

**ENDORSED**

**JUL 08 2019**

Clerk of the Napa Superior Court  
By: L. WALKER  
Deputy

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8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF NAPA

10 **19CV001013**

11 CALIFORNIA CLEAN ENERGY	)	CASE NUMBER
12 COMMITTEE, a California nonprofit	)	
13 corporation,	)	PETITION FOR WRIT OF MANDATE PURSUANT
	)	TO THE CALIFORNIA ENVIRONMENTAL
14 Petitioner,	)	QUALITY ACT
15 v.	)	
	)	
16 CITY OF AMERICAN CANYON, a municipal	)	
17 corporation; and DOES 1-100, inclusive,	)	
	)	
18 Respondents.	)	

19 Petitioner California Clean Energy Committee, by and through its attorney, alleges as  
20 follows:

21 GENERAL ALLEGATIONS

22 1. Respondent City of American Canyon (city) is a general law city and a political  
23 subdivision of the State of California. Having discretionary approval authority over the project  
24 described herein, the city is the lead agency responsible under the California Environmental Quality Act  
25 (CEQA) for preparation of the environmental impact report and for design of the environmental  
26 mitigation for the project described herein.  
27

28 2. Petitioner California Clean Energy Committee (CCEC) is a nonprofit corporation

1 incorporated under the laws of the State of California maintaining its principal place of business in the  
2 City of Davis, California. CCEC has advocated on behalf of the general public throughout the State of  
3 California for energy conservation, the development of clean energy resources, reduced greenhouse gas  
4 emissions, smart growth, more efficient transportation systems, farmland preservation, and related issues  
5 in connection with numerous projects and issues since 2008. During 2016 and 2017, CCEC submitted  
6 comments and negotiated environmental mitigation for Watson Ranch, a 309 acre specific plan project  
7 for over 1200 residential units, a new elementary school, and commercial uses located in the City of  
8 American Canyon. CCEC actively supports the application of the California Environmental Quality Act  
9 (CEQA) to energy conservation and related issues. Over twenty (20) individuals in the City of  
10 American Canyon have joined in support of the CCEC campaign to ensure that the City of American  
11 Canyon provides an efficient transportation system design, accurate impact analysis, robust energy  
12 conservation, and environmental stewardship in connection with the Broadway District Specific Plan.

13 3. Clean Energy's supporters in American Canyon and surrounding areas will be directly  
14 and adversely impacted by the implementation of the project and by the failure of the City to adequately  
15 evaluate the impacts of the project and by its failure to identify feasible mitigation for the impacts of the  
16 project as required pursuant to CEQA. Petitioner brings this action as a representative of the general  
17 public in the area of American Canyon who will be affected by the project.

18 4. Without a representative organization such as Clean Energy, it would be impractical and  
19 uneconomic for individual members of the public to enforce CEQA with respect to the project discussed  
20 herein. Without a representative action such as this one, the violations of CEQA described in this  
21 petition would remain immune from judicial review. No governmental agency is prepared to evaluate  
22 the environmental issues or to enforce the public rights that are at stake.

23 5. Venue for this action is proper in this court because the environmental impacts of the  
24 actions alleged herein will cause direct and substantial impacts within the County of Napa and because  
25 the principal office of the respondent agency is situated within the County of Napa.

26 6. Concurrently herewith petitioner is filing a declaration of prior service by mail upon the  
27 City of American Canyon of written notice of intent to commence this action in compliance with the  
28 requirements of Public Resources Code section 21167.5.

1           7. Petitioner is further filing and serving herewith notice of its election to prepare the  
2 administrative record in this matter pursuant to Public Resources Code section 21167.6.

3           8. The true names and capacities of the respondents and real parties in interest sued herein  
4 under California Code of Civil Procedure section 474 as Does 1 through 100, inclusive, are presently  
5 unknown to petitioner. Does 1 through 100 include agents of the county, state, and federal government  
6 who are responsible in some manner for the conduct described herein and real parties in interest  
7 presently unknown to the petitioner who claim some legal or equitable interest in the project who  
8 petitioner therefore sues by such fictitious names. Petitioner will amend this petition to include these  
9 Doe respondents' true names and capacities when they are ascertained. Each of the fictitiously-named  
10 respondents is responsible in some manner for the conduct alleged herein.

11           9. CCEC's action herein will result in the enforcement of important rights affecting the  
12 public interest and confer substantial benefits on the general public. The necessity and financial burden  
13 of private enforcement justify an award of attorney fees pursuant to Code of Civil Procedure section  
14 1021.5.

15           10. The public comment period on the draft environmental impact report (DEIR) extended  
16 through January 24, 2017. Despite the extensive comments received, the City has nevertheless prepared  
17 and relied on an EIR that falls well below CEQA's minimum standards. If the City is allowed to  
18 proceed with the project, irreparable harm will result to the environment and to the public. No adequate  
19 remedy, other than that prayed for herein, exists by which the rights of the petitioner and the class it  
20 represents may be protected.

21           11. CCEC has exhausted all administrative remedies by submitting written comments on two  
22 occasions requesting compliance with CEQA and a full and adequate environmental review. All issues  
23 raised in this petition were raised with the City by CCEC or by other members of the public or public  
24 agencies prior to the certification of the EIR. The City has made its final decision. This petition is  
25 timely filed in accordance with Public Resources Code section 21167 and CEQA Guidelines section  
26 15112.

PROCEDURAL BACKGROUND

1  
2 12. In 2009 the Association of Bay Area Governments (ABAG) in cooperation with other  
3 local agencies established a program known as the Priority Development Area Program, which is  
4 intended to maximize residential development and job growth in areas of existing communities that are  
5 served by frequent and convenient transit. The Broadway District consists of land in the City of  
6 American Canyon located on either side of State Route 29 (SR 29 or Broadway), starting at the  
7 Solano/Napa County line and extending 2.38 miles north and ending at Green Island Road. The  
8 Broadway District serves both as the commercial core of the city and as a main thoroughfare for  
9 commuter, tourist, and commercial travel. Pursuant to a request by the City of American Canyon,  
10 ABAG designated the Broadway District as a potential priority development area. Pursuant to that  
11 designation, it was incumbent upon the city to adopt a specific plan for the Broadway District area.

12 13. In November, 2017, the city released a draft Broadway District Specific Plan (BDSP)  
13 along with a draft environmental impact report. The proposed BDSP is intended to become the guiding  
14 document for growth and improvement of the BDSP area, "transforming the auto-oriented Highway 29  
15 commercial district into a livable, mixed use, small town neighborhood." The document contains goals,  
16 objectives and policies. It sets forth the location and extent of different land uses, the location and  
17 extent of roadways, and the major infrastructure. The BDSP provides for 1,200 net new residential units  
18 and approximately 840,000 net new square feet for non-residential uses including office and  
19 commercial, which the city projects will generate 3,379 residents and 1,666 jobs, which will generate an  
20 additional 148,735 miles of vehicle travel daily. (EIR 3.2-47.)

21 14. The draft EIR is intended to address "all public infrastructure improvements and all  
22 future development that are within the parameters of the proposed project." The draft EIR was released  
23 for a 60-day public review period which ended on January 24, 2018. It was reviewed by various  
24 governmental agencies and members of the public. CCEC submitted comments during the public  
25 comment period on the draft EIR. The city published the Final Environmental Impact Report on April  
26 10, 2019, which consisted of copies of comments received, the city's responses to comments, and minor  
27 revisions to the text of EIR. On June 3, 2019, CCEC submitted comments and documents addressing  
28 the final EIR.

1 15. On June 18, 2019, the City Council met and approved (i) a resolution adopting findings  
2 pursuant to CEQA, certifying the final environmental impact report, and adopting a statement of  
3 overriding considerations; (ii) a resolution adopting a mitigation monitoring and reporting program; (iii)  
4 an ordinance amending the City's general plan; and (iv) an ordinance approving the Broadway District  
5 Specific Plan.

#### 6 7 TRANSPORTATION IMPACT ANALYSIS

8 16. Cumulative Impact Analysis. The analysis of cumulative traffic impacts in the EIR  
9 purports to restate the environmental analysis completed in 2013 for the city's general plan Circulation  
10 Element. The EIR states that build-out of the general plan along with increases in regional traffic  
11 traversing the Broadway corridor would result in "an unacceptable LOS under the proposed plan  
12 conditions" and concludes that the impact of the specific plan would be significant. It goes on to state  
13 that the impact is unavoidable because "there are no feasible mitigation measures that the City of  
14 American Canyon can undertake independently to fully mitigate this impact." The EIR states that "[i]n  
15 the absence of an established regional and state funding mechanism, the necessary improvements to  
16 mitigate regional growth on top of local traffic will not occur." The EIR states that "there are no feasible  
17 improvements beyond the proposed widening to six lanes that the City of American Canyon can perform  
18 independently." (EIR 3.12-42.) The city's analysis of cumulative traffic impacts does not comply with  
19 CEQA and is unsupported. The changes proposed under the specific plan were not analyzed as part of  
20 the general plan environmental review and the specific plan does not tier off that review. It does not  
21 make the analysis in the general plan available to the public at a location specified by the lead agency.  
22 The EIR must evaluate the impact of proposed specific plan viewed in connection with past projects,  
23 other current projects, and probable future projects. The analysis must identify current baseline  
24 conditions. The city erroneously declined to set forth mitigation that other agencies, or the city in  
25 cooperation with other agencies, could adopt. The lead agency may find that mitigation is within  
26 another agency's responsibility and jurisdiction and that the other agency has adopted the mitigation or  
27 can and should adopt it. Such a finding is only appropriate when another agency has exclusive  
28 responsibility. The analysis fails to identify the combined impact of the proposed specific plan and

1 other projects or the incremental impact of the specific plan.

2 17. Congestion Management Plan. The EIR further indicates that SR-29 is a congestion  
3 management plan facility and states that build-out of the specific plan would generate new vehicle trips  
4 that would contribute to unacceptable operations on SR-29. (EIR 3.12-43.) It concludes that there would  
5 be a significant impact because it is not feasible to widen SR-29 to eight lanes. The analysis does not  
6 comply with CEQA because it fails to identify the specific conflict with the congestion management  
7 plan.

8 18. Generated Traffic. Highway expansion on congested links such as SR 29 is likely to  
9 generate considerable amounts of additional traffic and to provide only temporary congestion reduction  
10 benefits. Under typical urban conditions, more than half of the added capacity is filled within five years  
11 of project completion, by additional vehicle trips that would not otherwise occur, and with continued but  
12 slower growth in later years. CCEC informed the city that ignoring generated traffic underestimates the  
13 magnitude of future traffic congestion problems, overestimates the congestion reduction benefits of  
14 increasing roadway capacity, and underestimates the benefits of alternative solutions to transportation  
15 problems. Building increased highway capacity increases vehicle miles travelled and related impacts.  
16 Over the long term it helps create more automobile dependent transportation systems and land use  
17 patterns. The EIR failed to consider this impact. The city's response was inadequate and unsupported.  
18 The EIR should evaluate and mitigate generated traffic impacts.

19 19. Vehicle Miles Traveled. The city was further informed that the transportation analysis  
20 should address the project impact on vehicle miles travelled (VMT). The city responded that VMT had  
21 been disclosed in the discussion of energy impacts. The analysis of VMT in the energy section and in  
22 the air quality section of the EIR does not comply with CEQA. The city used full project build out as  
23 the baseline. CCEC informed the city twice that the discussion of transportation impacts must use a  
24 current conditions baseline. Disclosing total VMT associated with the project did not constitute an  
25 evaluation of the project impact on VMT because the EIR failed to identify or compare to any baseline  
26 and failed conduct any analysis of the expected change in per capita VMT. The failure to analyze VMT  
27 creates the false and misleading perception that inducing people to regularly take longer vehicle trips to  
28 reach their destinations creates no greater impact to air quality, transportation, energy, or greenhouse gas

1 impacts than would occur for shorter vehicle trips. The EIR fails to provide an analysis of the project's  
2 impact to VMT and would not be substantial evidence to support a finding of no significant impact to  
3 transportation.

#### 4 5 MITIGATION USING LAND USE POLICIES

6 20. Transit-Oriented Development. The city failed to evaluate and adopt feasible mitigation  
7 for the significant air quality and transportation impacts of the specific plan. CCEC urged the city to  
8 reduce commuting traffic by implementing transit-oriented development through policies such as  
9 locating increased residential density near transit stops. The city responded that the proposed specific  
10 plan would accommodate 1,200 net new dwelling units most of which would be multi-family. This did  
11 not analyze or address whether the impacts of the plan could be mitigated by implementing transit-  
12 oriented development. The specific plan strategies for public transit are limited to improving bus stops  
13 on Broadway and participating in studies of transit demand undertaken by Napa Valley Transportation  
14 Authority (NVTA). (SP, 4-12.) The specific plan contains no policy addressing where transit stops  
15 should be located or whether land uses that generate transit riders will be located within a convenient  
16 distance of transit service.

17 21. Workforce Housing. The proposed specific plan would continue a long and unfortunate  
18 trend in Napa County of failing to provide enough affordable housing opportunities for employees and  
19 effectively induces employees to commute to Solano County or Contra Costa County at considerable  
20 expense to them, to the public, and also at significant cost to the environment. Ironically, the City of  
21 American Canyon, itself enduring tremendous regional traffic that burdens and splits the core of the city,  
22 is one of major casualties of this long-term trend. CCEC pointed out to the city during the public  
23 comment period that NVTA had demonstrated that housing costs require many lower and middle  
24 income employees in Napa County to commute to Solano County and to Contra Costa County for  
25 affordable housing and that the congestion and air quality impacts of the project could be mitigated by  
26 providing additional workforce housing and housing density in the specific plan. The city refused to  
27 evaluate incorporating increased affordability standards into the specific plan to ensure greater amounts  
28 of housing affordable to the local workforce and thereby to reduce commuting distances. Under the

1 specific plan fewer than 1200 dwelling units could be built. The city responded that workforce housing  
2 would not represent feasible mitigation for transportation impacts because employees residing in  
3 workforce housing in the Broadway District would still commute on SR-29. The city's position is  
4 unsupported. The fact that employees would travel some reduced distance to work does not establish  
5 that the impacts of that travel would not be significantly less than the impacts of travelling daily from  
6 another county to a job in Napa County. The city failed to comply with CEQA by failing to respond to  
7 comments with a detailed, reasoned and good faith analysis of mitigation for the significant air quality  
8 and transportation impacts of the project. (Cal. Code Regs., tit. 14, § 15088(c).) Further, it failed to  
9 describe and adopt feasible mitigation measures that could minimize the significant adverse impacts of  
10 the project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1).)

#### 11 12 MITIGATION USING TRANSIT POLICIES

13 22. Transit Facilities in Broadway Corridor. The specific plan calls for reconfiguring  
14 Broadway to make regular bus service possible and straightening the express bus route. CCEC urged  
15 the city to mitigate congestion impacts by incorporating additional specific plan provisions that would  
16 foster improved transit service through the Broadway Corridor and thereby increase transit mode share.  
17 These included intersection controls that can give transit priority by setting a traffic light to stay green  
18 for several extra seconds to allow a bus to avoid stopping, real time passenger information at transit  
19 stops, shoulder operation to bypass congestion, queue bypass lanes at congested intersections, enhanced  
20 transit stops, improved signage, and expanded park and ride. Features such as these have been  
21 recommended by NVTa in the Gateway Corridor Improvement Plan and in the Express Bus Corridor  
22 Study. The city failed to evaluate policies that would design the Broadway Corridor for increased transit  
23 ridership. It responded that these types of improvements are subject to Caltrans approval and that the  
24 City of American Canyon did not have the ability to install transit signal priority and queue jumps on  
25 SR-29. However, it is evident that the city is already proposing certain changes to transit services in the  
26 Broadway District and that the city seeks to exercise considerable influence over Caltrans regarding the  
27 configuration of the SR 29 and the speed limit through the Broadway District. The city failed to address  
28 improved transit features in the Broadway Corridor with Caltrans during the preparation of the EIR and



1 stated that these suggestions would be evaluated in the future. Adopting policies in the specific plan that  
2 would enhance transit facilities in the Broadway Corridor constitutes feasible mitigation which should  
3 have been analyzed and either adopted or recommended to other agencies.

4 23. Enhanced Transit Services. CCEC further urged the city to incorporate policies into the  
5 specific plan that would mitigate transportation impacts by establishing a transportation management  
6 agency to provide funding for improved transit service, expanded operation hours, shorter headways,  
7 and faster service on corridors. CCEC particularly urged the city to mitigate impacts by providing free  
8 or discounted transit passes to residents and employees, which are an effective tool for increasing transit  
9 mode share. Potential funding sources for such mitigation include development fees, annual charges to  
10 land uses that impact the transportation system, funding through a transportation management  
11 association, and fee revenue derived from supplying public parking facilities. The city failed and  
12 refused to evaluate such measures. The city failed to determine whether the Napa Valley Transportation  
13 Authority would be amenable to using funds collected by American Canyon to implement programs  
14 such as these. It refused to evaluate these policies asserting that they were the prerogative of the NVRTA  
15 and simply noted in the specific plan that the city would participate in studies to identify ways to  
16 improve bus transit. The city failed to comply with CEQA by failing to respond to comments with a  
17 detailed, reasoned and good faith analysis of mitigation for the significant air quality and transportation  
18 impacts of the project. (Cal. Code Regs., tit. 14, § 15088(c).) Further, it failed to describe and adopt  
19 feasible mitigation measures that could minimize the significant adverse impacts of the project. (Cal.  
20 Code Regs., tit. 14, § 15126.4(a)(1).)

21  
22 PARKING

23 24. Parking Development. The proposed specific plan provides for the creation of a more  
24 accessible and efficient system of surface parking that will adequately serve the project area. It asserts  
25 that a well-managed public and private parking supply is critical to the long-term success of the  
26 Broadway District. It contains no policy provision that there would be any fee charged for parking, and  
27 it must be assumed that the proposal will provide free-parking. Research has established that providing  
28 increased parking is associated with an increase in automobile mode share. Providing parking serves as

1 an inducement to driving and thereby contributes to greater traffic congestion, reduces energy  
2 efficiency, and increases the emission of air quality pollutants. CCEC urged the city to evaluate the  
3 impacts of providing parking in the EIR, but the city did not provide such an evaluation. Paid parking  
4 reduces driving and CCEC recommended that paid parking be evaluated in the EIR and adopted as  
5 mitigation for the congestion impacts of the project. The city failed to evaluate paid parking as  
6 mitigation.

7 25. Parking Management. In order to mitigate transportation impacts, CCEC recommended  
8 that the specific plan provide that a parking management plan be prepared for the Broadway District.  
9 The plan should designate parking areas, parking circulation, special signage, parking fees, time limits,  
10 ride share incentives, biking and walking options to mitigate project impacts. Parking management is  
11 energy efficient and mitigates air quality and congestion impacts. It reduces the amount of time drivers  
12 need to spend cruising for parking and creates a close, more pedestrian-oriented streetscape, which is  
13 conducive to walking. The city failed to evaluate a policy for adopting a parking management plan as  
14 mitigation.

## 15 16 TRANSPORTATION DEMAND MANAGEMENT

17 26. Provisions of the Specific Plan. The specific plan contains a weak and infeasible  
18 transportation demand management (TDM) program that consists of (i) a reference to the land use  
19 policies contained in the specific plan; (ii) a commitment to provide on-street and off-street parking,  
20 which actually encourages driving; (iii) encouraging NVTA to provide bus service on Broadway, which  
21 it already does; and (iv) working with businesses to "spread the word about rideshare services." CCEC  
22 informed the city repeatedly that these provisions do not constitute an effective TDM program. They  
23 amount to referencing TDM and reducing it to a few ineffective statements. Both Caltrans and CCEC  
24 urged the city to adopt a "robust" TDM program to mitigate project impacts. Both urged the city to plan  
25 for a transportation management association (TMA) to develop a partnership among affected  
26 developments and involved public agencies to implement an effective TDM program.

27 27. Recommendations for a TDM Program. Caltrans and CCEC provided the city with  
28 multiple examples of policies that would enable the city to meet transportation demand while reducing

1 traffic congestion and air quality impacts. The city expressly declined to adopt a policy to develop a  
 2 robust TDM program, relying on the unsupported assertion that providing for such a program in the  
 3 specific plan would be "premature." The city nevertheless amended the final EIR to erroneously assert  
 4 that the specific plan included a Broadway District Transportation Demand Management Program,  
 5 which would require project applicants to submit some type of TDM proposal to the Public Works  
 6 Department for approval. (FEIR 5-2.) The specific plan does not contain such a program, and the  
 7 hypothetical policy provides only for a document prepared by the project applicant without standards,  
 8 requirements, or oversight. Effective mitigation would be a policy that calls for achieving a specified  
 9 reduction in peak period motor vehicle trips reducing them below what would be typical for  
 10 development in the applicable land use category. An effective policy would call for reductions that  
 11 would be deemed aggressive yet feasible and that could range from 15 to 45 percent. Exceptions could  
 12 be allowed for hardship cases. An effective TDM policy would involve monitoring by the city on an  
 13 annual basis. It should provide enforcement mechanisms and penalties that accrue if targets are not met.

14         28. Fee or Trade in Lieu. To further reduce impacts to less than significant, CCEC  
 15 recommended that the city require new development projects to offset significant impacts to peak period  
 16 motor vehicle trips either by directly contracting with another property owner or organization to reduce  
 17 trips generated from another site or by paying an annual fee to the City for use in reducing motor vehicle  
 18 trips to the extent feasible through the provision of transit services, carpool/rideshare incentives, bicycle  
 19 lanes, and other similar programs and improvements. The city failed to comply with CEQA by failing  
 20 to respond to comments with a detailed, reasoned and good faith analysis of mitigation for the  
 21 significant transportation impacts of the project. (Cal. Code Regs., tit. 14, § 15088(c).) Further, it failed  
 22 to describe and adopt feasible mitigation measures that could minimize the significant adverse impacts  
 23 of the project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1).)

#### 24 25                                 ENERGY

26         29. Operational Energy. The EIR states that the long-term operational energy usage of the  
 27 project would consist of an estimated 20.4 million kWh of electricity and 92.1 million cubic feet of  
 28 natural gas and that the project would be required to comply with Title 24 energy efficiency standards.

1 Based upon that, the EIR concludes the project would not result in the unnecessary, wasteful or  
2 inefficient use of energy. CCTC notified the city that the discussion of energy impacts in the EIR is  
3 insufficient and that it provides no useful disclosure because there is no discussion of what constitutes  
4 energy efficiency for the type of projects that would be built under the specific plan and no basis for  
5 concluding whether those projects would achieve energy efficiency. The discussion of energy offered  
6 by the city consists primarily of filler material addressing extraneous matters with no identified bearing  
7 on the matter to be decided. No baseline condition has been identified. No cumulative impact analysis  
8 has been provided. The discussion consists of an estimate of the gross energy consumption at build out  
9 of some undefined population and an unsupported conclusion. The analysis should consider what types  
10 of energy uses will likely be located in the specific plan area, discuss the typical energy consumption for  
11 such uses, consider whether that level of energy consumption compares well to efficient designs, and  
12 address a process for evaluating individual projects. The discussion of operational energy efficiency is  
13 unsupported and does not meet minimal CEQA standards.

14           30. Transportation Energy. The International Energy Agency defines "transport energy  
15 efficiency" as the maximization of travel activity with minimal energy consumption through  
16 combinations of land-use planning, transport modal share, energy intensity, and fuel type. With respect  
17 to transportation energy, the EIR simply states that vehicle fuel efficiency standards are set at the federal  
18 level and estimates that 802,935 gallons of motor vehicle fuel would be used annually in association  
19 with the specific plan. It points out that there would be increased opportunities for non-motorized travel  
20 and more direct routes for motor vehicles. It then concludes that the project would not result in the  
21 unnecessary, wasteful or inefficient use of gasoline or diesel fuel. That conclusion is not supported by  
22 substantial evidence, and the analysis does not meet CEQA's information disclosure requirements.  
23 There is no discussion of whether the use of transportation energy is efficient in view of the specific plan  
24 policies related to land-use planning, transport mode share, energy intensity, and fuel types. For  
25 example, the specific plan does not provide that dwelling units be convenient to frequent destinations  
26 such as employment sites and transit so that residents are not required to drive an unnecessary number of  
27 miles and to consume excessive amounts of energy for travel. The specific plan contains no policies that  
28 would maximize reliance on more efficient modes of transport such as transit. The proposed specific



1 CCEC informed the city during the public review period that it considered the EIR to be a project-level  
2 EIR based upon the express terms of the EIR. The city did not dispute that characterization. (FEIR 3-  
3 88.) As a result it is now unclear whether the city intended to do a programmatic EIR or a project EIR.  
4 The uncertainty about the nature of the EIR requires that the project approval be set aside.

5 33. Growth Inducing Impact. At the present time with Broadway configured with two lanes  
6 in each direction, considerable traffic congestion occurs during the morning and evening hours which  
7 limits the number of vehicles that can commute from the Bay Area to destinations north of American  
8 Canyon. By expanding the roadway to six lanes, thereby reducing congestion, the proposed project  
9 allows for a greater number of vehicles to commute and encourages greater residential and commercial  
10 development in Napa Valley. The proposed specific plan failed to comply with CEQA because it did  
11 not contain a discussion of the growth inducing impacts of the project.

12  
13 FIRST CAUSE OF ACTION

14 (Failure to Comply with CEQA)

15 34. Petitioners incorporate by reference each and every allegation set forth above.

16 35. CEQA requires that lead agencies prepare an EIR that complies with the requirements of  
17 the statute. The lead agency must also provide for public review and comment on the project and  
18 associated environmental documentation. An EIR must provide sufficient environmental analysis such  
19 that decision-makers can intelligently consider environmental consequences when acting on the  
20 proposed project.

21 36. Respondent violated CEQA by certifying an EIR for the project that is inadequate and  
22 fails to comply with CEQA and approving the project on that basis. Among other things, respondent:

- 23 a. Failed to adequately disclose or analyze the project's significant environmental impacts  
24 including but not limited to the project's impacts on transportation and energy;
- 25 b. Failed to provide a consistent and appropriate environmental baseline for analysis of the  
26 project's environmental impacts;
- 27 c. Failed to adequately analyze the significant cumulative impacts of the project;
- 28 d. Improperly deferred impact analysis and mitigation measures;

- e. Failed to discuss potentially feasible mitigation measures; and
- f. Failed to adopt and make enforceable feasible mitigation for project impacts.

37. As a result of the foregoing defects, respondent prejudicially abused its discretion by certifying an EIR that does not comply with CEQA and by approving the project in reliance thereon. Accordingly, respondent's certification of the EIR and approval of the project must be set aside.

## SECOND CAUSE OF ACTION

### (Inadequate Findings)

38. Petitioner hereby incorporates by reference each and every allegation set forth above.

39. CEQA requires that a lead agency's findings for the approval of a project be supported by substantial evidence in the administrative record. CEQA further requires that a lead agency provide an explanation of how evidence in the record supports the conclusions the agency has reached.

40. Respondent violated CEQA by adopting findings that are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to the following:

- a. The determination that certain impacts would be less than significant and/or that adopted mitigation measures would avoid or lessen the project's significant effects on the environment;
- b. The determination that certain mitigation was infeasible;
- c. The determination that overriding economic, legal, social, technological, or other benefits of the project outweighed its significant impacts on the environment.

41. As a result of the foregoing defects, respondent prejudicially abused its discretion by adopting findings that do not comply with the requirements of CEQA and approving the project in reliance thereon. Accordingly, the agency's certification of the EIR and approval of the project must be set aside.





1           2. Preliminary and permanent injunctions restraining respondent, its agents, employees,  
2 contractors, consultants and all persons acting in concert with them, from undertaking any construction  
3 or development, issuing any approvals or permits, or taking any other action to implement in any way  
4 the approval of the project without full compliance with California law;

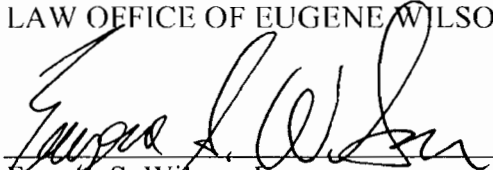
5           3. A declaration of the rights and duties of the parties hereto, including but not limited to a  
6 declaratory judgment that prior to undertaking any action to carry out any aspect of the project,  
7 respondent must prepare, circulate, and adopt a revised EIR in accordance with the requirements of  
8 CEQA;

9           4. Petitioner's costs of suit and reasonable attorney fees; and

10          5. Such other relief as the court deems just and proper.

11 Dated: July 8, 2019

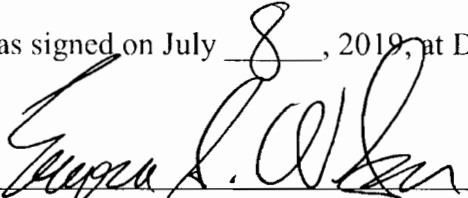
12  
13 LAW OFFICE OF EUGENE WILSON

14   
15 Eugene S. Wilson, Esq.  
16 Attorney for the California Clean Energy  
17 Committee  
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2 VERIFICATION  
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4 I am an officer of petitioner, California Clean Energy Committee, and I am authorized to  
5 execute this verification on behalf of petitioner. I have read the foregoing petition and am familiar with  
6 its contents. The facts recited in the petition are true of my personal knowledge except as to matters  
7 stated on information and belief and as to those matters I believe them to be true.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing  
9 is true and correct and that this verification was signed on July 8, 2019, at Davis, California.

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12 Eugene S. Wilson  
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