and public-private partnership voucher-based systems, with often excellent, effective, and equitable transportation service results; however, this actual and cost-effective transportation mode does not equate to a VMT reduction and has been openly and repeatedly scorned by CARB staff.

Rail (light and heavy) and ferry service have also expanded, but California's notoriously burdensome procedural requirements have typically resulted in a 20-year delay (and hundreds of millions of cost increases) in actually delivering substantial new transportation infrastructure. CARB's Report enthusiastically endorses yet another “study” of the daily transportation catastrophe suffered by our increasingly (and disproportionately minority) number of “supercommuters,” while doing absolutely nothing to expedite the time or reduce the cost in delivering effective transportation solutions to today's suffering workers.

California's existing land use patterns, with or without evolving into greater density, also make fixed route transit systems exceptionally burdensome and impractical. Again as CARB well

knows, several studies have confirmed that riding transit takes nearly twice as long as a point-to-point car trip (single occupancy, carpool, or app-based car service). This is not to deny the critical role buses, and fixed rail and ferry service, play as effective transit solutions for some jobs for some residents some of the time. However, 6,000 times more jobs are accessible in a 30-minute commute by car than bus in the LA region, and that existing land use dispersal is a reality, and in a region with a growing population and jobs base that means more VMT.

CARB is a state air quality agency: it is not responsible for making transportation, housing, or employment solutions work for any people anywhere in California. CARB is clearly blind to the needs of working Californians in minority communities, although it periodically gives a nod to the poor and homeless with offers of modest direct funding for limited programs.

CARB ignores, however, the role that the automobile plays for working Californians. As noted by the University of Southern California's most experienced land use law professor, George Lefcoe, "Automobiles are the survival mechanism for low-income people." Numerous other studies, including poverty and housing segregation studies completed by the Obama administration and non-partisan think tanks like the Brookings Institute, confirm that families with a car have a much better future: cars make it easier to hold a job that pays for housing and other needs, cars make it easier to keep kids in school and get medical attention, and this housing, employment, health and educational security means a level of financial stability that families without cars simply cannot match – not in California, and not nationally.

If the Legislature wants to mandate VMT reductions, then it can sort through scores of racial, class, job type, regional, and transportation alternative considerations. Nearly 40% of our economy is linked to Port-related trade and transportation: is this sector slashed even if electric trucks become viable? A Stanford study confirmed that construction workers spend the highest percentage of their incomes on transportation: driving trucks to and from construction job sites, to and from locations and during work hours and with equipment that is simply not consistent with fixed route public transit – so are construction workers uniquely harmed, or do they get a total pass, from CARB's VMT reduction mandate? For urgently needed housing projects, CARB and other agencies have suggested imposing substantial and in-perpetuity new "VMT mitigation" fees – thousands of dollars per unit of housing, to be paid by new renters or homeowners every year, to help subsidize school buses and bike path construction as new CEQA mitigation mandates. Those without housing – disproportionately minorities – will pay even more for housing along with these remarkable new annual, in perpetuity new housing fees – conferring yet another fiscal windfall for the state's generally whiter, wealthier and older homeowners and piling on more housing fees for housing on top of the country club initiation equivalent of \$150,000 per new housing unit already charged by some California agencies. Imposing extortionate fees and regulatory obstacles on housing is a proven winner for those seeking to block housing based on class or race: is inventing new VMT fees to impose on California's 3 million missing homes a policy choice made by our elected officials (or voters)?

CARB cannot, based on undisclosed math, impose a VMT reduction – or a disguised VMT reduction in the form of a VMT fee as noted in the Vibrant Communities Appendix - on any California agency, project or person based on any statutory authority granted to CARB by the Legislature. CARB's repeated attempts to do so, with failed legislation and its own abandoned effort to impose a VMT reduction mandate in the SB 375 Target Updates finally approved without that mandate in March of 2018, are unlawful and discriminatory.

3. CARB's Housing Vision is Infeasible, and Discriminatory

The Report also notes that most regions have fallen behind in housing production, and is particularly critical of the continued construction of single family homes – anywhere. However, just as CARB pretends that its VMT reduction mandate is based on non-existent legal authority, CARB pretends its housing vision is based on a high density housing economic fantasy.

As one of CARB's own advisors have documented, and has been well documented in numerous other studies, high density housing units cost 300-500% more to build than small-lot single family, duplex, quadplex and townhome housing units. California's new high density transit-oriented housing units cost far in excess of what middle income families can afford to rent or buy. Even 100% affordable housing units, built in the less costly mid-density (4-6 stories) rather than most costly high density (above 6 stories) range, cost in excess of \$500,000 per unit in Los Angeles, and \$700,000 per unit in San Francisco. As experts from the non-partisan Legislative Analyst Office and others have repeatedly noted, there is no way that public funding will pay for a 3 million home shortage where 40% of Californians need to make a monthly choice between paying for food and medicine. There is no option – none – to reducing the cost of housing to levels that are actually affordable to middle income families if California is serious about solving our housing crisis.

CARB also knows from its own experts that lower density housing – smaller single family homes, duplexes/quadplexes and townhomes – is the only available type of housing that has the level of substantially lower production costs that make this housing affordable.

In the most comprehensive examination of what it would take to build just under 2 million new homes entirely within existing urban areas that are actually affordable (e.g., small single family/duplex/quad/townhomes) to those earning normal salaries, scholars at UC Berkeley (one of whom was on the Report's advisory group) concluded that “tens if not hundreds of thousands” of single family homes would need to be demolished. Given our current shortfall of 3 million homes, CARB's infill-only, transit vision of California's climate future will require razing thousands of single family homes.

CARB's demand for the most costly form of urban housing - high density transit oriented housing units - isn't just infeasible for California's aspiring minority homeowners (and renters). Other studies have demonstrated that these high cost, dense new housing projects can displace low and middle income families (especially renters) who actually use transit but are forced to

relocate to more distant locations with less costly housing, where public transit is not as viable as it was from their more centrally-located original neighborhoods. Simply put, new residents of chic new high density housing urban projects near transit, who are able to afford \$1 million condos or pay \$5000 per month in rent, don't take the bus. In the Bay Area, and as documented in yet another comprehensive new study, the housing crisis has resulted in a racial diaspora, as African American and Latino populations have shrunk – substantially – in the region's wealthiest five counties closest to jobs, while these minority populations have grown substantially in the Central Valley and more distant East Bay counties. About 190,000 daily commuters enter the Bay Area from outside the 9-county region, and over 210,000 commute from the East Bay to Silicon Valley or San Francisco. CARB's prescription – to require even higher densities in costly urbanized areas, and prohibit lower density small "starter" homes and townhomes – could not be more perfectly tailored to worsen the housing options for our hard working minority families.

There is not a single Legislator who voted to approve CARB's new land use vision, or the related proposal in "Vibrant Communities" to impose a new "ecosystem services" tax on urban residents to pay for the open space lands they do not use or inhabit.

There is not a single Legislator who has proposed or voted to spend at least \$500,000 per apartment to build 40% of the needed 3 million new housing units for the lower income Californians that United Way describes as unable to meet normal monthly expenses (1,200,000 new homes at \$500,000 per home is \$600,000,000,000 – that's billion).

There is not a single Legislator who has proposed or voted to end home ownership as a pathway to the middle class for Californians who work hard to earn median and above-median incomes.

Instead, the Legislature enacted SB 375 to ask each region to reduce GHG from the land use and transportation sectors – and directed CARB to establish GHG (not VMT) reduction targets. Regions, informed by cities and counties, have in turn spent tens of millions of dollars doing two (mostly completed) rounds of SB 375 plans, which CARB has in turn reviewed and approved.

Under SB 375, each regional transportation agency has carefully weighed density and transportation choices, and disclosed the substantial environmental impact tradeoffs between density and to make lower density and more financially feasible housing within the footprint of existing communities our only housing solution. Each Sustainable Communities Strategy, prepared by each region and approved by CARB, endorses far more transit and supports more density – but also documents scores of significant unavoidable impacts to the existing environment in affected communities that has created political and voter backlash against new housing. If CARB wants to pronounce SB 375 a failure, as indicated in the Report, then it's time to rethink practical housing and transportation solutions for actual Californians – but as a state air quality agency, CARB has not been charged – and is clearly not qualified – to lead this complex undertaking.

Instead, CARB's proposed solution to today's urgent poverty, homeless and housing crisis can only be invented by bureaucrats with secure employment, and special interest advocates paid to participate in endless "process" instead of actual "progress." The Report's prescription is to develop yet another "plan" – even though CARB the latest round of SB 375 targets in March of 2018!

CARB completely ignores the simple and ongoing, but politically inconvenient truths, of what experts from around the state agreed would be required to make SB 375 successful:

- More public funding would be needed, especially for housing and infrastructure. Instead, Governor Brown eliminated redevelopment, which was by far the most effective financing tool then in existence – and itself not sufficient – to make SB 375 work. CARB proposes no financing solutions.
- CEQA reform would be needed, especially for existing communities where the vast majority of CEQA lawsuits are filed and threatened. The top target statewide of CEQA lawsuits is high density infill housing, and abuse for non-environmental objectives – sometimes for openly racist NIMBY "redlining" of the type long ago recognized as illegal and immoral – is likewise ignored by CARB, which has instead decided to impose even higher housing costs with its recommended expansions of CEQA. Governor Brown took office championing CEQA reform, only to throw in the towel a few years later because "unions use CEQA to leverage project labor agreements." Even housing that complies with every single local, regional, and state law, ordinance, and mandate, can get stalled out for years by CEQA studies prepared in defense of threatened lawsuits – and then held up for even longer by CEQA lawsuits.
- Land use reform would be needed, to reduce the time and cost required to get new projects approved and contain runaway fees that in some communities have now hit \$150,000 per single unit of housing (even a small apartment!). Here Governor Brown made a try with "by right" housing requiring only ministerial (non-CEQA) approvals, which failed to be endorsed by a single Legislator. The "housing package" approved in 2017 was important in recognizing and making incremental improvements, but all Legislators and the Governor conceded that far more was necessary to solve the housing crisis – and 2018 was effectively a time-out for the election. CARB in its Report at least acknowledges this problem, but its clear preference is a state agency takeover of land use approvals – a statewide equivalent of the Coastal Commission – with a leading role by, of course, CARB itself.

CARB's report demonstrates its total amnesia about what it would take for SB 375 to succeed, and its call for yet another "plan" with still more jargon about "action items" for future consideration, along with an ever-expanding mission creep of other policy preferences dear to some of CARB's allies (e.g., avoiding urban conversion of agricultural lands even within existing city limits, notwithstanding estimates that more than 500,000 acres of agricultural land

must be taken out of production to meet groundwater sustainability mandates), is yet another demonstration of the fundamental mismatch between an air agency and its environmentalist allies, and the housing and transportation needs of California's minority communities.

CARB did not, and should not, get legal authorization to forward its proposed "MAP" plan. This is an unlawful distraction from the urgent housing and transportation needs of the state, and the state's minority communities in particular.

4. CARB Climate Math

In these highly partisan times, too often those challenging anything CARB proposes have been pilloried as climate denier – or worse, Trumpites! However, enforcing hard-won civil rights protections, including equal access to housing and homeownership, have nothing to do with denying climate change – or criticizing California's commitment to climate leadership. But like other powerful bureaucrats in other times, CARB and its allies are advancing their own version of climate policies which are blind to the needs of our communities, while intentionally concealing its own inconvenient truths.

For example, one of CARB's most vexing habits is its refusal to "show its work" on math. Even third graders are trained that getting the answer right isn't enough: in math, you must show your work.

Scores of commenters have – for many years, and in many different proceedings - asked CARB, "How much GHG reduction do you need to get from VMT reductions to meet the AB 32 (and now SB 32) GHG reduction target?" CARB has adamantly and repeatedly declined to answer this question, and instead insisted that high density housing and reliance on public transit is absolutely necessary for California to meet its GHG reduction target. Even the most basic examination of CARB's math demonstrates that this is patently false, and a land use power grab that harms those most hurt by California's housing and poverty crisis.

From the earliest days of AB 32, CARB's own scientists questioned how much GHG reduction could be achieved from the land use sector, given how established land uses and transit modes established patterns that would take decades to change – if they could be changed at all. Lowering fossil fuel emissions from power plants and other manufacturing/refining facilities, increasing renewable power production, and reducing emissions from vehicles, were clear GHG "big" reduction opportunities. When pressed, CARB's scientists – and the Legislature – agreed that retrofitting older buildings with energy and water conservation features (e.g., LED lighting, insulation, more efficient HVAC systems, modern appliances, etc.) would result in the biggest GHG reductions from this sector. Ignoring science and the Legislature, CARB has never prioritized or committed meaningful funding levels needed to retrofit the vast majority of California's built environment – preferring instead to weigh in on sexier decisions about where new housing should be located that already must meet the most GHG efficient standards in the United States.

The revolution in transportation technology and services has also not been allowed to interfere with CARB's anti-VMT agenda, even as huge strides are made with electric and other clean transportation modes like electric bikes and scooters, and even with the advent of carshare and app-based ride services that reduce reliance on owned – and mostly parked – private cars. CARB does not even have an established methodology for calculating how many trips (or how much VMT) does not occur based on the exploding use of these new transportation technologies or services. These types of trips are not even counted in CARB-approved models – yet CARB remains adamant that VMT reductions are required.

Why does CARB refuse to convert its VMT reduction demand into GHG? Simply put, CARB refuses to accept that there very likely are far less intrusive, far less costly, and far less damaging to minority communities, ways to reduce GHG than mandating reductions in VMT.

CARB knows very well how to “rank” potential emission reduction strategies, and this transparent approach has a remarkably successful track record in the Clean Air Act. If CARB needs to get 10 tons, or 10,000 tons, of GHG reductions from VMT reductions, then other potential GHG reduction sources can be evaluated on the basis of relative environmental, equity, and economic consequences. As the Obama administration documented, tailpipe emissions from 1960's-era cars were reduced by nearly 99% as of 2016 – a remarkable regulatory success under the Clean Air Act that required a careful combination of technology-forcing regulations, accompanied by technical and economic analyses, that preserved the functionality and affordability of cars with technological advances in engines and fuels that were not conceivable when this regulatory effort began in the early 1970's.

CARB is clearly no fan of this Clean Air Act regulatory model, or the transparency and accountability that comes with “showing its math.” In fact, there is not a single location, in either the Report or in the 2017 Scoping Plan, where CARB “shows its math” by explaining how much GHG this desired new VMT reduction mandate will achieve.

Attachment 3 to this letter “shows the math” – which, shockingly – shows that building even two-thirds of the needed housing units will require the demolition of “tens if not hundreds of thousands” of single family homes, must be done in far less dense housing types (e.g., duplexes/quadplexes) than the high densities demanded by CARB because of the exceptionally high cost of high density housing, will mean that average new housing units will be about 800 square feet instead of about 2100 square feet (and will of course have no private back yard), and then – ready the drumroll – GHG from VMT will be reduced by less than 2 million metric tons per year, which is itself less than 1% of CARB's Scoping Plan target of reducing GHG by 260 tons per year by 2030. Since CARB agrees that the California economy produces about 1% of the world's GHG, CARB's VMT reduction/high density housing agenda will result in reducing GHG by less than 1% of what CARB believes is needed - which will have statistically zero effect in reducing the GHG emissions worldwide for this global pollutant.

To worsen California's housing and poverty crisis, and disparately harm California's minority communities, chasing 1% of 1% of global GHG is quite simply an outrageous regulatory abuse of the sincere support that Californians have for leading the world on climate change.

There are a myriad suite of options to get 1% - less than 2 MMT - of GHG out of the California GHG inventory. CARB can do what its scientists and the Legislature told it to do and retrofit existing buildings (and save struggling residents money on power and water bills), or it can reduce what the Little Hoover Commission called "catastrophic" conditions in the 33% of California that is forested to avoid even a single forest fire, and generate stable levels of electricity from dead forest vegetation when it is dark and not windy (England's base load replacement for coal as a carbon neutral power production source), or it can equitably retire the oldest and dirtiest cars that have the highest GHG and other emissions in California's vehicle (which are most often owned and absolutely relied on by low income workers and their families), or it can choose to "lead the world" in developing and deploying new production methods that produce consumer products with less GHG and avoid GHG emissions from ocean-crossing exporters (and provide middle income job opportunities to Californians). These are all "win-win" strategies that reduce GHG and achieve other very important goals for California, and actually help rather than harm California's minority communities. Instead, CARB and its Vibrant Community state agency allies appear intent on using climate to make California look like and be as expensive and exclusive as Manhattan in NYC.

We urge CTC and all other California agencies and stakeholders to demand "math transparency" by CARB.

Stop CARB's Voter Disenfranchisement

Finally, we note that CARB missed its statutory deadline of September 2018 for publishing this report – thereby conveniently avoiding accountability to the majority of California voters who dutifully supported the state leaders by rejecting Measure 6 and paying higher fuel taxes to repair and maintain existing roadway infrastructure, while directing substantial future spending on transit instead of road expansions. CARB, now free of voter oversight or accountability, attacks our transportation agencies for spending money on road maintenance – by far the biggest existing transportation system infrastructure – even while voters have decided that the vast majority of new transportation projects funded by the gasoline tax will be transit and pedestrian/bicycle projects. CARB's conflation of maintenance funding with new project funding intentionally distorts California's commitment to direct most new money away from roads, and is another example of "CARB math."

CARB also provided less than 7 days, inclusive of a weekend and right after the Thanksgiving holiday, and with zero advance notice, for review and comment on this remarkable new Report. If there was a more effective way to suppress input from other state, regional and local agencies – and virtually every other California person and enterprise since all of us are dependent on

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either housing or transportation – we would need to travel to a totalitarian country or dictatorship rather than a democracy to find it. This is, however, typical of CARB: for example, its “Vibrant Communities” appendix was released after the Legislative session without notice and with only a few days for comments, and the resulting hailstorm of criticism was entirely ignored by CARB and its aligned agencies. It is also the case that CARB will intone that its desired next step – its “MAP Plan” for taking over housing and transportation decisionmaking – assuming the CARB Board allows staff to further squander taxpayer dollars and obstruct progress in solving the housing crisis or spending voter-approved housing and transportation dollars in the current housing emergency, was merely the inevitable outcome of this Report – which was, after all, the subject of a public notice and comment, and Board hearing, process.

CARB is an air agency, and it has been directed to reduce GHG. It should do so based on the tried and true transparency requirements of the Clean Air Act. There is no question that the CARB Board, and a properly managed staff, can find other opportunities achieving 1% of California’s SB 32 GHG reduction goal.

In conclusion, we strongly oppose CARB’s continued planning and work to mandate VMT reductions unaffordable-by-design high density housing. Global climate change creates no excuse for violating the civil rights of Californians.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read 'Jennifer L. Hernandez', with a long, sweeping flourish extending to the right.

Jennifer L. Hernandez
Equity Partner

JLH:mlm



February 22, 2019

via email: 2020PEIR@scag.ca.gov

Mr. Roland Ok
Senior Regional Planner
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, California 90017

Subject: Comments on the Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (Southern California Association of Governments 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear Mr. Ok:

The City of Irvine appreciates the opportunity to provide comments on the Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for Connect SoCal, the Southern California Association of Governments' 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).

The City of Irvine respectfully requests the following clarifications and considerations during the preparation of the PEIR.

1. Alternative Planning Strategy: Page 5 of the NOP identifies the year 2020 and year 2035 regional greenhouse gas emission reductions targets that the SCAG Sustainable Communities Strategy (SCS) must achieve through a combination of land use, housing, and transportation strategies. The NOP further states that if the SCS is not capable of meeting the regional targets, SCAG must then prepare a separate "Alternative Planning Strategy" (APS) that is capable of meeting the regional greenhouse gas emission reduction targets.

The City of Irvine recommends language in the PEIR that clearly identifies that an Alternative Planning Strategy, if developed, is statutorily not subject to CEQA provisions (as clarified by SCAG staff at the January 17, 2019 SCAG Technical Working Group meeting), and would therefore not be addressed or analyzed in the Connect SoCal Program EIR.

2. Comparative Analysis of the Connect SoCal Preferred Plan and the PEIR Alternatives: To enable the reader to clearly understand the distinct differences in strategy and policy between the Preferred Plan and the PEIR Alternatives, the City of Irvine recommends that the PEIR include a comparative table matrix that highlights the key similarities and differences between the components of the Preferred Plan and PEIR Alternatives. The matrix should also include the amount of greenhouse gas emission reductions achieved by the Preferred Plan and the PEIR Alternatives. Examples of the comparative components could include:

- Land Use
- Growth Scenario
- Open Space Conservation
- Transportation Network
- Public Transit
- Non-Motorized Transportation
- Local/Regional Pricing
- Transportation Demand Management
- Vehicle Technology/Innovation
- Greenhouse Gas Emission Reduction (automobiles and light-duty trucks)

Within the land use component, the PEIR matrix (as recommended above) should specify if the Preferred Plan and each of the PEIR Alternatives:

- Does or does not maintain each jurisdiction's control totals for population, housing, and employment;
- Does or does not maintain individual county control totals for population, housing, and employment;
- Does or does not maintain the regional control totals for population, housing, and employment.

3. Additional New PEIR Alternative: The NOP states on page 7 that the growth scenario included in the No Project Alternative and all the PEIR alternatives would include the same **regional** totals for population, housing, and employment. However, while regional totals for population, housing, and employment are maintained, there could be alternatives that redistribute growth in a manner where a jurisdictional total could be greater than the original input provided by the local jurisdictions.

The City of Irvine recommends that an additional PEIR Alternative be developed and analyzed that maintains local jurisdictional control totals in

population, housing, and employment, but shifted in intensity or location within the jurisdiction. This new PEIR Alternative would provide local jurisdictions and stakeholders with an assessment of the degree to which local growth would need to be intensified or relocated within its jurisdiction to strive to achieve the State required regional greenhouse gas emissions reduction targets and allow local jurisdictions the opportunity to assess the degree to which such an alternative meets community goals and objectives. The addition of the proposed new PEIR Alternative would also allow for the PEIR to include an assessment of the environmental impacts of this Alternative, if the full range of impacts exceeds that of the Intensified Land Use Alternative.

4. Local Jurisdiction Review of TAZ-Level Population, Housing, and Employment Datasets: As all PEIR Alternatives are developed, there could be distinct differences in growth forecast numbers for population, housing, and employment at the local jurisdiction level and traffic analysis zone level, from that submitted by local jurisdictions as part of the Connect SoCal Local Input process.

The City of Irvine recommends that any shifts in growth that differ from Local Input, are actively coordinated and communicated between SCAG and the applicable local jurisdictions, to ensure that any proposed redistribution of growth are, in fact, reasonable, achievable, and do not require any General Plan or zoning amendments.

Sincerely,



Pete Carmichael
Director of Community Development

cc: Timothy Gehrich, Deputy Director of Community Development
Kerwin Lau, Manager of Planning Services
Steve Holtz, Manager of Neighborhood Services
Bill Jacobs, Principal Planner
Melissa Dugan, Supervising Transportation Analyst
Marika Poynter, Senior Planner



City of Mission Viejo

Office of the City Manager

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Mayor

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Wendy Bucknum
Council Member

Trish Kelley
Council Member

Edward Sachs
Council Member

Electronic Transmittal: 2020PEIR@scag.ca.gov

February 20, 2019

Mr. Roland Ok
Senior Regional Planner
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

Subject: City of Mission Viejo Comments: SCAG Notice of Preparation of a Program Environmental Impact Report for Connect SoCal (2020 – 2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear Mr. Ok,

The City of Mission Viejo appreciates the opportunity to provide comments on the Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) for SCAG's 2020 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), referred to as Connect SoCal, or the Plan.

The City of Mission Viejo respectfully requests the following clarifications and considerations, to enable the Connect SoCal PEIR to provide a clear and full consideration of environmental factors that have the potential to generate significant impacts.

The City of Mission Viejo comments are as follows:

- 1) **Alternative Planning Strategy:** Page 5 of the NOP identifies the Year 2020 and Year 2035 regional greenhouse gas emissions reduction targets that the SCAG Sustainable Communities Strategy (SCS) must achieve, through a combination of land use, housing and transportation strategies. The NOP further states that if the SCS is not capable of meeting the regional targets, that SCAG must then prepare a separate "Alternative Planning Strategy" that is capable of meeting the regional greenhouse gas emission reduction targets.

The City of Mission Viejo recommends language in the PEIR that clearly identifies that an Alternative Planning Strategy, if developed, is statutorily not subject to CEQA provisions (as clarified by SCAG staff at the January 17, 2019 SCAG Technical Working Group meeting), and would therefore not be addressed nor analyzed in the Connect SoCal Program EIR.

2) Comparative Analysis of the Connect SoCal Preferred Plan and the PEIR Alternatives:

To enable the reader to clearly understand the distinct differences in strategy and policy between the Preferred Plan and the PEIR Alternatives, the City of Mission Viejo recommends that the PEIR include a comparative table matrix that highlights the key similarities and differences among the components of the Preferred Plan and PEIR Alternatives, and the amount of greenhouse gas emissions reductions that the Preferred Plan and each of the PEIR Alternatives would achieve. Examples of the comparative components could include:

- Land Use
- Growth Scenario
- Open Space Conservation
- Transportation Network
- Public Transit
- Non-Motorized Transportation
- Local/Regional Pricing
- TDM
- TSM
- Vehicle Technology/Innovation
- Greenhouse Gas Emissions Reduction (automobiles and light-duty trucks)

Within the land use component, the PEIR matrix (as recommended above) should specify if the Preferred Plan and each of the PEIR Alternatives:

- does or does not maintain each jurisdiction's control totals for population, housing and employment;
- does or does not maintain individual county control totals for population, housing and employment;
- does or does not maintains the regional control totals for population, housing and employment.

3. Additional New PEIR Alternative: The NOP (page 7) states that the growth scenario included in the No Project Alternative and all the PEIR alternatives, would include the same **regional** totals for population, housing and employment. However, while regional totals for population, housing and employment are maintained, there could be alternatives where the growth scenario re-distributes growth such that jurisdictional totals could be greater than the original input provided by the local jurisdictions.

The City of Mission Viejo recommends that an additional PEIR Alternative be developed -- above and beyond the No Project, Local Input, and Intensified Land Use Alternatives -- if the 2020 Local Input Alternative is quantified to not be capable of achieving the region's greenhouse gas emissions reduction target, and if the Preferred Plan and the PEIR Intensified Land Use Alternative both shift land use growth away from county unincorporated areas and instead re-directs some of the unincorporated county growth into individual local jurisdiction growth priority areas, and through such shifts, causes an

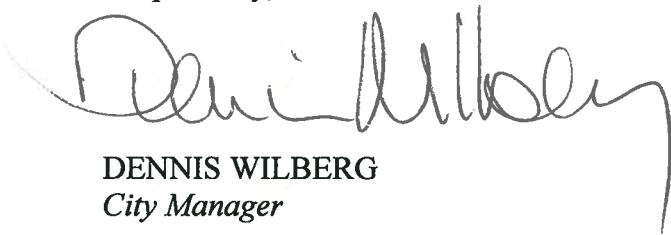
increase in growth above and beyond the jurisdictional totals in population, housing and employment and correspondingly reduces unincorporated county totals in population, housing and employment, in order to maintain countywide control totals.

The proposed new PEIR Alternative would analyze the degree to which local jurisdictional control totals in population, housing and employment could be maintained, but be shifted in intensity or location within the jurisdiction. This new PEIR Alternative would provide local jurisdictions and stakeholders with an assessment of the degree to which local growth would need to be intensified or re-located, to strive to achieve regional greenhouse gas emissions reductions targets, and allow local jurisdictions the opportunity to assess the degree to which such an alternative meets community goals and objectives. The addition of the proposed new PEIR Alternative would also allow for the PEIR to include an assessment of the environmental impacts of this Alternative, if the full range of impacts exceeds that of the Intensified Land Use Alternative.

4. Local Jurisdiction Review of TAZ-Level Population, Housing and Employment Datasets:
As all PEIR Alternatives are developed, there could be distinct differences in growth forecast numbers for population, housing and employment at the local jurisdiction level and traffic analysis zone level, from that submitted by local jurisdictions as part of the 2020 RTP/SCS Local Input process.

The City of Mission Viejo recommends that any shifts in growth that differ from Local Input, are actively coordinated and communicated between SCAG and applicable local jurisdictions, to ensure that any proposed re-distributions of growth are, in fact, reasonable, achievable and do not require any General Plan or zoning amendments, to effect.

Respectfully,



DENNIS WILBERG
City Manager

- c: City of Mission Viejo City Council
Keith Rattay, Assistant City Manager/Director of Public Services
Elaine Lister, Director of Community Development
Mark Chagnon, Director of Public Works
Larry Longenecker, Planning & Economic Development Manager
Rich Schlesinger, City Engineer
Philip Nitollama, Traffic/Transportation Engineer
Gail Shiomoto-Loehr, GSL Associates
Marnie O'Brien Primmer, OCCOG Executive Director
Marika Poynter, OCCOG TAC Chair

Anita Au

From: Claudia Manrique <claudiam@moval.org>
Sent: Friday, February 22, 2019 3:35 PM
To: 2020 RTP/SCS PEIR
Cc: Nevins, Patty
Subject: PEIR Comments

Roland:

Moreno Valley wishes to be placed on the notification list for the Connect SoCal Plan PEIR.

Thank you.

Sincerely,

Claudia Manrique
Associate Planner
Community Development
City of Moreno Valley
p: 951.413.3225 | e: claudiam@moval.org w: www.moval.org
[14177 Frederick St., Moreno Valley, CA 92553](#)

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NATIVE AMERICAN HERITAGE COMMISSION
Cultural and Environmental Department
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West Sacramento, CA 95691 Phone (916) 373-3710
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February 12, 2019

Ping Chang
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, CA 90017

RE: SCH#2019011061 Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy),
Ventura, Los Angeles, Orange, San Bernardino, Riverside and Imperial Counties.

Dear Mr. Chang:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:

Steven.Quinn@nahc.ca.gov.

Sincerely,



for

Steven Quinn

Associate Governmental Program Analyst

cc: State Clearinghouse



Roland Ok, Senior Regional Planner
Southern California Association of Governments
900 Wilshire Blvd., Ste. 1700
Los Angeles, CA 90017

February 22, 2019

RE: Scoping Connect SoCal - 2020-2045 Regional Transportation Plan / Sustainable Communities Strategy

Dear Mr. Ok,

Thank you for the opportunity to comment on the scoping of the environmental analysis that will underpin the 2020-2045 Regional Transportation Plan / Sustainable Communities Strategy.

The 2020-2045 time frame of this plan takes us solidly into the the point of no return on climate action. This plan must guide our region towards an aggressive shift in land use and transportation patterns to radically reduce climate emissions.

The EIR should examine as part of its alternatives analysis an alternative that describes a future in which the land use and transportation systems of Southern California meet the necessary trajectory to reach California's ambitious and necessary climate goals. By that, we mean aiming for the full 25% reduction in per capita greenhouse gas emissions from transportation (relative to 2005 levels by 2035) that is identified as necessary in the ARB scoping plan, and not simply the 19% mandated by SCAG's SB 375 target.

An incremental approach that merely entertains existing commitments, which are bound to fail us in reaching our climate goals, is not appropriate or adequate.

We ask SCAG to include in its alternatives analysis at least one scenario that includes all of the following elements:

- 1) A halt to sprawl, greenfield development that increases per-capita VMT;
- 2) A robust prioritization of infill development near jobs and destinations -- especially near transit and including affordable housing -- that reduces per capita VMT in line with the ARB scoping plan and includes anti-displacement measures;
- 3) No new road or highway capacity projects;
- 4) A reprioritization of existing road and highway capacity to more equitable and efficient modes of transportation, including bus only lanes, bicycle lanes and high-occupancy vehicle lanes;
- 5) A robust system of roadway pricing, including cordon tolling, VMT/VHT pricing and corridor pricing throughout the SCAG geography as appropriate, with a priority on improving transportation equity through revenue investment;
- 6) An extensive electrification of our passenger and goods movement systems.

The plan's environmental review should also provide an equity analysis, incorporating best practices, that includes: an accounting of investment in disadvantaged communities that addresses discrepancies in access to transportation options; a neighborhood-scale impact analysis in these communities; a tracking of displacement of low-income residents that has occurred; and an anticipation of future displacement risk to vulnerable communities associated with these investments.

This analysis should aim to provide guidance to jurisdictions for mitigating disproportionate air quality impacts, and protecting against displacement of vulnerable residents. In addition, the analysis should disaggregate data as much as possible to lift up race/ethnicity, age, and low-income exposure to poor air quality and other health hazards from all of SCAG's six counties.

Thank you for your consideration.

Sincerely,

Carter Rubin, Mobility and Climate Advocate
Natural Resources Defense Council

Christopher Escárcega, Acting Co-Director
ClimatePlan

Bryn Lindblad, Deputy Director
Climate Resolve

Matthew Baker, Policy Director
Planning and Conservation League

Demi Espinoza, Senior Equity & Policy Manager
Safe Routes to School National Partnership

Jared Sanchez, Senior Policy Advocate
California Bicycle Coalition

Anita Au

From: Robert dale <robertdaleplanning@gmail.com>
Sent: Wednesday, February 13, 2019 2:58 PM
To: nader.ghobrial@ocpw.ocgov.com
Subject: OC BikeLoop

Nader Ghobrial
Bike Trail Planner
OC Public Works

Hello Nader,

Thanks for taking my phone call today.

Also, thanks again for your help completing the 66 mile OC BikeLoop & expanding recreational opportunities in park poor north OC. The proposed La Habra Centennial Rail Trail is the largest gap in the plan.

I agree with you, the lower Coyote Creek Bike Trail is a difficult situation. From our ride in 1996, most of the gates were locked, & it looked like several bridges were needed. Also the 5 Fwy was a major obstruction. We ended up riding in the storm channel to get to the San Gabriel River Trail.

I am hopeful the La Habra Centennial RailTrail will be completed by our town's, 1/20/2025, Centennial Celebration! A recent study found La Habra has the fattest kids in the county. Also, 50% of our young adults are pre-diabetic. Expanding recreational opportunities is vital to the sustainability of our town.

Keep up your great work!

Robert Dale
La Habra Bike Club
La Habra 2025 Centennial Celebration Committee
1401 Sierra Vista Dr.
La Habra, CA. 90631
Ph. (562) 697-8953

Cc La Habra Bike Club; La Habra 2025 Centennial Celebration Committee

Anita Au

From: Robert dale <robertdaleplanning@gmail.com>
Sent: Wednesday, February 13, 2019 2:18 PM
To: Roland H. Ok; 2020 RTP/SCS PEIR
Cc: Ho, Andrew; Al.Jabbar@ocgov.com; Angela Lindstrom; Assemblymember.Chen@Outreach.assembly.ca.gov; Bill Ballinger; Bob Henderson; Jim Brewer; Barbara Ballinger; Banning Ranch Conservancy; Bicycle Club; bwwhitaker@live.com; Chuck Buck; RoslynL@ci.brea.ca.us; Stacy.Blackwood@ocparks.com; Douglas Cox; chris.jepsen@rec.ocgov.com; Chris Johansen; Carlos Jaramillo; Chamber; Claire Schlotterbeck; chuy51@aol.com; Gordon cox; davidd@lahabracity.com; David Whiting; Debbie Presley; Dave Larson; Teri Daxon; Dr. David Nilson; everprop@gmail.com; Rusty Elliot; Rose Espinoza; Jose Medrano; Jack Miller; Mike Foley; Sandi.fp@gmail.com; Fullerton Observer; Surfrider Foundation; sue gaede; Jim Gomez; greenvision@fhbp.org; mplotnik@lahabracity.gov; Nord, Gregory; TShaw@lahabracity.gov; Lynton Hurdle; heather mcRea; honk@ocregister.com; Jane Noltensmeir; jwilliams90631@gmail.com; Jean Watt; Les Knight; Lou Salazar; Dave Larson; mustangthompson; Schlotterbeck, Melanie; nsantana@voiceofoc.org; ecarpenter@octa.net; nwheadon@octa.net; pmartin@octa.net; TheTracks@cityofbrea.net; Scott.Thomas@ocparks.com; Theresa Sears; Tuan.Richardson@ocparks.com; rory.paster@ocparks.com; nader.ghobrial@ocpw.ocgov.com; kathied@cityofbrea.net; Sadro, Jim; Eric Johnson
Subject: So Cal Assoc. of Gov.; Connect SoCal Project, EIR Public Comments

2/13/19

To: Roland Ok, Senior Planner
SCAG, "ConnectSoCal", PEIR
From: Robert Dale, La Habra 2025 Centennial Committee
1401 Sierra Vista Dr.
La Habra, Ca 90631

Re: Public Comments.

Subject: Connect SoCal, PEIR.

Topic: Orange County Bike Path Planning

Please consider the proposed 2040 Orange County Regional Bike Path Plan in your environmental assessment.

Also, please consider the completion of the proposed, 66 mile, "OC BikeLoop", from downtown La Habra to the Pacific Ocean. Completion of the proposed La Habra Centennial RailTrail, the largest gap in the plan, is vital to the sustainability of our region.

Thanks,
Robert Dale
La Habra, CA

"Connect SoCal Project" - The 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy is a long-range visioning plan that balances future mobility and housing needs with economic, environmental and public health goals.

Connect SoCal embodies a collective vision for the region's future and is developed with input from local governments, county transportation commissions (CTCs), tribal governments, non-profit organizations, businesses and local stakeholders within the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura.

What is the Program Environmental Impact Report,(PIER)?

SCAG's PEIR is an environmental report that will analyze and disclose potential impacts of the Connect SoCal plan on the environment.

Please send comments related to the Environmental Impact Report: "Notice of Preparation" to:

Southern California Association of Governments

Attn: Mr. Roland Ok

900 Wilshire Blvd., Ste 1700

Los Angeles, CA 90017

Comments may also be submitted electronically to 2020PEIR@scag.ca.gov

All responses must be sent no later than **5:00 p.m. on Friday, February, 22, 2019.**

[IN THIS SECTION](#)

[What is the PEIR?](#)

[What will the PEIR Analyze?](#)

[Notice of Preparation](#)

[Participate](#)

[Submitting Comments](#)

February 21, 2019

Southern California Association of Governments
Attn: Mr. Roland Ok
900 Wilshire Blvd., Ste. 1700
Los Angeles, CA 90017

RE: Comments on the Prospective Scope of the Draft Program Environmental Impact Report (PEIR) Concerning “Connect SoCal” (SCAG’s 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)

Dear Mr. Ok,

Orange County Business Council (OCBC) is an influential advocate for business in Southern California, promoting the economic development and prosperity of not only Orange County, but the interconnected region as a whole. Pursuant to obligations outlined in Senate Bill 375 (SB 375), the Southern California Association of Governments (SCAG) must update its federally required regional transportation plan and prepare a sustainable communities strategy (SCS). The California Air Resources Board (CARB) is mandated to establish greenhouse gases (GHG) reduction targets for SCAG to aim for when adopting an SCS; however, CARB is attempting to force SCAG and other metropolitan planning organizations (MPOs) to demonstrate their projected reductions in vehicles miles traveled (VMT). **Because this a problematic measurement for MPOs, OCBC is opposed to the method CARB is pushing to reach reduction targets.**

The Legislature instructed CARB to ensure that emissions reduction targets are “achievable” and carefully consider population growth, economic factors, and the need for housing. VMT reductions is not an appropriate gauge for demonstrating GHG emissions reductions. Despite CARB’s emphasis on per capita VMT reductions, VMT has generally been increasing slightly—not decreasing. This is in line with evidence that no region with a growing population has been successful in significant VMT reductions. The Legislature has acted accordingly with these facts, removing VMT from SB 375 and rejecting efforts by CARB to authorize the imposition of a VMT reduction metric. Each MPO is required only to attempt to meet a CARB-prescribed GHG emissions reduction target, while SB 375 permits MPOs to adopt SCSs that reduce GHG emissions but are not foreseeably able to achieve CARB-prescribed targets. SCAG’s 2016 RTP/SCS assumed a 10 percent decrease in VMT between 2005 and 2035; now, at the halfway point in this timeline, there has been no decrease in VMT. Every MPO in the state reported an increase, not a decrease, in VMT since SB 375 was enacted in 2008.

Each of these telling signs serves as a warning that CARB’s strategy is misguided. In order for SCAG to meet the targets expected by CARB, it would need to undertake a dramatic effort that would disastrously harm the Southern California economy and undermine local land use decision-making by democratically elected officials. CARB justifies this approach as necessary to mitigate climate change impacts, but despite

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SCAG RTP/SCS
February 21, 2019

California's prestigious ranking as the fifth-largest economy in the world, the state emits less than one percent of global GHG. The economic damage of drastic and sweeping changes to the state's infrastructure and housing availability caused by CARB's mandate would be far more destructive than beneficial for Californians. The Bay Area region has attempted to reduce VMT vehemently, but has failed as commuting times increase and public transit ridership falls. This demonstrates that even earnest efforts by MPOs in similarly congested areas will not be met with success.

CARB's vision of exclusively high-density, transit-oriented development patterns have not proven successful for any MPO to date. OCBC appreciates SCAG's efforts to assure that SB 375 can be implemented consistent with its statutory protections for a healthy economy and growing population. Ultimately, VMT is a flawed metric for achieving GHG reduction targets. **OCBC respectfully urges SCAG to reject CARB's continued push to impose a VMT reduction scenario in our region as part of its effort to achieve climate and/or air quality goals.**

Sincerely,



Alicia Berhow
Senior Vice President of Government Affairs



AFFILIATED AGENCIES

*Orange County
Transit District*

*Local Transportation
Authority*

*Service Authority for
Freeway Emergencies*

*Consolidated Transportation
Service Agency*

*Congestion Management
Agency*

February 22, 2019

Mr. Roland Ok
Senior Regional Planner
900 Wilshire Blvd
Suite 1700
Los Angeles, CA 90017

Re: **Notice of Preparation for the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy Program Environmental Impact Report**

Dear Mr. Ok:

The Orange County Transportation Authority (OCTA) appreciates the opportunity to review and comment on the Notice of Preparation (NOP) for the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (2020 RTP/SCS) Program Environmental Impact Report (PEIR). OCTA thanks you in advance for considering the comments below.

Scope of PEIR Analysis

OCTA understands that the PEIR is a broad-level analysis of the program of projects, policies, and strategies considered in the financially constrained 2020 RTP/SCS. However, alternatives whose implementation are remote or speculative and whose effects cannot be reasonably ascertained, do not require consideration, as noted in the California Environmental Quality Act Guidelines (Section 15126.6). Based on our understanding of the purpose of the PEIR, and to be consistent with past PEIR practice, OCTA makes the following request:

The 2020 RTP/SCS financially constrained alternatives should accurately reflect the projects submitted by the county transportation commissions. Furthermore, financially unconstrained project submittals (Strategic Plan) should not be modeled, or otherwise analyzed for performance or impacts, as part of the 2020 RTP/SCS or PEIR. This is because they are conceptual in nature and would require further substantial study prior to modeling, and implementation is remote and speculative.

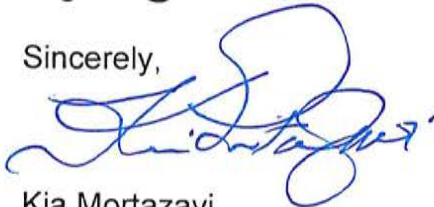
Mr. Roland Ok
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Alternatives Development

The NOP indicates that alternatives, "except the No Project Alternative, will vary in terms of policies and projects including, but not limited to, variations in land use development patterns or transportation network." OCTA understands that the Southern California Association of Governments (SCAG) must perform scenario planning and consider stakeholder input to develop a reasonable range of alternatives that enable the 2020 RTP/SCS to conform with air quality emission budgets, financial constraints, greenhouse gas emission reduction targets, and system preservation goals, among other requirements. However, if potential variations in transportation projects, policies, and networks deviate from any projects submitted by OCTA, please coordinate closely with OCTA. This will ensure alternatives are feasible and appropriate.

Once again, thank you for the opportunity to provide comments on the NOP for the 2020 RTP/SCS PEIR. In addition, OCTA appreciates SCAG's willingness to discuss and consider suggestions from partner agencies in the 2020 RTP/SCS development process. If you have any questions regarding the comments above, please contact Greg Nord, Section Manager II, at (714) 560-5885 or gnord@octa.net.

Sincerely,



Kia Mortazavi
Executive Director, Planning

KM:ww

February 22, 2019

Comments regarding the scope of the PEIR for the SCAG RTP SCE Connect SoCal Plan

Dear Planners,

I am a member of the coordinating team for 350 Ventura County Climate Hub that we founded over six years ago. I have done climate action advocacy to every city in Ventura County during those years. I am writing for myself because there has not been time to inform our members and get their thoughts, but I believe that hundreds in the county concur with most of my comments, if not every detail of suggested policies. Our group lacks understanding of the relationship between Ventura County and SCAG. We will learn because we are interested in the implications for climate action.

OUR GOAL IS CLIMATE MITIGATION THAT MUST COME WITH SOCIAL JUSTICE IN A FRAMEWORK OF MAXIMIZING RESILIENCE TO CLIMATE IMPACTS, AND JUST TRANSITION FROM A FOSSIL FUEL TO A CLEAN ENERGY ECONOMY

Climate change adaptation is listed as the 12th of 12 challenges in the opening of the SCAG-RTP-SCS. Climate mitigation doesn't appear to be a stated goal. 350 Ventura County Climate Hub is aligned with the California Sierra Club in declaring a climate emergency and measures to mitigate climate change. We have launched a campaign asking jurisdictions to start implementing every possible measure to reduce GHG emissions. The campaign is described here: <https://www.sierraclub.org/california/cnrcc/ecc-support-climate-emergency-actions>

Neither Ventura County nor any of its ten cities has a Climate Action Plan (CAP). The General Plans of the largest jurisdictions are outdated with no climate action goals. There was an attempt by Ventura County Regional Energy Alliance published in 2015 using GHG inventories from 2012. The inventory for energy was provided by SCE and the Gas Co and the transportation and other emissions measures are sketchy. We have no better GHG inventory than that for any jurisdiction. The county plans to integrate our CAP into the General Plan Update for 2020-2040 to which we have offered extensive detailed input, some of which will be shared here, but that is only for the unincorporated area. Our request is that our county lead us in doing our part to keep global temperature from rising 1.5 degrees C by 2030. We think we need an inventory and transparent tracking to be able to work on such a goal. Our Board of Supervisors pledged last year to be "In with Paris", but we lack a plan for how to do that.

"No Program" is not an option nor is "202 Local Input Alternative" due to our experience with our local governments falling far short in developing responsible policy. Policy and implementation at the scale of the problem appears unlikely by the jurisdictions in Ventura County. Therefore, we pin our hopes on the "Intensified Land Use Alternative Scenario".

WE NEED A GHG INVENTORY AND CLIMATE ACTION PLANS TRUE TO CURRENT SCIENCE WITH PARTICIPATION OF A WIDE RANGE OF STAKEHOLDERS INCLUDING CLIMATE ACTION ADVOCATES

The mandates currently in use in Ventura County's CAP background document are not acceptable to us, i.e. the last Governor's Executive Order, the latest ARB draft plans, and certainly not AB 32 and SB 32 that do not compute to keep the world below 1.5 degrees C. You must anticipate continuous foreshortening of climate goals to match the increasingly dire warnings from scientists. The political will for action is accelerating so fast that we can assure you there will be a federal rising price on carbon in the coming decade that will be a major disruptor of any scenario. We suggest hiring REMI to run the

data for an economy under an upstream steadily rising price on carbon starting in mid-2020 to exceed \$110 per ton of CO₂e by 2030.

Scientific reports will keep forecasting worse and worse impacts for life on earth, for agriculture and forests, biological resources and open space, soils, hydrology and wildfires, and land use and planning. The examples of catastrophic impacts from no or inadequate action are countless. For example, we are told that within three years of having no more pollinators that it won't be possible to grow food. Therefore, you need to work out a scenario for when people start to finally do something about the pollinators going extinct (all insects have declined by about 70% from 30 years ago). Then imagine what new federal and state mandates will force the immediate cessation of atmospheric and pest management pollution along with a World War II scale mobilization for biological carbon sequestration and revegetation for drawdown of CO₂ to try to save insects from going extinct.

There are goals in the plans that are disguised as "co-benefits" but we agree serious climate mitigation goals are embedded in the plan. Obvious examples are the way neighborhoods can change under implementation of SB 743 and the climate mitigation from being aligned with the 2030 Implementation Plan for Natural and Working Lands.

From my observation, the elected in Ventura County will continue to vote pretty much for business as usual until the climate emergency is unveiled. We need the help of planners who will stop sugar-coating the situation and make it harder for the elected to hide from our future. Also, planners who do not open up the window by the common sense forecasting of policy scenarios are blinding themselves to valid insights for imagining scenarios that many top experts present.

ASSUMPTIONS IN CHALLENGES 4-9 ABOUT COSTS AND REGIONAL AND INTERNATIONAL TRADE MAKE QUESTIONABLE ASSUMPTIONS ABOUT THE CONTINUATION OF GROWTH AND ARE BLIND TO A SCENARIO WITH AN ECONOMIC DOWNTURN

There are currently weaknesses in the national and regional economy, especially when one forecasts a steadily rising price on upstream fossil fuels. Fossil fuel dependent industries and methods of transportation will quickly collapse or localize or otherwise recreate their business model. The bottom could fall out of the fossil fuel market or the whole economy in a more sudden and disruptive way if policy continues to be impossible of enactment for an easier transition. A scenario would be prudent that imagines a 10-30% drop in the value of the US dollar with many already debt-ridden oil and gas companies going bankrupt in an economic recession.

Challenge number 11 alludes to the sky-rocketing health care costs but does not mention how it makes our economy vulnerable. You say it is because of poor air quality and inactivity but you need to add in the cumulative toxic load from food, water and other kinds of exposure at home and work. You should invest in a forecast for the region based on the data that 46% of the US population has at least one chronic disease, and that health care costs have been rising 6-8% per year (higher each year since 1992 with the introduction of much more toxic inputs to the food supply). The annual cost by 2025 in the US is estimated to be \$5 Trillion. You mention the aging population but not that the cancer among the elderly is 70%. Every third child is forecast to be autistic requiring the other two to help with caregiving; this is not due to the air quality and inactivity that you cite. It is from cumulative toxic load in our environment. Include all the other debt besides medical debt. Think about how Russia and France will be entirely organic nations by 2025.

Another point to be made about the economy is that federal carbon tax will no doubt include a border adjustment such that no trade will be possible with another nation that does not have a comparable

price on carbon, otherwise they will pay a commensurate tariff to the US. This is expected to be a powerful motivator. It should also be possible to prevent the dumping of polluting vehicles, equipment and industries to Mexico as is now happening. Businesses that are slow to transition will hit harder times.

We have asked Ventura County to include at least a presentable calculation of an estimate of the GHG inventory for the phase 3 cross-boundary emissions related to goods moving in and out of the Port of Hueneme to China, Japan, Australia, etc. We need to know this in order to forecast the impact on the local economy of a carbon tax and to think about how to put a fair price on imports and exports.

Varied and serious weaknesses and fossil fuel related costs in the economy suggest a need for ambitious goals to steadily eliminate dependence on fossil fuels, a 100% green energy infrastructure with community microgrids and food hubs in order to localize food and energy sources for resilience in a potentially contracting or collapsing economy.

DECARBONIZING ELECTRICITY IS ESSENTIAL

Your 10th challenge among 12 is the requirement for “updated planning to smoothly integrate these new travel options [electric cars, real-time traveler information, car sharing and ridesourcing with smart phones, etc] into the overall transportation system.”

Ventura County is off to a good start with most of our ratepayers belonging to Clean Power Alliance and the majority at the 100% renewable energy default. We want to see specific goals for the rest of the cities to join and maximize participation at the Green Tier.

SB 743 PROTOCOL AND ENFORCEMENT IS ESSENTIAL

It has been stated that reduction of VMT is necessary, likely somewhere between 20 and 35%. However, your plan says it will achieve reductions of “more than seven percent and Vehicle Hours Traveled (VHT) per capita by 17 percent (for automobiles and light/medium duty trucks) as a result of more location efficient land use patterns and improved transit service”. This might be enough to meet the goal of AB 32, but I do not understand it to be enough to seriously want to prevent global warming from exceeding 1.5 degrees C.

If the transition to EVs accelerates, the energy supply cannot be de-carbonized fast enough to de-carbonize the transportation system. Not even if there were effective consumer education leading to all the right choices. Unfortunately, we understand that people are driving more and buying less fuel efficient vehicles. Congress will enact an effective tax on fossil fuels as the only way to set in motion the steady reduction of VMT in fossil-fueled vehicles among many outcomes throughout the economy that will dramatically affect your plan.

Please provide the calculations for how much VMT must decrease in each jurisdiction to de-carbonize the transportation system by 2030. Frame this calculation to meet the climate goals dictated by science to stay under 1.5 degrees C. We estimate a decrease between 20% to 35%. You cannot begin to work on alternatives without this calculation.

WE NEED TO PROMOTE SOME HIGH-DENSITY INFILL PROJECTS

While not popular in the areas around Thousand Oaks and Ventura and possibly other spheres of influence, you must present this to the decision-makers as an opportunity to demonstrate how quality of life can be enhanced by project designs that meet the requirements of SB 743. They probably need

help with outside experts giving community workshops to show why VMT has to decrease by a lot as well as the quality of life benefits from high-density infill at major transportation corridors.

The projected growth in the VC unincorporated area and the goals for provision of affordable housing are low compared to what the county is expecting the cities to take up. However, there are places in the unincorporated areas where ALL of the growth through 2040 could be provided through the development of Demonstration Projects compliant with SB 743 and maximizing very low income units on major bus routes that need to be more frequent. Designs can provide benefits to residents similar to those provided for adult living centers near transit centers where basic shopping and services are in walking distance and people do not need cars and enjoy reliable shared or public transportation to the more distant places they want to go. The building height restrictions need to be considered case by case where there would not be a significant negative visual impact from five-story mixed use structures. There appear to be no developers for this type of project, so SCAG needs to help Ventura County find partners.

I would like to see such a demonstration project in each of the five districts anchoring a community microgrid using the facility's 100% solar generation and electric minibus batteries as part of an energy storage bank. I imagine live-work zoning to balance the energy load, parks and community garden beds designed to hold all storm water onsite for landscaping and urban forests to sequester carbon.

There is far too much zoning in Ventura County that is restricted to single family residences. I suggest that there should be no areas in the unincorporated area that are restricted to single family residences, because there is too much of that zoning throughout the jurisdictions and the county can make this kind of transition more easily than most of the cities politically. The cities are going to have to be told a maximum amount in what areas can remain with that single family residence restriction. There will be loud and angry complaints and it would help to find some really fantastic designers for these Demonstration Projects so that those who fear this type of change will be able to change their minds.

EMERGENCY EVACUATION PLANNING AND EDUCATION OR 'DRILLS' FROM HIGH DENSITY PROJECTS WHERE PEOPLE DON'T HAVE CARS IS ESSENTIAL

The benefits of projects that support the goals of SB 743 can be hard to sell to people in areas with just one main corridor who experienced the Thomas fire or this year's wildfires. There has to be a great plan for all people and animals and high-value critical tools and materials for people's livelihoods to be capable of evacuation in case of a wildfire or flood, debris flow or tsunami. This can be overcome with ingenuity on a site by site basis. For example in West Ventura the bike trail should become an emergency route for a shuttle and there needs to be another emergency route paralleling the east side of Ventura Avenue. The Ventura River Masterplan has three bridges from the Ventura Bike Trail over Highway 33 to the Ventura River one at Stanley Ave and one at Westpark Recreation Center. If these were built then massive congestion that happened on Ventura Avenue during the Thomas fire might have been avoidable by people knowing they could drive or walk on a sidewalk one way over Hwy 33 to the road on the levee where there is nothing burnable. That would have been another safe exit from the valley besides Ventura Ave and Hwy 33. I do not think policy needs to promise everyone a way to evacuate with a carload of belongings, but all people have to be able to evacuate quickly from a vulnerable high-density project. More safe destinations for evacuation must be equipped with a self-contained microgrid with enough battery storage for minimum two weeks of cloudy days.

TO FURTHER REDUCE VMT THOSE WHO DRIVE SHOULD PAY-WHEN THEY DRIVE ALONE THEY SHOULD PAY MORE

Challenge 5 says that “many of us will continue to live in the suburbs and drive alone” and the plan “will not change how everyone chooses to get around, but will offer residents more choices.” That is only ok if people who choose to get around alone in cars pay more than those who ride transit. This will happen systemically in the economy when the price of carbon reaches around \$45-50 per ton. Meanwhile, another way to reduce VMT by a necessary amount is that cameras be set up on roads where people commonly drive alone and send a weekly or monthly bill that might be quadruple the bus fare per incident when the camera shows them alone in the car.

FREE PARKING FOR RESIDENTS, SHOPPERS, CLIENTS AND VISITORS SHOULD BE PHASED OUT

While extremely unpopular one of the best ways to reduce VMT is to stop rewarding those who drive cars to work, to shop, to public places and places they go regularly. The new tax on provision of parking by employers in the new IRS tax code is a step in the right direction, but it does not go far enough. Whatever is the mix of factors, the result must be that transit is favored economically over driving. To fix the IRS code it must be fair to employers that lease parking for employees by also charging all employers with parking lots the same equivalence per space used by the employees, i.e. the full cost of purchase, taxes, depreciation, and maintenance on those spaces used by employees.

To demonstrate various approaches for unbundled parking, every City Hall and County Government Center should be required to charge for parking. Employees should be given a raise commensurate with the value of a parking space and then be allocated a space that they will be charged for if they use it. They could also earn dividends for every day that they do not use a space. Once people are used to this type of system and understand the necessity to reduce VMT by whatever percent is required, then the largest employers should be helped to set up a similar type of system . If necessary the city or county might charge extra property tax to combine with whatever they must pay the IRS and recoup it with parking fees.

BIOLOGICALLY CARBON SEQUESTRATION AND ELIMINATION OF TOXIC AG INPUTS ARE ESSENTIAL

ARB 2030 Implementation Plan for Natural and Working Lands goals and future plans include increasing the ambition and scope . The question is not whether land managers can sequester or at least stabilize soil carbon; the question should be what they think society should pay them to farm carbon as well as food, fiber, and flowers for the future of life on earth.

SCAG needs to prioritize a goal for carbon sequestration through programs to increase healthy soils, restore small water cycles to hold storm water on site to support vegetation, enlarge and increase the health of urban forest, wetlands, grasslands and even seagrass beds as appropriate in the context of sustainable communities. It must be clear in the plan and to the jurisdictions that the best way to maximize forest carbon storage is to maximize protection of forests from logging, including logging conducted under the rubric of "thinning", which leads to a large net reduction in forest carbon storage and net increase in carbon emissions. We will not increase forest carbon storage by pulling more carbon out of the forests through logging. A CAP must include an inventory of the carbon sinks in all forest lands and use of GIS mapping software, such as Terra Count developed by the CA Department of Conservation and tested in Merced County. One way or another the technology must be required at the county level to set goals to increase sinks and the tracking of soil carbon in all land uses throughout the county in cooperation with the cities.

We particularly need an agreement between SCAG and CAL TRANS to stop using herbicide on easements. We need to be sequestering carbon in the easements instead.

BAN TOXIC PESTICIDES

Many parkland and landscaping as well as farm management practices unnecessarily deplete soil carbon, pollute air and surface and groundwater, and expose insects, fish, animals and humans to toxic chemicals. Some believe they are contributing to epidemic chronic diseases and infertility. It is easy to mitigate. Ban all degrading and polluting practices in land and farm management. The conclusion of the EIR of the Agriculture Chapter of the last VC General Plan has a shocking conclusion that these practices cannot be mitigated. I assure you this is a new day and a very different EIR.

There is a relationship between use of toxic pesticides and herbicides and GHG emissions. Roundup damages soil microbes that are the means for soil carbon sequestration. Aerosols from spraying causes illnesses that cause more car trips to get the doctor and pharmacy. Aerosols and herbicide –laden dust prevent some people from walking in their own neighborhoods or using bike trails. People will drive to the store when they would rather walk, but there is too much risk of exposure to agricultural or landscape management chemicals. People will not walk their dogs because of the widespread use of toxic herbicides beside sidewalks. Dachsunds have a high rate of pancreatic cancer. The health impacts from the failure to ban toxic pesticides is becoming more widely recognized.

OFFSETS FOR GHG EMISSIONS MUST BE WITHIN THE JURISDICTION AS RULED IN THE CASE AGAINST THE SAN DIEGO COUNTY CLIMATE ACTION PLAN

SUMMARY

We don't have 11 more years to reverse runaway climate catastrophe. We really only have whatever we plan to accomplish in the next few years. There is no respectable alternative to failure to achieve goals that represent our portion of the emissions reduction that keeps global warming under 1.5 degrees C. That includes a specific goal and target for reduction in VMT. There must also be a specific and measurable goal for biological carbon sequestration to draw down the legacy CO2 in the atmosphere to return the concentration to 350 ppm. There is no life within a plan that fails to cover all of the implications of the current climate science.

Sincerely yours,
Jan Dietrick, MPH, President
Rincon-Vitova Insectaries
108 Orchard Dr
Ventura, CA 93001
805-746-5365

<http://www.vcapcd.org/AQMP-2016.htm>. We note a newer emissions model (EMFAC2017) is now available and is being used by CARB. EMFAC2017 has not yet been approved by US-EPA and is currently undergoing approval review.

The Ventura County Air Quality Assessment Guidelines (AQAG) can also be used to evaluate all potential air quality impacts. The AQAG are also downloadable from our website here: <http://www.vcapcd.org/environmental-review.htm>. Specifically, the air quality assessment should consider reactive organic compound, nitrogen oxide emissions and particulate matter from all project-related motor vehicles, sources not permitted with APCD, and construction equipment that may result from potential buildout, as appropriate to future transportation development policies and implementation measures. We note that the AQAG has not been updated since 2003 and serves as a reference and is not required or mandated by the APCD (AQAG Page 1-1). Current air quality determinations follow the same process but using different tools (CalEEMod vs. URBEMIS, CO Hotspots analysis no longer required, etc.). The recommended list of mitigation measures in the AQAG are also limited and outdated. For example, the following template is currently being recommended by APCD as a Commenting Agency for projects that include construction equipment, reflecting state laws adopted since the AQAG was last updated in 2003:

The project applicant shall ensure compliance with the following State Laws and APCD requirements:

- I. Construction equipment shall not have visible emissions greater than 20% opacity, as required by APCD Rule 50, Opacity.
- II. All portable diesel-powered equipment over 50 BHP shall be registered with the State's Portable Equipment Registration Program (PERP) or an APCD Portable Permit.
- III. Off-Road Heavy-Duty trucks shall comply with the California State Regulation for In-Use Off-Road Diesel Vehicles (Title 13, CCR §2449), the purpose of which is to reduce NO_x and diesel particulate matter exhaust emissions.
- IV. On-Road Heavy-Duty trucks shall comply with the California State Regulation for In-Use On-Road Diesel Vehicles (Title 13, CCR §2025), the purpose of which is to reduce NO_x and diesel particulate matter exhaust emissions.
- V. All commercial on-road and off-road diesel vehicles are subject to the idling limits of Title 13, CCR §2485, §2449(d)(3), respectively. Construction equipment shall not idle for more than five (5) consecutive minutes. The idling limit does not apply to: (1) idling when queuing; (2) idling to verify that the vehicle is in safe operating condition; (3) idling for testing, servicing, repairing or diagnostic purposes; (4) idling necessary to accomplish work for which the vehicle was designed (such as operating a crane); (5) idling required to bring the machine system to operating temperature, and (6) idling necessary to ensure safe operation of the vehicle. It is the Permittee's responsibility to have a written idling policy that is made available to operators of the vehicles and equipment and informs them that idling is limited to 5 consecutive minutes or less, except as exempted in subsection a. above.

The following are recommended measures for construction equipment and vehicles:

- I. Diesel powered equipment should be replaced by electric equipment whenever feasible.

- II. Maintain equipment engines in good condition and in proper tune as per manufacturer's specifications.
- III. Lengthen the construction period during smog season (May through October), to minimize the number of vehicles and equipment operating at the same time.
- IV. Use alternatively fueled construction equipment, such as compressed natural gas (CNG), liquefied natural gas (LNG), or electric, if feasible.

Lastly, VCAPCD will review the PEIR's air quality impact section for the following criteria:

- Conflict with or obstruct implementation of the applicable air quality management plan.
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation.
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors).
- Expose the public (especially schools, day care centers, hospitals, retirement homes, convalescence facilities, and residences) to substantial pollutant concentrations.
- Create objectionable odors affecting a substantial number of people.

Greenhouse Gas Emissions Section

Neither APCD nor the County has adopted a threshold of significance applicable to Greenhouse Gas (GHG) emissions from projects subject to the County's discretionary land use permitting authority. APCD published a report as a request by the Ventura County Air Pollution Control Board to report back on possible GHG thresholds options on November 8, 2011. The District will be looking into what GHG threshold is best suitable for Ventura County in the near future which will undergo a public review process.

The following are recommended guidance documents that could be used to address the impacts of climate change and greenhouse gases in Ventura County as a result of Connect SoCal.

On May 2016, the CARB published a Mobile Source Strategy. In this report, ARB staff is outlining a mobile source strategy that simultaneously meets air quality standards, achieves GHG emission reduction targets, decreases toxics health risk, and reduces petroleum consumption from transportation emissions over the next fifteen years. These goals and targets include These include 1) Attaining federal health-based air quality standards for ozone in 2023 and 2031 in the South Coast and San Joaquin Valley, and fine particulate matter (PM2.5) standards in the next decade; 2) Achieving greenhouse gas (GHG) emission reduction targets of 40 percent below 1990 levels by 2030, with continued progress towards an 80 percent reduction by 2050; 3) Minimizing health risk from exposure to toxic air contaminants; 4) Reducing our petroleum use by up to 50 percent by 2030; and 5) Increasing energy efficiency and deriving 50 percent of

our electricity from renewable sources by 2030. The report can be found here:

<https://www.arb.ca.gov/planning/sip/2016sip/2016mobsr.htm>.

On November 2017, the California Air Resources Board published its latest Climate Change Scoping Plan. The Scoping Plan lays out a strategy for achieving California's 2030 Greenhouse Gas target and builds on the state's successes to date, proposing to strengthen major programs that have been a hallmark of success, while further integrating efforts to reduce both GHGs and air pollution. California's climate efforts will 1) Lower GHG emissions on a trajectory to avoid the worst impacts of climate change; 2) Support a clean energy economy which provides more opportunities for all Californians; 3) Provide a more equitable future with good jobs and less pollution for all communities; 4) Improve the health of all Californians by reducing air and water pollution and making it easier to bike and walk; and 5) Make California an even better place to live, work, and play by improving our natural and working lands. The 2017 Climate Change Scoping Plan can be accessed here

https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf.

Finally, on December 2018, the Governor's Office of Planning and Research (OPR) published a Draft Technical Advisory. This document incorporates developments since the June 2008 Technical Advisory publication, including regulatory changes made to the regulations that implement CEQA (commonly known as the "CEQA Guidelines" in late 2018 by the California Natural Resources Agency (Agency). Although this document largely focuses on project-level analyses of greenhouse gas impacts, Section IV briefly addresses community-scale greenhouse gas reduction plans as one pathway to streamline CEQA analyses. This discussion draft is intended to address some common issues and topics that arise in greenhouse gas emissions analyses under CEQA but is not intended to address every single issue and topic. More information on the OPR's Technical Advisory can be found here

<http://opr.ca.gov/ceqa/technical-advisories.html>.

One final note on GHG emissions, APCD is concerned as to how the new reliance on VMT for CEQA transportation impacts will affect the required 19% GHG reduction goal needed by the SCAG Region by 2035 (SB 375).

Goods Movement

Ventura County has taken great strides in reducing emissions generated from the movement of goods throughout our county. In 2016, VCAPCD partnered with Channel Islands National Marine Sanctuary, Santa Barbara County Air Pollution Control District, National Marine Sanctuary Foundation and Volgenau Foundation to launch a voluntary Marine Vessel Speed Reduction Incentive Program which has resulted in estimated 825 tons of NOx emissions reductions per season and 30,000 metric tons of regional GHG emissions reductions per season from the speed reduction of marine vessels travelling through the Santa Barbara Channel. In addition, the Port of Hueneme has also agreed to electrify their shipping cargo cranes. As it relates to transportation impacts, in 2018, the American Association of Port Authorities (AAPA) awarded the Port of Hueneme the high accolade "2018 Comprehensive Environmental Management Award"; the Port was selected for its development and execution of a

comprehensive plan that seeks to enhance the environment through sustainable, efficient, and green port operations.

The Port of Hueneme is the first California port to receive certification from Green Marine, the preeminent certifier of sustainable maritime facility operations. Green Marine’s environmental program assists ports, terminal operators and shipping lines in reducing their environmental footprint through a comprehensive program that addresses key environmental issues and criteria. Being that Green Marine is completely voluntary, it affirms even further Port of Hueneme’s commitment to staying on the leading edge of environmental stewardship.

The Port of Hueneme is also part a large regional project which will study the capability of zero and near zero emission technology to move cargo between the Port of Hueneme and the Port of Los Angeles, including considering a hydrogen fuel cell drayage truck.

Finally, the Port of Hueneme is proactively beginning development of a clean air plan in partnership with VCAPCD. PHRESH (**P**ort of **H**ueneme, **R**educing **E**missions, **S**upporting **H**ealth) will be the first time in the State that a port and its air quality regulator have teamed up to write a clean air plan together. PHRESH will assess and address the Port’s emissions, air quality requirements and goals for the Port, future growth scenarios, emission control strategies, community involvement, strategy funding, implementation and monitoring.

EV Charging Stations

As part of our incentives programs, APCD has an Electric Vehicle Charging Station Grant program funded by the Clean Air Fund. Since the last RTP update, the following EV charging stations have been approved for funding via this program within the County of Ventura:

APPLICANT	LOCATION	# of Level-2 Chargers	Year Installed
Oak Park School District	Oak Park High School	4	2015
Ventura College	College Parking Lot	4	2015
Port of Hueneme	District Office	4	2016
California Lutheran University	Campus Parking Lot	4	2016
Oak Park School District	District Office and Oak Park High School	4	2017
City of Ojai	City Hall and Park N Ride Lot	2	2017
California Lutheran University	Campus Parking Lot	4	2018
Oak Park School District	Medea Creek School	2	2018
County of Ventura	Channel Islands Harbor	2	2019
City of Ventura Housing Authority	Westview Apartments	2	2019

Additionally, the Plug-In Electric Vehicle (PEV) Readiness Plan for the California Central Coast was initiated in 2011 as the regional PEV Coordinating Council for Ventura, Santa Barbara, and San Luis Obispo counties. The planning process for Plug-in Central Coast was initiated by the joint efforts of C5 –the Central Coast Clean Cities Coalition, the Community Environmental

Council of Santa Barbara, and the Air Pollution Control Districts of Ventura, Santa Barbara, and San Luis Obispo Counties. Key leaders from these organizations formed the Steering Committee of Plug-in Central Coast and obtained grants for tri-county PEV planning from the U.S. Department of Energy (DOE) and the California Energy Commission (CEC). The DOE grant was administered by the Central Coast Clean Cities Coalition (C5) on behalf of the Plug-in Central Coast PEV Coordinating Council, while the CEC grant was administered by the Ventura County Air Pollution Control District (APCD).

The Plug-In Electric Vehicle (PEV) Readiness Plan for the California Central Coast guides the development of PEV charging infrastructure for the tri-counties, Ventura, Santa Barbara and San Luis Obispo. The deployment of PEV Chargers on the Central Coast will encourage local drivers to consider purchasing PEVs, which is the ultimate goal of this planning effort. The major benefits of adopting PEVs include improvement in local air quality, reduction of greenhouse gas emissions that impact climate change, increase in the use of renewable energy such as photo voltaic solar energy, more efficient use of existing grid energy by off-peak PEV charging, and increase in energy security by reducing the use of petroleum fuels, which may be imported from unstable parts of the world. This Plan is intended to encourage and facilitate mass adoption of Plug-in Electric Vehicles (PEVs) in the tri-county Central Coast region. The installation of PEV charging infrastructure near major highways in the tri-counties is a critical factor to support this goal. The development of this plan has coincided with the construction of almost 200 Level 2 charging stations and several DC Fast Charge stations along the Central Coast. This initial infrastructure has not only provided range-extending electrical miles for PEVs, but it also serves to showcase the technology and raise public awareness.

Sustainability Planning Grant Projects

We would be interested to review what additional Planning Grant Projects will be proposed for Ventura County for the new 2020-2045 RTP. The 2016 RTP included 1 Planning Grant Project in Ventura County out of the 68 proposed for the entire SCAG Region (Ventura County Connecting Newbury Park Multi-Use Pathway Plan).

We look forward to working with SCAG to make sure the 2020-2045 RTP update is consistent with recently adopted air quality regulations and the state's plans to reduce greenhouse gas emissions.

If you have any questions, please call me at 645-1426 or email me at nicole@vcapcd.org.

county of ventura

February 21, 2019

Roland Ok
SCAG
900 Wilshire Blvd, Ste. 1700
Los Angeles, CA 90017

E-mail: 2020PEIR@scag.ca.gov

Subject: PEIR for Connect SoCal 2020-2045

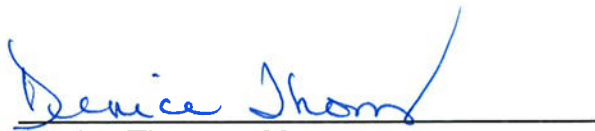
Dear Mr. Ok:

Thank you for the opportunity to review and comment on the subject document. Attached are the comments that we have received resulting from intra-county review of the subject document. Additional comments may have been sent directly to you by other County agencies.

Your proposed responses to these comments should be sent directly to the commenter, with a copy to Anthony Ciuffetelli, Ventura County Planning Division, L#1740, 800 S. Victoria Avenue, Ventura, CA 93009.

If you have any questions regarding any of the comments, please contact the appropriate respondent. Overall questions may be directed to Anthony Ciuffetelli at (805) 654-2443.

Sincerely,


Denice Thomas, Manager
Planning Programs Section

Attachments

County RMA Reference Number 19-001





Memorandum

County of Ventura • Resource Management Agency • Planning Division
800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • ventura.org/rma/planning

DATE: January 28, 2016

TO: Laura Hocking, RMA/Planning Technician

FROM: Kari Finley, Senior Planner

SUBJECT: Environmental Document Review, RMA Ref. #15-024
2016-2040 Regional Transportation Plan/Sustainable Communities
Strategy (2016 RTP/SCS)

We would like to thank the Southern California Association of Governments (SCAG) for the opportunity to review the Draft 2016 RTP/SCS and Program EIR. This memo provides comments on the Draft 2016 RTP/SCS from the Ventura County Planning Division for consideration by SCAG.

In September 2015, the Ventura County Board of Supervisors adopted a comprehensive update to the Saticoy Area Plan. The Saticoy community is defined as a “severely economically disadvantaged community”. The Saticoy Area Plan has a 20-year time horizon that extends from 2015 to 2035. Within the Saticoy Area Plan, project objectives are called “guiding principles” that must be used when evaluating future Area Plan amendments. The four guiding principles developed for the Saticoy Area Plan update 1) sustainable development that supports a healthy community, 2) economic revitalization, 3) improved housing opportunities and, 4) improved infrastructure systems. The Area Plan update was primarily funded through a combination of Compass Blueprint Program Grant and the Strategic Growth Council Sustainable Communities Planning Grant Program. Significant planning efforts were focused on reducing vehicle miles travelled.

One of the unavoidable, significant impacts that was identified in the Saticoy Area Plan Program EIR, includes traffic impacts on State Route 118 (SR118) in the Saticoy Community. One potential mitigation measure that was identified includes the widening/re-striping of SR118 in the Saticoy community (e.g., generally between Vineyard Avenue to Darling Road). Although the Board of Supervisors adopted a statement of overriding considerations for this impact, the following implementation program (highlight added) was included in the Area Plan to help mitigate the impact in the future:

No.	Program Description	Responsibility	Priority	Timeframe
MOBILITY ELEMENT				
MOB-P2	<p>Reclassify Portion of SR 118: To mitigate significant project and cumulative traffic impacts on SR 118 between Vineyard Avenue and Darling Road, the County should review and process a General Plan Amendment that would reclassify that segment of SR 118 from 4 to 6 lanes on the Regional Road Network. The road reclassification should be incorporated into the next General Plan Update, tentatively scheduled for completion in 2020. Finally, the County shall work with VCTC and Caltrans to reprioritize the re-striping of SR 118 from Vineyard Avenue to Darling Road on the Ventura County Congestion Management Plan and the Caltrans list of projects. Although the re-striping project is currently listed in the Congestion Management Plan, the prioritization and timing for construction should be modified to occur within the 20-year horizon of the Saticoy Area Plan.</p>	<p>PWA/ Transportation; RMA/Planning; VCTC; Caltrans; City of Ventura</p>	A	0-5 years

As indicated in the adopted Saticoy Area Plan program, it is critical for implementation of the recently adopted Saticoy Area Plan and future development in the Saticoy community that the re-striping project be included as a prioritized project in the 2016 RTP/SCS (FTIP Projects). The Saticoy Area Plan guiding principles are consistent with the RTP/SCS overarching strategy that calls for “more compact communities in existing urban areas”. The Saticoy Area Plan includes a land use plan with more compact development and improved mobility in an existing urban area. Peak-hour traffic impacts are already significant in this area and will impede future revitalization of this disadvantaged community if improvements to SR118 are not constructed.

As such, we respectfully request that the re-striping and any other critical intersection improvements in the Saticoy area be included in the RTP/SCS or FTIP Projects list as necessary, to make this a priority project. If you have any questions concerning these comments, you may contact Kari Finley at kari.finley@ventura.org or 805/654-3327.

February 22, 2019

Mr. Roland Ok, Senior Regional Planner
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, California 90017

Subject: Notice of Preparation of a Program Environmental Impact Report (PEIR) for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)(RTS/SCS)

Dear Mr. Ok:

Thank you for the opportunity to provide input and comments on the Notice of Preparation of a PEIR for Connect SoCal (2020-2045 Regional Transportation Plan/Sustainable Communities Strategy). The Long Range Planning Section of the Ventura County Planning Division reviewed the Notice of Preparation for the proposed project and provides the following response:

1. **Saticoy Area Plan.** In September 2015, the Ventura County Board of Supervisors adopted a comprehensive update to the Saticoy Area Plan. The Saticoy community is defined as a "severely economically disadvantaged community" and the Saticoy Area Plan has a 20-year time horizon that extends from 2015 to 2035. The Mobility Element within the Saticoy Area Plan identifies implementation program MOB-P2 which prioritizes the re-striping of SR 118 from Vineyard Avenue to Darling Road.

On January 28, 2016, the Long Range Planning Section submitted a comment letter to Southern California Association of Governments (SCAG) in response to Draft 2016 RTP/SCS and PEIR. This letter provided detailed background emphasizing the need for regional cooperation for the construction of these improvements. As such, we respectfully request that the re-striping and any other critical intersection improvements in the Saticoy area be included in the RTP/SCS or FTIP Projects list as necessary, to make this a priority project.

2. **Bottom-up Local Growth and Land Use Input Process.** On October 1, 2018 and December 14, 2018, the Ventura County Planning Division provided detailed and comprehensive data and analysis in response to the request for local input. We request that this input be considered as part of the preparation of the environmental document.
3. **Population Growth and Housing Projections.** As part of the scoping for the environmental analysis in the PEIR, we request special consideration be given to protection of farmland and



that contaminated sites such as Santa Susana Field Laboratory (SSFL) be excluded from consideration of potential housing sites.

Thank you again for the opportunity to comment. Should you have any questions about the contents of this letter, please contact me at 805-654-3327 or via email at linda.blackburn@ventura.org

Sincerely,



Linda Blackburn, Senior Planner
Long Range Planning Section
Ventura County Planning Division

Attachments: Environmental Document Review, RMA Ref. #15-024, Draft 2016 RTP/SCS and Program EIR comment letter dated January 28, 2016



VENTURA COUNTY WATERSHED PROTECTION DISTRICT
WATERSHED PLANNING AND PERMITS DIVISION
800 South Victoria Avenue, Ventura, California 93009
Sergio Vargas, Deputy Director – (805) 650-4077

M E M O R A N D U M

DATE: February 11, 2019

TO: Anthony Ciuffetelli, RMA Planner
County of Ventura

FROM: Sergio Vargas, Deputy Director *S.V.*

SUBJECT: RMA19-001 NOP of PEIR 2020-2045
Watershed Protection District Project Number: WC2019-0008

Pursuant to your request dated January 24, 2019, this office has reviewed the submitted materials and provides the following comments.

PROJECT LOCATION:

The SCAG region consists of six counties (Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura), and 191 cities (Figure 1, *SCAG Region*). To the north of the SCAG region are the counties of Kern and Inyo; to the east is State of Nevada and State of Arizona; to the south is the county of San Diego; and to the northwest is the Pacific Ocean. The SCAG region also consists of 15 sub-regional entities that serve as partners in the regional planning process

PROJECT DESCRIPTION:

Pursuant to federal and state planning requirements, SCAG updates and adopts a long-range regional transportation plan every four years. SCAG's last Plan was adopted in 2016 and an updated Plan is required to be adopted by April 2020.

Connect SoCal will outline the region's goals and policies for meeting current and future mobility needs, provide a foundation for transportation decisions by local, regional and state officials that are ultimately aimed at achieving a coordinated and balanced transportation system. Connect SoCal will also identify the region's transportation needs and issues, recommended actions, programs, and a list of projects to address the needs consistent with adopted regional policies and goals, and document the financial resources needed to implement Connect SoCal. It is important to note that SCAG does not implement individual projects in the RTP, as they will be implemented by local and state jurisdictions, and other agencies.

COMMENTS:

For each specific project considered, the environmental impacts for three areas of concern must be considered.

Impacts to Watershed Protection District Facilities and Jurisdictional Channels:

Each project analyzed under the proposed program must consider the impacts to facilities owned or under the jurisdiction of the Ventura County Watershed Protection District. Any projects in, on, over, under, or across a District jurisdictional channel or within District right-of-way would require a permit from the Ventura County Watershed Protection District consistent with District policy and Ordinance WP-2.

In planning future projects from a programmatic standpoint. The environmental documents should include a requirement that each project under the program must consider current and future flows for any projects that cross redline channels or other major waterways.

Hydraulic Hazards FEMA:

Each project analyzed under the proposed program must consider if the project is located in a special flood hazard area (SFHA) shown on either the effective or preliminary flood hazard mapping as prepared by the Federal Emergency Management Agency (FEMA). Project considered within the SFHA must obtain a permit from the Ventura County Public Works Agency and meet project specific requirements to mitigate impacts from flooding.

Costal Hazards and Sea Level Rise:

If a project is proposed in a Coastal Zone costal hazards and the impacts sea level rise must to be considered consistent with the California Coastal Commission and the Ventura County General Plan Policies.

END OF TEXT



**SOUTHERN CALIFORNIA
LEADERSHIP COUNCIL**



**LOS ANGELES AREA
CHAMBER OF COMMERCE**



**ORANGE COUNTY
BUSINESS COUNCIL**



February 22, 2019

Southern California Association of Governments
Attn: Roland Ok, Senior Regional Planner
Via electronic mail to: 2020PEIR@scag.ca.gov

Re: Comments on the Prospective Scope of the Draft Program Environmental Impact Report (PEIR) Concerning “Connect SoCal” (SCAG’s 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy)

Ladies and Gentlemen:

On behalf of the Southern California Leadership Council (SCLC), the Building Industry Association of Southern California (BIASC) and the other business/industry associations subscribing to this letter, we appreciate this opportunity to comment on the scope of the pending draft Program Environmental Impact Report (draft “PEIR”) concerning the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (“Connect SoCal”). Our organizations and the members and industries that they represent have been deeply involved with the Senate Bill 375 (2008) (hereinafter “SB 375”) ever since its introduction. As Southern California stakeholders, we were also highly attentive to and actively involved in the formulation and adoption by the Southern California Association of Governments (“SCAG”) of its inaugural, 2012 regional transportation plan/sustainable communities strategy (“RTP/SCS”) and its more recent 2016 RTP/SCS.

The companies and individuals comprising our collective memberships care deeply about economic development, job creation and the quality of life in Southern California. Many of our members engage in developing the housing, business properties and infrastructure (i.e. transportation, water, utilities, etc.) that are and will be needed to make the region an excellent place to live and work. Collectively, our organizations also include some of Southern California's largest private employers. With that in mind, the comments set forth below about SCAG's pending formulation of Connect SoCal reflect our concern for the overall betterment of the SCAG region, its economy, its communities, and its citizens.

Our group supports the development of an RTP/SCS that recognizes the critical importance of transportation and infrastructure to economic vitality, job creation and the quality of life for all Southern Californians. We support an RTP/SCS that recognizes the effect of market forces, honors local control and incorporates flexibility as it works to secure an integrated approach to land use, transportation, housing and environmental planning. We also support the overall aim of reducing our collective greenhouse gases ("GHG") emissions in ways and over timelines that are ambitious and achievable, including by means of envisioning and then pursuing the fulfillment of a sound RTP/SCS.

Our group especially appreciates the tireless work that has been done by SCAG's excellent staff during the ten-plus years since SB 375 was first enacted and SCAG's SCS analysis began. Ultimately, we expressed our general support for each of the two previous SCSs that SCAG adopted (in 2012 and 2016, respectively). We did so because SCAG seemingly adhered to and incorporated certain principles that we have always believed – and still believe – are essential to developing a strong and effective RTP/SCS. We continue to support an RTP/SCS that possesses the following characteristics:

- Provides positive economic impacts and is a plan that is conducive to economic growth and job creation. The RTP/SCS must undergo a true economic cost/benefit analysis so that economic impacts are understood and known by SCAG Regional Council members (and stakeholders) before making a final decision on the RTP/SCS.
- Respects local governments' prerogatives. Policymakers need to respect the essential role of local government in sound land use decision-making, because local governments more than relatively central governments have the best understanding of local needs, pressures, and aspirations of their growing and evolving communities. Maintaining local control of land use is essential to maintaining so-called "small d" democracy.
- Appreciates the organic nature of land use and development. Regulators, as analysts and policymakers, must appreciate the organic, dynamic nature of land development over time and the need for a balance between redevelopment and urban densification as well as smarter but ongoing new town and greenfield growth and development.

- Does not impose rigid land use prescriptions. As SB 375 was envisioned, and consistent with reasonable policymaking, the RTP/SCS construct is a large-scale, conceptual and largely aspirational regional plan, and not a firm land use prescription or mandate concerning land uses and densities at given sites or within given communities.
- Assures that any new revenue sources are fair, equitably imposed and economically sound. – Any proposed new transportation revenue concepts within the RTP/SCS must undergo cost/benefit and other appropriate analysis to assure that they are economically sound.
- Achieves CEQA compliance, is legally defensible, and facilitates CEQA streamlining and tiering. – The RTP/SCS is developed with all appropriate data and environmental analysis and is thus built to withstand a CEQA challenge. The plan should also be crafted so as to capture and maximize all available CEQA benefits, especially streamlining and tiering.

Given our group’s support for SCAG’s two prior RTP/SCSs, we have the opportunity now to comment on the scope of the environmental analysis of SCAG’s next RTP/SCS – the pending Connect SoCal. We do so knowing that the California Air Resources Board (“CARB”) is continually pressing all of the state’s Metropolitan Planning Organizations (“MPOs”), of which SCAG is the largest one, to fashion and adopt RTP/SCSs that are ever more imposing and potentially at odds with the principles listed above. For example, CARB has continued to ratchet up the MPOs’ respective regional GHG-emissions reduction targets with each planning cycle; and CARB is continually pressing to make each successive RTP/SCS more constrictive in terms its land use projections.

While we appreciate that SCAG may be inclined to accommodate CARB wherever and to the extent that it reasonably can, we urge SCAG to recognize and exercise its statutory prerogatives under SB 375 – consistent with the legislative intent that underpinned the statute. SCAG’s prerogatives include its right to adhere to the principles listed above, which we believe (1) were reflected in SCAG’s previous two RTP/SCSs, (2) led to broad-based regional support for them, and (3) has substantially improved the integration of transportation and land use in our region.

Whereas the principles discussed above are for the most part stated as positive characteristics of effective RTP/SCSs, we also hold some strong views about what characteristics an effective RTP/SCS should not have. The negative characteristics that should be avoided include:

- An over-dependence on dense redevelopment/infill within existing urban areas as the primary location for future growth and housing, to the exclusion of other development opportunities. Any such over-dependence would substantially constrict the region’s

capacity to add the volume and diversity of housing needed to truly address our region's housing affordability crisis.

- Recommended CEQA mitigation measures that are overly-prescriptive and overly-imposing. SCAG should avoid including within the Connect SoCal PEIR recommended mitigation measures which may be contextually unsuitable in their potential application.
- Overly ambitious assumptions about the region's ability to realize decreases in per capita vehicle miles traveled ("VMT"). Our growing understanding is that SCAG has, in connection with its prior RTP/SCSs, been assuming that the SCAG region can realize decreases in per capita VMT – even though the SCAG region's population is still growing, its communities are still expanding, and its economy is thriving and hopefully will remain so. Historically, per capita VMT does not decline when such conditions exist, and it is simply unrealistic to expect it to do so now.
- Promising successes of types that are unreasonable and/or infeasible. Our concern about this final point has been heightened by recent critical reports about the "performance" of prior RTP/SCSs.

Concerning the last two of these negative RTP/SCS characteristics, a key issue has come into sharp focus in recent months. Specifically, CARB expressed its criticism of the RTP/SCSs that were previously adopted by SCAG and its brethren MPOs in the earlier SC 375 cycles when, in November 2018, CARB issued an inaugural report pursuant to Senate Bill 150 (2017) (hereinafter the "SB 150 Report"). In it, CARB concluded that the RTP/SCSs that were theretofore adopted by the MPOs are not operating or "performing" as CARB had hoped and expected. CARB's main complaint was and is that, generally, the prior RTP/SCSs have not spawned a consequential realization of actual, sizable decreases in per capita VMT. CARB cites the absence of meaningful decreases in per capita VMT as ripe grounds for changing overall state policy to make sure that future RTP/SCSs achieve substantial per capita VMT reductions.

Because our organizations are keenly interested in the health of our region's economy as well as our environment, CARB's recent conclusions are most troubling to us. We recognize that the fundamental legislative goal behind SB 375, which is the statute that compels the formulation of sustainable communities strategies, was to spur along reductions in GHG emissions related to land use and transportation. The legislative goal was not to compel any reductions in per capita VMT, the achievement of which both seems illusive (in a growing, economically healthy population) and would be harmful to our region's economy and populace. Consequently, we believe that the goal of SB 375 – which is to achieve GHG emissions reductions – can and should be pursued in positive ways that do not try to impose unrealistic reductions in per capita VMT.

In our view, CARB's overly-ambitious SB 375 targets led SCAG's able staff, in the previous two SCS cycles, to work hard each time to both envision and model a land use and transportation scenario that would meet or better CARB's prescribed GHG-emissions reduction target then in place. In order to do so, however, SCAG's staff was each time compelled to report out an RTP/SCS that inherently projected a significant and unrealistic drop in per capita VMT between the years 2005 and 2035.

For example, in SCAG's 2016 SCS, SCAG's staff modeled future regional transportation to show a sixteen per cent (16%) reduction in GHG per capita from the region's land use and transportation sector (a factor that SCAG's staff was then able to increase to 18% based on certain additional off-model assumptions). To demonstrate such a 16% reduction in per capita GHG emissions from land use and transportation, however, SCAG's staff needed to project a scenario that would yield a 10% reduction in per capita VMT during the time period between 2005 and 2035 throughout the SCAG region. In other words, in order to meet CARB's GHG-emissions reduction target for the 2016-2040 RTP/SCS, SCAG had to project a scenario in which the average person traveling in and about the SCAG region would need to travel 10% less in 2035 than he or she did in 2005. This highly unlikely feat would need to be accomplished even though, at the end of such period, the SCAG region will be home to a significantly larger population living in a significantly more built-out region.

In contrast to SCAG's staff's assumptions underpinning its CARB-approved 2016 RTP/SCS, the recent SB 150 Report from CARB indicates that no per capita VMT reductions have occurred in the SCAG region – even though we are already nearly halfway through the 2005-2035 period under consideration. Instead, the combination of (1) a steadily growing population, (2) the maturation of communities generally, and (3) the economic recovery that unfolded over the last decade, has led to a rebound and increase in per capita VMT within the SCAG region. CARB's staff and SCAG's staff now recognize this to be the fact. Going forward, therefore, SCAG and CARB should model and settle upon a new SCS scenario that reflects that fact.

This is not to say, however, that SCAG's staff and CARB should abandon their goal of planning for a sustainable region in which per capita GHG-emissions reductions can be realized simply because per capita VMT reductions appear to be unrealistic. Moderate growth (i.e., relatively tempered growth) in per capita VMT is consistent with achieving the kinds of GHG-emissions reduction goals that climate-change scientists say must be pursued – provided our society makes meaningful, steady improvements in our fleets and fuels over time. Steady improvements in both the efficiency of our transportation fleet and our fuel options seem increasingly likely to unfold in the years pending before us. Importantly, foreseeable improvements in our transportation fleet and our fuel options will decrease the GHG-emissions reduction benefit that can be derived from any given decrease in per capita VMT – so much so

that if we were to pursue enough of the former (fleet and fuel change), we would need virtually none of the latter (per capita VMT reductions) to meet our state’s GHG reduction goals.¹

Therefore, we urge SCAG’s staff – when it is fashioning and analyzing alternatives for the PEIR – to consider, analyze and propose as the “preferred alternative” a scenario that will allow for a realistic degree of ongoing per capita VMT growth in the SCAG region.

At the public scoping hearing on Wednesday, February 13, 2019 (the earlier of the two sessions), SCAG’s staff stated that they were then anticipating that the Connect SoCal draft PEIR would analyze at least three alternative projects. The three alternative projects were:

1. the “no project” alternative (which is required by law for comparison purposes, but is practically a non-starter given the need for transportation improvements of all types),
2. the “2020 local input” alternative, and
3. the “intensified land use” alternative.

Presumably, the “2020 local input” alternative will project more per capita VMT in 2035 than would the conceived “intensified land use” alternative. Assuming this is true, we urge SCAG’s staff, committees and Regional Council to consider adopting the “2020 local input” alternative – or some other alternative that better reflects a realistic projection of per capita VMT – as the preferred alternative in the Draft PEIR. Importantly, we urge such a result even if it were to mean that SCAG’s resulting RTP/SCS will fall short of CARB’s SB 375 GHG-emissions reduction target, thus resulting in the need for SCAG to present to CARB – in addition to the SCS – an Alternative Planning Scenario (“APS”) just as SB 375 allows.

In our view – which is now informed by nearly a decade of hindsight, CARB set off in the wrong direction when it first established the MPOs’ respective SB 375 targets back in 2010.

¹ See K. Leotta & C. Burbank, *One Percent [Annual] VMT Growth or Less to Meet Greenhouse Gas Emissions Reduction Goals* (2009). Their study concludes that ambitious 2050 GHG emissions reduction goals can be achieved consistent with a moderated one percent annual increase in aggregate VMT – specifically if *emissions per VMT* can be decreased on average by roughly 72 percent over the 45-year projection period (2005-2050). Importantly, the combination of California’s standards requiring aggressive improvements in automobile emissions and the accelerating adoption of electric vehicles, natural gas, plug-in electric hybrid and even hydrogen vehicles suggests that California is well on its way to achieving greatly reduced GHG emissions per vehicle mile traveled. This foreseeable achievement will also predictably lessen over time the marginal benefit that will flow from any marginal reduction or constriction of per capita VMT.

SB 375 was intended to be about GHG-emissions reductions related to land use and transportation, and not about per capita VMT reductions. CARB effectively rejected the legislative intent, however, and substituted its own intention that the state's citizens' basic mobility must be curbed – notwithstanding a growing population and the additional land uses that a growing population logically entails. The Legislature's original intention can and should be belatedly restored. SB 375 can and should be more about overall GHG-emissions reductions, and not about projecting how to crimp both regional mobility and the region's economy through the imposition of per capita VMT reductions.

If SCAG's staff and leadership were to once again adopt an RTP/SCS underpinned by significant per capita VMT reductions, and if CARB were to successfully champion new state policies to mandate per capita VMT reductions, then our region's and our state's economy would suffer tremendously. Without any question, California as a whole and the SCAG region both already suffer from a massive shortage of available housing opportunities. To address this crisis, Governor Newsom has called for the construction of 3.5 million new homes by the year 2025, which would constitute adding more than twenty percent (20%) to California's existing housing stock in only about seven (7) years. In order to even begin to approach such an ambitious goal, our communities must explore, promote, condition and approve many different kinds of new housing opportunities. Such opportunities must include all of the following: (1) new urban development and redevelopment opportunities, (2) the ongoing development of budding and growing communities, and (3) well-planned, newly-opened communities. In short, unduly constrictive land use policies which are aimed at and premised on per capita VMT reductions are inconsistent with the obviously apparent needs of the people of California, and they should be rejected.

Apart from our opposition to any projections of per capita VMT reductions, we hope that SCAG's staff will analyze and incorporate into Connect SoCal additional policies that can improve our region's economy and allow our communities to better house our growing population. We intend to work with SCAG's staff in the months ahead to advance such policies. Examples include:

- In 2010, SCAG's Regional Council voted to reject CARB's then-proposed GHG reduction target for the SCAG region unless it was accompanied by financial and policy support from the State to help with the transportation and other investments that would be required by local governments and agencies to meet the target. Such support from the state was promised; but it has been lacking ever since. For example, whereas favorable redevelopment funding policies are needed to promote urban renewal of the type to which the SCSs certainly aspire, California eliminated redevelopment agencies and the funding and tools they provided to local government in 2012, just as the original SCSs began calling for more urban redevelopment. To the extent that Connect SoCal aims to promote a reasonable balance between (1) urban renewal, on the one hand, and (2)

greenfield and new-town development, on the other hand, SCAG, CARB and the California Legislature must all work together to restore meaningful redevelopment funding.

- Similarly, SCAG and its regional partners have pointed out to the state in recent years that the SCAG region has been given far less than its fair share of cap-and-trade funds gathered by the State and distributed to the regions through the Greenhouse Gas Reduction Fund (GGRF). This should be rectified; and CARB should be made to assure that the SCAG region obtains its fair share of state-wide funding.
- SB 375 contains provisions that purport to give certain CEQA exemptions to transit-oriented development which is consistent with an SCS; but these specific CEQA exemptions have largely been illusory and barely used. If the state had provided more meaningful and greater CEQA relief, it likely would have accelerated much-needed infill and transit-oriented redevelopment, smart new town development, and wise community growth – all of which would have helped progress toward meeting emission reduction goals. All interested parties should therefore continue to press for meaningful CEQA reform of the type that will accelerate approvals of needed development.

We recognize the daunting regulatory and administrative challenges that are inherent in SB 375. We recognize that it will be a major challenge for SCAG’s staff to re-evaluate the VMT constrictive assumptions that underpinned SCAG’s last two RTP/SCSs. Given our longstanding involvement with the SB 375 process and the depth of our concerns, we look forward to participating in the discussions about Connect SoCal; and we respectfully ask for your meaningful consideration of these comments.

Sincerely,



Richard Lambros
Managing Director
Southern California Leadership Council



Jeff Montejano
Chief Executive Officer
Building Industry Association of Southern
California (BIASC)





Alicia Berhow
Senior Vice President, Government Affairs
Orange County Business Council



Nick Cammarota

Nick Cammarota
Senior Vice President & General Counsel
California Building Industry Association



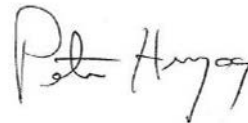
Jessica Duboff
Vice President, Public Policy
Los Angeles Area Chamber of Commerce



Paul Granillo
President & CEO
Inland Empire Economic Partnership



John Habel
Executive Director
Southern California Partnership for Jobs



Peter Herzog
Assistant Director of Legislative Affairs
NAIOP SoCal





Michael W. Lewis
Senior Vice President
Construction Industry Air Quality



Wes May
Executive Vice President
Southern California Contractors Association



Dave Sorem
Vice President - Infrastructure
Engineering Contractors Association



SCAG RTPSCS NOP – Comments/questions from SBCTA, February 13, 2019

We would appreciate further explanation of the following:

- 1) Page 5, last paragraph (Scenario Planning Process) - As scenarios are developed, how will the realities of market forces be factored into a preferred land use scenario and how will the Scenario Planning Process be incorporated into the development of “alternatives”? How will each jurisdiction with land use authority be involved in development of various scenarios, especially related to the “Intensified Land Use Alternative” scenario development?
- 2) Page 6 (Bottom-up Local Growth and Land Use Input Process) – Since the Local Input process differs from the Scenario Planning process (page 5), please make sure to explicitly note the difference between the two processes to avoid potential confusion for local jurisdictions.
- 3) Pages 6 and 7, list of scope of environmental effects – Would Greenhouse Gas Emissions and Climate Change include an analysis of climate resiliency or climate adaptation? Also, will the PEIR provide an analysis of impacts on public health and disadvantaged communities?
- 4) Page 7, second paragraph under CEQA streamlining – The text states that “*Additionally, the PEIR will support other CEQA streamlining options that do not fall into the categories under SB 375 (i.e., SB 743, SB 226 and the State CEQA Guidelines).*” Please explain how the PEIR will support SB 743 streamlining.
- 5) Page 7, No Project alternative: The paragraph states that:
“*The No Project Alternative will consider continued implementation of the goals and polices of the adopted 2016 RTP/SCS and will be based on 2016 RTP/SCS regional population, housing, and employment. The No Project Alternative includes those transportation projects that are included in the first year of the previously conforming FTIP (i.e., 2018).*”
This would seem to be slightly different from the definition of the No Project alternative used for the 2016 RTP/SCS PEIR, which states:
“*The No Project Alternative is based on and aligned with the 2016 RTP/SCS Scenario 1 (“No Build/Baseline: No build network and trend SED”).*”
Can you explain more explicitly what will be included as the growth forecast for the No Project alternative in the 2020 RTP/SCS PEIR? The 2016 RTP/SCS growth forecast already has built into it some of the elements of the Intensified Land Use Alternative described on Page 8 of the NOP. In other words, it is not the “trend SED” described in the 2016 PEIR.



South Coast Air Quality Management District

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SENT VIA USPS AND E-MAIL:

February 19, 2019

2020PEIR@scag.ca.gov

Roland Ok, Senior Regional Planner
Southern California Association of Governments
900 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90017

Notice of Preparation of a Program Environmental Impact Report for the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (Connect SoCal)

South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the above-mentioned document. SCAQMD staff's comments are recommendations regarding the analysis of potential air quality impacts from the Proposed Project that should be included in the Program Environmental Impact Report (EIR). Please send SCAQMD a copy of the Draft EIR upon its completion. Note that copies of the Program EIR that are submitted to the State Clearinghouse are not forwarded to SCAQMD. Please forward a copy of the Program EIR directly to SCAQMD at the address shown in the letterhead. **In addition, please send with the Program EIR all appendices or technical documents related to the air quality, health risk, and greenhouse gas analyses and electronic versions of all air quality modeling and health risk assessment files¹. These include emission calculation spreadsheets and modeling input and output files (not PDF files). Without all files and supporting documentation, SCAQMD staff will be unable to complete our review of the air quality analyses in a timely manner. Any delays in providing all supporting documentation will require additional time for review beyond the end of the comment period.**

Air Quality Analysis

SCAQMD adopted its California Environmental Quality Act (CEQA) Air Quality Handbook in 1993 to assist other public agencies with the preparation of air quality analyses. SCAQMD staff recommends that the Lead Agency use this Handbook as guidance when preparing its air quality analyses. Copies of the Handbook are available from the SCAQMD's Subscription Services Department by calling (909) 396-3720. More recent guidance developed since this Handbook was published is also available on SCAQMD's website at: [http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-\(1993\)](http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-(1993)). SCAQMD staff also recommends that the Lead Agency use the CalEEMod land use emissions software. This software has recently been updated to incorporate up-to-date state and locally approved emission factors and methodologies for estimating pollutant emissions from typical land use development. CalEEMod is the only software model maintained by the California Air Pollution Control Officers Association (CAPCOA) and replaces the now outdated URBEMIS. This model is available free of charge at: www.caleemod.com.

On March 3, 2017, the SCAQMD's Governing Board adopted the 2016 Air Quality Management Plan (2016 AQMP), which was later approved by the California Air Resources Board on March 23, 2017.

¹ Pursuant to the CEQA Guidelines Section 15174, the information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

Built upon the progress in implementing the 2007 and 2012 AQMPs, the 2016 AQMP provides a regional perspective on air quality and the challenges facing the South Coast Air Basin. The most significant air quality challenge in the Basin is to achieve an additional 45 percent reduction in nitrogen oxide (NO_x) emissions in 2023 and an additional 55 percent NO_x reduction beyond 2031 levels for ozone attainment. The 2016 AQMP is available on SCAQMD's website at: <http://www.aqmd.gov/home/library/clean-air-plans/air-quality-mgt-plan>.

SCAQMD staff recognizes that there are many factors Lead Agencies must consider when making local planning and land use decisions. To facilitate stronger collaboration between Lead Agencies and SCAQMD to reduce community exposure to source-specific and cumulative air pollution impacts, SCAQMD adopted the Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning in 2005. This Guidance Document provides suggested policies that local governments can use in their General Plans or through local planning to prevent or reduce potential air pollution impacts and protect public health. SCAQMD staff recommends that the Lead Agency review this Guidance Document as a tool when making local planning and land use decisions. This Guidance Document is available on SCAQMD's website at: <http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/complete-guidance-document.pdf>. Additional guidance on siting incompatible land uses (such as placing homes near freeways or other polluting sources) can be found in the California Air Resources Board's *Air Quality and Land Use Handbook: A Community Health Perspective*, which can be found at: <http://www.arb.ca.gov/ch/handbook.pdf>. Guidance² on strategies to reduce air pollution exposure near high-volume roadways can be found at: https://www.arb.ca.gov/ch/rd_technical_advisory_final.PDF.

SCAQMD has also developed both regional and localized air quality significance thresholds. SCAQMD staff requests that the Lead Agency compare the emissions to the recommended regional significance thresholds found here: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>. In addition to analyzing regional air quality impacts, SCAQMD staff recommends calculating localized air quality impacts and comparing the results to localized significance thresholds (LSTs). LSTs can be used in addition to the recommended regional significance thresholds as a second indication of air quality impacts when preparing a CEQA document. Therefore, when preparing the air quality analysis for the Proposed Project, it is recommended that the Lead Agency perform a localized analysis by either using the LSTs developed by SCAQMD or performing dispersion modeling as necessary. Guidance for performing a localized air quality analysis can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

When specific development is reasonably foreseeable as result of the goals, policies, and guidelines in the Proposed Project, the Lead Agency should identify any potential adverse air quality impacts and sources of air pollution that could occur using its best efforts to find out and a good-faith effort at full disclosure in the Program EIR. The degree of specificity will correspond to the degree of specificity involved in the underlying activity which is described in the Program EIR (CEQA Guidelines Section 15146). When quantifying air quality emissions, emissions from both construction (including demolition, if any) and operations should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operation-related air quality impacts may include, but are not limited to, emissions from stationary sources (e.g., boilers),

² In April 2017, CARB published a technical advisory, *Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways: Technical Advisory*, to supplement CARB's *Air Quality and Land Use Handbook: A Community Health Perspective*. This technical advisory is intended to provide information on strategies to reduce exposures to traffic emissions near high-volume roadways to assist land use planning and decision-making in order to protect public health and promote equity and environmental justice. The technical advisory is available at: <https://www.arb.ca.gov/ch/landuse.htm>.

area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, such as sources that generate or attract vehicular trips, should be included in the analysis. Furthermore, for phased projects where there will be an overlap between construction and operation, the emissions from the overlapping construction and operational activities should be combined and compared to SCAQMD's regional air quality CEQA *operational* thresholds to determine the level of significance.

In the event that the Proposed Project generates or attracts vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment. Guidance for performing a mobile source health risk assessment (“*Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis*”) can be found at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>. An analysis of all toxic air contaminant impacts due to the use of equipment potentially generating such air pollutants should also be included.

Mitigation Measures and Health Risks Reduction Strategies

In the event that the Proposed Project generates significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized during project construction and operation to minimize or eliminate these impacts. Pursuant to CEQA Guidelines Section 15126.4 (a)(1)(D), any impacts resulting from mitigation measures must also be discussed. Several resources are available to assist the Lead Agency with identifying possible mitigation measures for the Proposed Project, including:

- Chapter 11 “Mitigating the Impact of a Project” of SCAQMD’s *CEQA Air Quality Handbook*
- SCAQMD’s CEQA web pages available here: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies>
- SCAQMD’s Rule 403 – Fugitive Dust, and the Implementation Handbook for controlling construction-related emissions and Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities
- CAPCOA’s *Quantifying Greenhouse Gas Mitigation Measures* available here: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

Additional Recommended Mitigation Measures

SCAQMD staff has prepared the following list of mitigation measures as suggestions to the Lead Agency to consider and incorporate in the Program EIR.

- Require the use of Tier 4 emissions standards or better for off-road diesel-powered construction equipment of 50 horsepower or greater. To ensure that Tier 4 construction equipment or better will be used during the Proposed Project’s construction, SCAQMD staff recommends that the Lead Agency include this requirement in applicable bid documents, purchase orders, and contracts. Successful contractor(s) must demonstrate the ability to supply the compliant construction equipment for use prior to any ground disturbing and construction activities. A copy of each unit’s certified tier specification or model year specification and California Air Resources Board (CARB) or SCAQMD operating permit (if applicable) shall be available upon request at the time of mobilization of each applicable unit of equipment. Additionally, the Lead Agency should require periodic reporting and provision of written construction documents by construction contractor(s) to ensure compliance, and conduct regular inspections to the maximum extent feasible to ensure compliance.
- Require zero-emissions or near-zero emission on-road haul trucks such as heavy-duty trucks with natural gas engines that meet the CARB’s adopted optional NOx emissions standard at 0.02

grams per brake horsepower-hour (g/bhp-hr), if and when feasible. At a minimum, require that construction vendors, contractors, and/or haul truck operators commit to using 2010 model year trucks (e.g., material delivery trucks and soil import/export) that meet CARB's 2010 engine emissions standards at 0.01 g/bhp-hr of particulate matter (PM) and 0.20 g/bhp-hr of NOx emissions or newer, cleaner trucks³. The Lead Agency should include this requirement in applicable bid documents, purchase orders, and contracts. Operators shall maintain records of all trucks associated with project construction to document that each truck used meets these emission standards, and make the records available for inspection. The Lead Agency should conduct regular inspections to the maximum extent feasible to ensure compliance.

- Suspend all on-site construction activities when wind speeds (as instantaneous gusts) exceed 25 miles per hour.
- All trucks hauling dirt, sand, soil or other loose materials are to be covered, or should maintain at least two feet of freeboard in accordance with California Vehicle Code Section 23114 (freeboard means vertical space between the top of the load and top of the trailer).
- Enter into applicable bid documents, purchase orders, and contracts to notify all construction vendors, contractors, and/or haul truck operators that vehicle and construction equipment idling time will be limited to no longer than five minutes, consistent with the CARB's policy⁴. For any idling that is expected to take longer than five minutes, the engine should be shut off. Notify construction vendors, contractors, and/or haul truck operators of these idling requirements at the time that the purchase order is issued and again when vehicles enter the Proposed Project site. To further ensure that drivers understand the vehicle idling requirement, post signs at the Proposed Project site, where appropriate, stating that idling longer than five minutes is not permitted.
- Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential areas.
- Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Lead Agency should commit to re-evaluating the Proposed Project through the CEQA process prior to allowing this land use or higher activity level.
- Provide electric vehicle (EV) Charging Stations (see the discussion below regarding EV charging stations).
- Should the Proposed Project generate significant regional emissions, the Lead Agency should require mitigation that requires accelerated phase-in for non-diesel powered trucks. For example, natural gas trucks, including Class 8 HHD trucks, are commercially available today. Natural gas trucks can provide a substantial reduction in health risks, and may be more financially feasible today due to reduced fuel costs compared to diesel. In the Program EIR, the Lead Agency should require a phase-in schedule for these cleaner operating trucks to reduce any significant adverse air quality impacts. SCAQMD staff is available to discuss the availability of current and upcoming truck technologies and incentive programs with the Lead Agency.
- Trucks that can operate at least partially on electricity have the ability to substantially reduce the significant NOx impacts from this project. Further, trucks that run at least partially on electricity are projected to become available during the life of the project as discussed in the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016-2040 RTP/SCS)⁵. It is important to make this electrical infrastructure available when the project is built so that it is

³ Based on a review of the California Air Resources Board's diesel truck regulations, 2010 model year diesel haul trucks should have already been available and can be obtained in a successful manner for the project construction California Air Resources Board. March 2016. Available at: <http://www.truckload.org/tca/files/ccLibraryFiles/Filename/00000003422/California-Clean-Truck-and-Trailer-Update.pdf> (See slide #23).

⁴ California Air Resources Board. June 2009. *Written Idling Policy Guidelines*. Accessed at: <https://www.arb.ca.gov/msprog/ordiesel/guidance/writtenidlingguide.pdf>.

⁵ Southern California Association of Governments. Accessed at: <http://scagrtpscs.net/Pages/FINAL2016RTPSCS.aspx>.

ready when this technology becomes commercially available. The cost of installing electrical charging equipment onsite is significantly cheaper if completed when the project is built compared to retrofitting an existing building. Therefore, SCAQMD staff recommends the Lead Agency require the Proposed Project and other plan areas that allow truck parking to be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks to plug-in. Similar to the City of Los Angeles requirements for all new projects, SCAQMD staff recommends that the Lead Agency require at least 5% of all vehicle parking spaces (including for trucks) include EV charging stations⁶. Further, electrical hookups should be provided at the onsite truck stop for truckers to plug in any onboard auxiliary equipment. At a minimum, electrical panels should be appropriately sized to allow for future expanded use.

- Design warehouses or distribution centers such that entrances and exits are such that trucks are not traversing past neighbors or other sensitive receptors.
- Design warehouses or distribution centers such that any check-in point for trucks is well inside the site to ensure that there are no trucks queuing outside of the facility.
- Design warehouses or distribution centers to ensure that truck traffic within the site is located away from the property line(s) closest to its residential or sensitive receptor neighbors.
- Restrict overnight parking in residential areas.
- Establish overnight parking within warehouses or distribution centers where trucks can rest overnight.
- Establish area(s) within warehouses or distribution centers for repair needs.
- Develop, adopt and enforce truck routes to and from warehouses or distribution centers that avoid sensitive receptors, where feasible.
- Create a buffer zone of at least 300 meters (roughly 1,000 feet), which can be office space, employee parking, greenbelt, etc. between warehouses or distribution centers and sensitive receptors.
- Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on the building roofs and/or on the Proposed Project site to generate solar energy for the facility.
- Maximize the planting of trees in landscaping and parking lots.
- Use light colored paving and roofing materials (e.g., “cool” roofs and cool pavements).
- Utilize only Energy Star heating, cooling, and lighting devices, and appliances.
- Require use of electric or alternatively fueled sweepers with HEPA filters.
- Use of water-based or low VOC cleaning products.

Health Risks Reduction Strategies

Many strategies are available to reduce exposures from locating sensitive land uses near freeways or sources of air pollution, including, but are not limited to, building filtration systems with MERV 13 or better, or in some cases, MERV 15 or better is recommended; building design, orientation, location; vegetation barriers or landscaping screening, etc. Because of the potential adverse health risks involved with siting sensitive receptors near freeways and other sources of air pollution, it is essential that any proposed strategy must be carefully evaluated before implementation.

In the event that enhanced filtration units are required for installation at the Proposed Project either as a mitigation measure or project design feature, SCAQMD staff recommends that the Lead Agency consider the limitations of the enhanced filtration. For example, in a study that SCAQMD conducted to investigate

⁶ City of Los Angeles. Accessed at:
http://ladbs.org/LADBSWeb/LADBS_Forms/Publications/LAGreenBuildingCodeOrdinance.pdf.

filters⁷, a cost burden is expected to be within the range of \$120 to \$240 per year to replace each filter. The initial start-up cost could substantially increase if an HVAC system needs to be installed. In addition, because the filters would not have any effectiveness unless the HVAC system is running, there may be increased energy costs to the residents. It is typically assumed that the filters operate 100 percent of the time while residents are indoors, and the environmental analysis does not generally account for the times when the residents have their windows or doors open or are in common space areas of the project. In addition, these filters have no ability to filter out any toxic gases from vehicle exhaust. Therefore, the presumed effectiveness and feasibility of any filtration units should be carefully evaluated in more detail prior to assuming that they will sufficiently alleviate exposures to diesel particulate matter (DPM) emissions.

If enhanced filtration units are installed at the Proposed Project, and to ensure that they are enforceable throughout the lifetime of the Proposed Project as well as effective in reducing exposures to DPM emissions, SCAQMD staff recommends that the Lead Agency provide additional details regarding the ongoing, regular maintenance and monitoring of filters in the environmental analysis. To facilitate a good faith effort at full disclosure and provide useful information to future residents who will live at the Proposed Project in a close proximity to freeways and other sources of air pollution, the environmental analysis should include the following information, at a minimum:

- Disclose the potential health impacts to prospective residents from living in a close proximity of freeways and other sources of air pollution and the reduced effectiveness of air filtration system when windows are open and/or when residents are outdoor (e.g., in the common and open space areas);
- Identify the responsible implementing and enforcement agency such as the Lead Agency to ensure that enhanced filtration units are installed on-site at the Proposed Project before a permit of occupancy is issued;
- Identify the responsible implementing and enforcement agency such as the Lead Agency to ensure that enhanced filtration units are inspected regularly;
- Provide information to residents on where the MERV filters can be purchased;
- Disclose the potential increase in energy costs for running the HVAC system to prospective residents;
- Provide recommended schedules (e.g., once a year or every six months) for replacing the enhanced filtration units to prospective residents;
- Identify the responsible entity such as residents themselves, Homeowner's Association, or property management for ensuring enhanced filtration units are replaced on time, if appropriate and feasible (if residents should be responsible for the periodic and regular purchase and replacement of the enhanced filtration units, the Lead Agency should include this information in the disclosure form);
- Identify, provide, and disclose any ongoing cost sharing strategies, if any, for the purchase and replacement of the enhanced filtration units;
- Set City-wide or Project-specific criteria for assessing progress in installing and replacing the enhanced filtration units; and
- Develop a City-wide or Project-specific process for evaluating the effectiveness of the enhanced filtration units at the Proposed Project.

⁷ This study evaluated filters rated MERV 13 or better. Accessed at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/aqmdpilotstudyfinalreport.pdf>. Also see 2012 Peer Review Journal article by SCAQMD: <https://onlinelibrary.wiley.com/doi/10.1111/ina.12013>.

Alternatives

In the event that the Proposed Project generates significant adverse air quality impacts, CEQA requires the consideration and discussion of alternatives to the project or its location which are capable of avoiding or substantially lessening any of the significant effects of the project. The discussion of a reasonable range of potentially feasible alternatives, including a “no project” alternative, is intended to foster informed decision-making and public participation. Pursuant to CEQA Guidelines Section 15126.6(d), the Program EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the Proposed Project.

Permits

In the event that implementation of the Proposed Project requires a permit from SCAQMD, SCAQMD should be identified as a Responsible Agency for the Proposed Project in the Program EIR. For more information on permits, please visit SCAQMD’s webpage at: <http://www.aqmd.gov/home/permits>. Questions on permits can be directed to SCAQMD’s Engineering and Permitting staff at (909) 396-3385.

Data Sources

SCAQMD rules and relevant air quality reports and data are available by calling the SCAQMD’s Public Information Center at (909) 396-2039. Much of the information available through the Public Information Center is also available via the SCAQMD’s webpage (<http://www.aqmd.gov>).

SCAQMD staff is available to work with the Lead Agency to ensure that project air quality impacts are accurately evaluated and mitigated where feasible. Please contact me at (909) 396-3308, should you have any questions.

Sincerely,

Lijin Sun

Lijin Sun, J.D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

LS

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Thomas Lenz

Atkinson Andelson Loya

Wayne Ratkovich

The Ratkovich Company

Dwight Richards

FAIRPLEX

Michael Rodgers

Lucas Horsfall Accountants

Dr. William Scroggins

Mt. SAC

Dr. Sadiq Shah

Cal Poly Pomona

Susan Stel

LAEDC

Maureen Taylor

Azusa Pacific University

Mark Thorpe

Ontario International Airport

Robert Stamp

University of La Verne

Sajid Sindhia

Citrus Valley Health Partners

Kelly Wu

Cathay Bank



February 22, 2019

Roland Ok, Senior Regional Planner
Southern California Association of Governments
900 Wilshire Blvd, Suite 1700
Los Angeles, CA 90017

RE: SCAG “Connect SoCal” Scoping Phase Comments

Dear Mr. Ok,

On behalf of the San Gabriel Valley Economic Partnership, I write with strong concerns regarding SCAG’s 2020-2045 Regional Transportation Plan (RTP) and Sustainable Community Strategies (SCS). The California Air Resources Board (CARB) wishes to impose a foolish and flawed Vehicle Miles Travelled (VMT) reduction target as a strategy for greenhouse gas (GHG) reduction. This grossly ignores the local opinions of many communities and stakeholders recorded in previous Regional Transportation Plan /Sustainable Community Strategies.

The Air Resources Board has no statutory authority to impose a VMT reduction target in an SCS; doing so violates the SB 375 requirement that an SCS must provide for a robust economy and growing population. In two prior RTP/SCS iterations in 2012 and 2016, SCAG met required GHG reduction targets based on local input for land use planning and full respect for voter-approved transportation projects and critical infrastructure required by longstanding laws requiring efficient transportation and goods movement.

The most aggressive decrease in GHG emissions based on VMT reductions in the SCAG region called for a 10% decrease in overall regional VMT, which the region has not met and shows no indication of being able to meet. California emits less than 1% of total global greenhouse gases while it has the nation’s highest rates for poverty and homelessness. Each of these huge social problems are directly attributable to outrageously high housing prices that are nearly three times above the national average. Sky high housing prices leads to significantly longer commutes as working families travel great distances from their employers in the city to far outlying ex-urban regions where they can afford to live.

CARB’s current target of reducing VMT by 19.5% is simply unattainable. SCAG should not continue to spend taxpayer dollars on infeasible plans. This is especially true when there has been no progress in enacting key reforms that prior SCS plans identified, such as redevelopment funding and CEQA reform.

The Partnership lauds SCAG efforts to see that SB 375 is implemented in line with its statutory protections for a healthy economy and growing population. I suggest that SCAG reject CARB staff’s decision to adopt VMT reduction targets. The State Legislature has repeatedly refused to impose a VMT reduction target as part of its climate and air quality laws and regulations. There is no basis to suggest VMT reduction targets a feasible in the SCAG region and the agency is better served by concentrating on substantive, achievable measures that have already been identified in previously approved iterations of the RTP/SCS.

Sincerely,


Brad Jensen, Director of Public Policy



ClimatePlan



Roland Ok, Senior Regional Planner
Southern California Association of Governments
900 Wilshire Blvd., Ste. 1700
Los Angeles, CA 90017

February 22, 2019

RE: Scoping Connect SoCal - 2020-2045 Regional Transportation Plan / Sustainable Communities Strategy

Dear Mr. Ok,

Thank you for the opportunity to comment on the scoping of the environmental analysis that will underpin the 2020-2045 Regional Transportation Plan / Sustainable Communities Strategy.

The 2020-2045 time frame of this plan takes us solidly into the the point of no return on climate action. This plan must guide our region towards an aggressive shift in land use and transportation patterns to radically reduce climate emissions.

The EIR should examine as part of its alternatives analysis an alternative that describes a future in which the land use and transportation systems of Southern California meet the necessary trajectory to reach California's ambitious and necessary climate goals. By that, we mean aiming for the full 25% reduction in per capita greenhouse gas emissions from transportation (relative to 2005 levels by 2035) that is identified as necessary in the ARB scoping plan, and not simply the 19% mandated by SCAG's SB 375 target.

An incremental approach that merely entertains existing commitments, which are bound to fail us in reaching our climate goals, is not appropriate or adequate.

We ask SCAG to include in its alternatives analysis at least one scenario that includes all of the following elements:

- 1) A halt to sprawl, greenfield development that increases per-capita VMT;
- 2) A robust prioritization of infill development near jobs and destinations -- especially near transit and including affordable housing -- that reduces per capita VMT in line with the ARB scoping plan and includes anti-displacement measures;
- 3) No new road or highway capacity projects;
- 4) A reprioritization of existing road and highway capacity to more equitable and efficient modes of transportation, including bus only lanes, bicycle lanes and high-occupancy vehicle lanes;
- 5) A robust system of roadway pricing, including cordon tolling, VMT/VHT pricing and corridor pricing throughout the SCAG geography as appropriate, with a priority on improving transportation equity through revenue investment;
- 6) An extensive electrification of our passenger and goods movement systems.

The plan's environmental review should also provide an equity analysis, incorporating best practices, that includes: an accounting of investment in disadvantaged communities that addresses discrepancies in access to transportation options; a neighborhood-scale impact analysis in these communities; a tracking of displacement of low-income residents that has occurred; and an anticipation of future displacement risk to vulnerable communities associated with these investments.

This analysis should aim to provide guidance to jurisdictions for mitigating disproportionate air quality impacts, and protecting against displacement of vulnerable residents. In addition, the analysis should disaggregate data as much as possible to lift up race/ethnicity, age, and low-income exposure to poor air quality and other health hazards from all of SCAG's six counties.

Thank you for your consideration.

Sincerely,

Carter Rubin, Mobility and Climate Advocate
Natural Resources Defense Council

Christopher Escárcega, Acting Co-Director
ClimatePlan

Bryn Lindblad, Deputy Director
Climate Resolve

Matthew Baker, Policy Director
Planning and Conservation League

Demi Espinoza, Senior Equity & Policy Manager
Safe Routes to School National Partnership

Jared Sanchez, Senior Policy Advocate
California Bicycle Coalition

Anita Au

From: Robert dale <robertdaleplanning@gmail.com>
Sent: Wednesday, February 13, 2019 2:58 PM
To: nader.ghobrial@ocpw.ocgov.com
Subject: OC BikeLoop

Nader Ghobrial
Bike Trail Planner
OC Public Works

Hello Nader,

Thanks for taking my phone call today.

Also, thanks again for your help completing the 66 mile OC BikeLoop & expanding recreational opportunities in park poor north OC. The proposed La Habra Centennial Rail Trail is the largest gap in the plan.

I agree with you, the lower Coyote Creek Bike Trail is a difficult situation. From our ride in 1996, most of the gates were locked, & it looked like several bridges were needed. Also the 5 Fwy was a major obstruction. We ended up riding in the storm channel to get to the San Gabriel River Trail.

I am hopeful the La Habra Centennial RailTrail will be completed by our town's, 1/20/2025, Centennial Celebration! A recent study found La Habra has the fattest kids in the county. Also, 50% of our young adults are pre-diabetic. Expanding recreational opportunities is vital to the sustainability of our town.

Keep up your great work!

Robert Dale
La Habra Bike Club
La Habra 2025 Centennial Celebration Committee
1401 Sierra Vista Dr.
La Habra, CA. 90631
Ph. (562) 697-8953

Cc La Habra Bike Club; La Habra 2025 Centennial Celebration Committee

Anita Au

From: Robert dale <robertdaleplanning@gmail.com>
Sent: Wednesday, February 13, 2019 2:18 PM
To: Roland H. Ok; 2020 RTP/SCS PEIR
Cc: Ho, Andrew; Al.Jabbar@ocgov.com; Angela Lindstrom; Assemblymember.Chen@Outreach.assembly.ca.gov; Bill Ballinger; Bob Henderson; Jim Brewer; Barbara Ballinger; Banning Ranch Conservancy; Bicycle Club; bwwhitaker@live.com; Chuck Buck; RoslynL@ci.brea.ca.us; Stacy.Blackwood@ocparks.com; Douglas Cox; chris.jepsen@rec.ocgov.com; Chris Johansen; Carlos Jaramillo; Chamber; Claire Schlotterbeck; chuy51@aol.com; Gordon cox; davidd@lahabracity.com; David Whiting; Debbie Presley; Dave Larson; Teri Daxon; Dr. David Nilson; everprop@gmail.com; Rusty Elliot; Rose Espinoza; Jose Medrano; Jack Miller; Mike Foley; Sandi.fp@gmail.com; Fullerton Observer; Surfrider Foundation; sue gaede; Jim Gomez; greenvision@fhbp.org; mplotnik@lahabraca.gov; Nord, Gregory; TShaw@lahabraca.gov; Lynton Hurdle; heather mcRea; honk@ocregister.com; Jane Noltensmeir; jwilliams90631@gmail.com; Jean Watt; Les Knight; Lou Salazar; Dave Larson; mustangthompson; Schlotterbeck, Melanie; nsantana@voiceofoc.org; ecarpenter@octa.net; nwheadon@octa.net; pmartin@octa.net; TheTracks@cityofbrea.net; Scott.Thomas@ocparks.com; Theresa Sears; Tuan.Richardson@ocparks.com; rory.paster@ocparks.com; nader.ghobrial@ocpw.ocgov.com; kathied@cityofbrea.net; Sadro, Jim; Eric Johnson
Subject: So Cal Assoc. of Gov.; Connect SoCal Project, EIR Public Comments

2/13/19

To: Roland Ok, Senior Planner
SCAG, "ConnectSoCal", PEIR
From: Robert Dale, La Habra 2025 Centennial Committee
1401 Sierra Vista Dr.
La Habra, Ca 90631

Re: Public Comments.

Subject: Connect SoCal, PEIR.

Topic: Orange County Bike Path Planning

Please consider the proposed 2040 Orange County Regional Bike Path Plan in your environmental assessment.

Also, please consider the completion of the proposed, 66 mile, "OC BikeLoop", from downtown La Habra to the Pacific Ocean. Completion of the proposed La Habra Centennial RailTrail, the largest gap in the plan, is vital to the sustainability of our region.

Thanks,
Robert Dale
La Habra, CA

"Connect SoCal Project" - The 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy is a long-range visioning plan that balances future mobility and housing needs with economic, environmental and public health goals.

Connect SoCal embodies a collective vision for the region's future and is developed with input from local governments, county transportation commissions (CTCs), tribal governments, non-profit organizations, businesses and local stakeholders within the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura.

What is the Program Environmental Impact Report,(PIER)?

SCAG's PEIR is an environmental report that will analyze and disclose potential impacts of the Connect SoCal plan on the environment.

Please send comments related to the Environmental Impact Report: "Notice of Preparation" to:

Southern California Association of Governments

Attn: Mr. Roland Ok

900 Wilshire Blvd., Ste 1700

Los Angeles, CA 90017

Comments may also be submitted electronically to 2020PEIR@scag.ca.gov

All responses must be sent no later than **5:00 p.m. on Friday, February, 22, 2019.**

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[What will the PEIR Analyze?](#)

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[Participate](#)

[Submitting Comments](#)