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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO**
17 **CENTRAL DIVISION**

18 CLEVELAND NATIONAL FOREST
19 FOUNDATION,
20 Petitioner,
21 v.
22 CALIFORNIA DEPARTMENT OF
TRANSPORTATION; and DOES 1 through
23 20, inclusive.
24 Respondents.

Case No. 37-2013-00078391-CU-TT-CTL

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PETITIONER'S OPENING BRIEF

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1 **PRELIMINARY STATEMENT**

2 Petitioner Cleveland National Forest Foundation (“CNFF”) brings this action to challenge the
3 California Department of Transportation’s (“Caltrans”) decision in 2013 to approve the Interstate 5 North
4 Coast Corridor Project (“Project”). The challenged Project involves the widening of a 27-mile stretch of
5 Interstate 5 (“I-5”) beginning in San Diego and extending north through Del Mar, Solana Beach, Encinitas,
6 Carlsbad, and Oceanside. Petitioner seeks a writ of mandate directing Caltrans to vacate both its Project
7 approval and its certification of an environmental impact report (“EIR”) for the Project. As Petitioner
8 demonstrates, Caltrans’ actions in approving the Project violated the California Environmental Quality Act
9 (“CEQA”), Public Resources Code section 21000 *et seq.*¹

10 The Project at issue—a massive expansion of one of the region’s busiest freeways—will transform
11 the northern coastal area of San Diego County and beyond. By adding four new “managed” lanes plus
12 “auxiliary” lanes, Caltrans anticipates that, by 2030, the number of vehicles on the I-5 will rise by
13 approximately 50 percent; each day an additional 140,000 vehicles will travel some sections of the freeway.
14 This enormous increase in traffic will result in corresponding increases in air pollution and greenhouse gas
15 (“GHG”) emissions in the County, a region already burdened with some of the nation’s worst air pollution.
16 It will also increase noise impacts on communities along the freeway corridor. Moreover, by adding
17 freeway capacity, the Project will facilitate additional growth in the region, including sprawl development in
18 the County’s rural areas that in turn will cause further environmental impacts.

19 Petitioner and others repeatedly warned Caltrans that the Project would inflict significant and
20 irreversible harm on the environment and exacerbate already severe hazards to public health. Undeterred,
21 Caltrans approved an EIR for the Project that fails to meet the legal standards of adequacy established by
22 CEQA. The EIR’s flaws include fundamental omissions and analytic distortions that subvert CEQA’s core
23 policies of public participation and agency accountability. *See Laurel Heights Improvement Assn. v. Regents*
24 *of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights I*”) (An EIR is intended “to demonstrate to an
25 apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its
26 action.”) (citations omitted).

27 _____
28 ¹ Except as otherwise noted, all further statutory references are to the Public Resources Code.

1 The EIR’s most fundamental deficiency is that it systematically underestimates the Project’s
2 environmental effects. For example, even though the Project allows GHG emissions to rise by more than 42
3 percent, the EIR claims that the Project will not contribute to climate change. Neither the record nor the law
4 supports this conclusion. Caltrans asserts that only population growth—not the Project—will cause the
5 increase in vehicle trips (and GHGs), but it provides no support for this claim. Instead, authoritative studies
6 have found that highway expansion projects inevitably induce people to drive more, and the U.S.
7 Environmental Protection Agency rejected Caltrans’ assertion that its Project would facilitate no additional
8 auto travel.

9 The EIR’s analysis of climate impacts also ignores CEQA’s requirement to analyze the Project’s
10 consistency with state climate plans and policies. *See* CEQA Guidelines § 15125(d)² (EIR must “discuss
11 any inconsistencies between the proposed project and applicable . . . plans for the reduction of greenhouse
12 gas emissions”). These policies—embodied in the Scoping Plan required by Assembly Bill (“AB”) 32 and
13 in Executive Order (“EO”) S-3-05—call for dramatic reductions in GHG emissions over the next four
14 decades.³ While the EIR describes certain actions that Caltrans is taking to generally address climate
15 change, it never analyzes the extent to which these measures will actually help achieve the state’s climate
16 goals. Given that Caltrans is a member of the Governor’s Climate Action Team to implement the Executive
17 Order, the agency’s failure to perform this basic analysis is particularly egregious.

18 The EIR further masks the Project’s climate impacts by using an improper baseline to analyze its
19 GHG emissions. Instead of comparing the Project’s emissions to existing environmental conditions, the EIR
20 compares them to hypothetical future conditions in 2030. The California Supreme Court recently rejected
21 this approach, holding that agencies must measure the significance of a project’s impacts against existing
22 conditions unless the agency provides substantial evidence demonstrating that doing so would be misleading
23 or without informational value. *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013)
24 57 Cal.4th 439, 445 (“*Smart Rail*”). Caltrans provided no such evidence here. And, because the EIR failed

25 ² The CEQA Guidelines, Cal. Code Regs., tit. 14 § 15000 *et seq.*, are referred to herein as “Guidelines.” The
26 courts generally accord the Guidelines “great weight.” *Laurel Heights I*, 47 Cal.3d at 391, fn. 2.

27 ³ AB 32 requires the state to reduce GHG emissions to 1990 levels by 2020. Administrative Record (“AR”) 49521.
28 EO S-3-05 contains the same goal and also requires reductions of 80 percent below 1990 levels by 2050. AR 2060.

1 to acknowledge the Project’s contribution to climate change, Caltrans never fulfilled its obligation under
2 CEQA to identify feasible measures to mitigate those impacts. *See* § 21081(a) (agencies required to mitigate
3 projects’ significant effects to the extent feasible).

4 This pattern of overlooking the Project’s effects persists in other key sections of the EIR. For
5 example, when the EIR calculates the Project’s air quality impacts, it never analyzes how this pollution—
6 including toxic air contaminants—will affect the health of nearby residents, schoolchildren and employees.
7 Instead, the document simply states that there are no valid methods for analyzing such health risks. But this
8 excuse directly contravenes case precedent. *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.*
9 (2001) 91 Cal.App.4th 1344, 1368-70 (“*Berkeley Keep Jets*”) (lack of universally accepted method for
10 correlating health impacts to pollution levels does not excuse agency’s failure to “find out and disclose all
11 that it reasonably can”). In fact, as the record shows, other transportation agencies routinely conduct health
12 risk assessments for roadway projects. Notably, when the San Diego Association of Governments
13 (“SANDAG”) recently prepared its environmental impact report for the 2050 Regional Transportation
14 Plan/Sustainable Communities Strategy (“RTP/SCS”), it represented that health risk assessments would be
15 performed during “project-level” environmental review for implementing transportation projects listed in the
16 RTP. The I-5 widening is such an implementing project, but Caltrans refused to conduct the promised
17 health risk assessment.

18 Caltrans also declined to properly assess the Project’s impact on growth in the region, as CEQA
19 requires. *See* Guidelines § 15126.2(d) (requiring analysis of projects’ growth-inducing impacts). Here, the
20 EIR uses an artificially constrained study area to conduct its “growth-inducement” analysis, focusing on a
21 small, urbanized area next to the I-5 corridor. Using this device, the document completely overlooks the
22 Project’s effect on sprawl development in the County’s more rural areas, some of which are located only a
23 few miles from the freeway. CEQA forbids this practice. *Kings County Farm Bureau v. City of Hanford*
24 (1990) 221 Cal.App.3d 692, 721-24 (“*Kings County*”) (agencies must analyze entire area where project’s
25 impacts are reasonably expected).

26 Finally, the EIR’s analysis of noise impacts—a crucial subject for a freeway project—falls far short
27 of CEQA’s requirements. The EIR claims that readily perceptible noise increases due to the Project will not
28 cause significant impacts, but it neglects to consider the particular environmental circumstances here: that

1 noise levels on the I-5 corridor are already excessive. Case law flatly forbids this blinkered approach. *Gray*
2 *v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122-23 (even small noise increases may be significant
3 if conditions are already loud). Additionally, for larger noise impacts that Caltrans acknowledges may be
4 significant, it fails to identify all feasible mitigation, as CEQA requires. The agency claims that it is
5 infeasible to construct sound walls in some locations, but it never considers whether other types of
6 mitigation—such as insulating affected buildings or using quieter pavement surfaces—could reduce these
7 impacts.

8 In sum, Caltrans abused its discretion in certifying the EIR and approving the Project. As a result, a
9 writ of mandate must issue directing the agency to vacate its decision.

10 STATEMENT OF FACTS

11 I. The Proposed Expansion of the I-5 Freeway.

12 The Project involves widening a 27-mile stretch of the I-5 Freeway beginning at La Jolla Village
13 Drive in San Diego and extending to Harbor Drive in Oceanside. AR 1074-75. This section of freeway
14 currently consists of eight general purpose lanes. AR 1, 1118. While Caltrans initially considered widening
15 the freeway by either four or six lanes, it ultimately approved a widening by four lanes. AR 1, 989, 991.
16 The new lanes will consist of two high-occupancy vehicle/managed lanes in each direction, separated from
17 the existing, general purpose lanes by striped buffers. AR 989. The managed lanes will be available for
18 carpools, vanpools, and buses at no cost, and to single occupancy vehicles for a fee when there is adequate
19 capacity. AR 1074.

20 The Project also includes direct access ramps that allow buses and paying single occupancy vehicles
21 to access the managed lanes without weaving through general purpose lanes. AR 1076, 1121. Additionally,
22 the Project will add auxiliary lanes in 19 locations. AR 1121, 1130-31. These lanes will generally be
23 located before exit ramps, after entrance ramps, or on hills to provide an extra lane for truck climbing. AR
24 1128. Caltrans expects the Project to cost \$3.06 billion (AR 990) and take 20 years to construct (AR 994).

25 The Project's primary stated purpose is expanding freeway capacity to address traffic congestion.
26 AR 1074, 3705. However, although widening the I-5 may temporarily reduce congestion, it will also induce
27 more people to use the freeway. An economic study commissioned by Caltrans and SANDAG describes
28 how people take fewer trips when roadways are congested, and more trips when traffic conditions improve.

1 AR 11593-647. If a freeway-widening project relieves congestion and reduces travel times by ten percent,
2 the project also generally causes a ten percent increase in traffic volumes. AR 11621, 11623. This
3 transportation phenomenon, called “induced demand,” has been widely studied. AR 48278-79, 48473,
4 48480, 48726. Experts agree that an agency cannot build its way out of congestion – freeway expansions
5 induce more travel, which then clogs up the road again. AR 48726 (“roughly 90 percent of new lane
6 capacity in congested urban areas is filled within five years after a project is completed”), 48479.

7 The additional vehicle trips on the widened I-5 will not only cause congestion but also emit
8 unhealthy air pollutants. Vehicle emissions constitute the largest source of air pollution in the San Diego
9 area. AR 2463. The region currently violates federal and state air quality standards for ozone, and state
10 standards for particulate matter (PM₁₀ and PM_{2.5}). AR 1677, 1679. In addition to their regional effects,
11 vehicle emissions cause localized health impacts. Numerous studies have demonstrated that people—and
12 especially children—who live, attend school, and recreate within 300 to 1000 feet of freeways are at risk of
13 increased health problems. AR 48574-576. Traffic emissions are associated with reduced lung function in
14 children, increased asthma hospitalizations, and premature death in elderly individuals with heart disease.
15 AR 48574.

16 Here, thousands of homes, hospitals, schools and commercial uses are located on the land
17 immediately adjacent to the I-5 in this corridor. AR 1681-85. Eight schools, 13 preschools, 2 universities,
18 30 parks and 2 nursing homes are located less than 1000 feet from the I-5, and many of these are situated
19 within 500 feet of the freeway. *Id.*

20 People living and working near the I-5 are exposed not only to heightened air pollution, but also to
21 excessive noise. Noise levels in most locations along the I-5 already exceed relevant federal criteria (AR
22 27516), and as traffic volumes increase due to induced demand and population growth, noise levels will
23 continue to rise (AR 2018).

24 **II. Environmental Review and Project Approval.**

25 Because the Project involves federal funding, Caltrans and the Federal Highway Administration
26 prepared a joint EIR/EIS (environmental impact statement) to comply with both CEQA and its federal
27 counterpart, the National Environmental Policy Act (“NEPA”). AR 956, 996. Pursuant to CEQA, Caltrans
28 issued its notice of preparation of the Draft EIR (“DEIR”) on October 20, 2004. AR 9012. From the

1 issuance of that notice until final Project approval, CNFF and other members of the public submitted
2 extensive comments critiquing the Project and its compliance with CEQA.

3 Caltrans issued the DEIR for public review on July 8, 2010. AR 9005-06. Surprisingly, the
4 document claimed that this massive freeway-widening project would have no significant impacts on air
5 quality, growth, noise, energy, traffic, and many other impact areas. AR 821. It asserted that the Project
6 would not cause any new vehicle trips, but would simply reduce traffic congestion. AR 2065, 3725, 4617.
7 Because vehicles traveling at moderate speeds emit fewer air pollutants than vehicles in stop-and-go traffic,
8 the DEIR also asserted that the Project's congestion relief would reduce emissions of toxic air pollutants and
9 GHGs compared with the situation if the Project was not approved. AR 825, 2462-63.

10 Numerous government agencies, community and environmental organizations, and members of the
11 public submitted comments criticizing the DEIR and the Project. For example, the California Coastal
12 Commission commented that the DEIR failed to analyze the "potential effects of induced demand (i.e.
13 additional trips, or the diversion of trips from high-occupancy or non-vehicular modes to single-occupancy
14 trips that otherwise would not occur without the additional highway capacity provided by the project)." AR
15 2645. As a result of this oversight, the DEIR greatly underestimated the Project's emission of GHGs. *Id.*
16 The City of Solana Beach also commented that the DEIR ignored induced demand and disagreed that
17 widening the freeway would reduce GHG emissions. AR 3384, 3392. Another community group described
18 how the Project offers "very expensive facilities that provide congestion relief for a limited number of years,
19 only to clog up again. Worse yet, these facilities then encourage the continued development of dispersed
20 suburban land uses, whose residents then become locked in, forever dependent on the personal auto for
21 mobility." AR 4082. For its part, CNFF commented that the Project would encourage sprawl, thereby
22 thwarting regional efforts to promote more compact, urban-centered development. AR 3700.

23 Other commenters criticized the DEIR's failure to analyze the extent to which the Project's emission
24 of air pollutants would cause serious health effects. AR 2815-16 (Torrey Pines Community Planning
25 Board), 2744 (City of Oceanside), 2747 (Solana Beach School District), 4075 (TRANSDEF). Many
26 agencies and residents were also concerned about the Project's noise impacts. The City of Oceanside
27 commented that Oceanside High School lies adjacent to the I-5 and would be significantly affected by
28 construction and operational noise levels. AR 2739. It pointed out inconsistencies in the DEIR's

1 description of noise impacts and mitigation (AR 2741), and requested that Caltrans fully mitigate all noise
2 impacts to less than significant levels (AR 2741-42). Given these and other deficiencies contained in the
3 DEIR, many commenters informed Caltrans that the necessary changes to it would require that it recirculate
4 the DEIR. *See, e.g.*, AR 2505, 2688, 3189.

5 In response to this outpouring of criticism, Caltrans revised portions of its DEIR and issued a
6 Supplemental DEIR (“SDEIR”) in August, 2012. AR 9000-01. The SDEIR, however, focused mainly on
7 design modifications for bridges (AR 100-01) and did not correct the many deficiencies identified by
8 agencies and the public. Agencies and members of the public again sent letters criticizing the EIR’s
9 approach. The U.S. Environmental Protection Agency (“EPA”) commented that the SDEIR’s air quality
10 analysis was incomplete and requested that Caltrans discuss how the Project’s emission of toxic air
11 pollutants will affect residential areas near I-5. AR 6364-65. EPA also strongly disagreed with the SDEIR’s
12 conclusion that it could not feasibly analyze health risks caused by the Project’s emissions; as EPA
13 explained, it and other agencies routinely conduct this type of analysis. *Id.* Additionally, EPA roundly
14 criticized the SDEIR’s GHG analysis; it asked Caltrans to analyze the Project’s consistency with state GHG-
15 reduction policies, to describe GHG emissions caused by induced demand, and to include additional GHG
16 mitigation. AR 6367.

17 The City of Del Mar explained how the SDEIR failed to adequately analyze noise impacts or
18 consider mitigation measures other than sound walls. AR 6451. The Torrey Pines Community Planning
19 Board submitted another letter describing Caltrans’ “[f]ailure to protect the public health related to Noise
20 and Air Pollution.” AR 6485. Counsel for CNFF, acting on behalf of Paul Henkart, also submitted detailed
21 comments describing the many deficiencies in the SDEIR’s noise analysis. AR 6530-39.

22 Despite these and many other critical comments, Caltrans released a Final EIR (“FEIR”) around
23 November 1, 2013 that only modestly revised the SDEIR. AR 956-2221. Although Caltrans did not provide
24 a public comment period for the FEIR (AR 38915), agencies and organizations nevertheless submitted
25 comments in which they reiterated their concerns. For example, CNFF pointed out that the FEIR failed to
26 correct the numerous deficiencies regarding analysis and mitigation of air quality, noise, and climate
27 impacts, and also failed to adequately address the Project’s potential to induce vehicle trips and affect
28 regional development patterns. AR 49214-23. The EPA also commented again, once more reiterating the

1 need for Caltrans to conduct a health risk assessment of the Project's toxic air emissions. AR 38907-08. An
2 open space agency asked Caltrans to require alternative surface materials on the freeway that would reduce
3 tire noise at adjacent open space areas. AR 38904-05.

4 Caltrans did not publicly respond to these comments before approving the Project on October 31,
5 2013. It filed its Notice of Determination on November 5, 2013. AR 1.

6 **III. The Project's Relationship to SANDAG's Regional Transportation Plan/Sustainable**
7 **Communities Strategy.**

8 In October 2011, SANDAG adopted its RTP/SCS and certified an EIR for that plan. AR 1076,
9 49486. The RTP/SCS identifies specific transportation needs and projects for the region (AR 1289-90),
10 including this Project (AR 1074). CNFF, the California Attorney General, and others filed suit against
11 SANDAG challenging the RTP/SCS and asserting that the agency failed to adequately analyze or mitigate
12 the Plan's significant climate, air quality and other impacts. AR 49486, 49493.

13 The superior court held that SANDAG's EIR violated CEQA because it failed to analyze the plan's
14 consistency with the state's long-term climate goals, as embodied in Executive Order S-3-05, and failed to
15 adequately mitigate the plan's GHG impacts. AR 1675, 49493-498. The Court of Appeal agreed, and it also
16 held, *inter alia*, that the EIR unlawfully failed to correlate the RTP/SCS's emission of dangerous air
17 pollutants with resulting health impacts. *Cleveland Nat. Forest Found. v. San Diego Assn. of Governments*
18 (2014) 180 Cal.Rptr. 3d 548, 556, review granted and opinion superseded *Cleveland Nat. Forest Found. v.*
19 *San Diego Assn. of Governments* (2015) 343 P.3d 903; *see also* Request for Judicial Notice, filed
20 concurrently with this brief. The Supreme Court has granted review of the following limited issue in the
21 case: whether CEQA required the EIR to analyze consistency with the state's long-term climate goals.
22 *Cleveland Nat. Forest Found.*, 343 P.3d 903.⁴ It did not accept review of the air quality/public health or any
23 other issue. *Id.*

24 _____
25 ⁴ Because the Supreme Court granted review of this case, the Court of Appeal's decision is no longer
26 published and may not generally be cited. California Rule of Court 8.1115(a). However, this Court may
27 take judicial notice of it pursuant to Evidence Code section 452(d)(1). *Gilbert v. Master Washer & Stamping*
28 *Co.* (2001) 87 Cal.App.4th 212, 217, fn. 14 (taking judicial notice of unpublished appellate opinion to aid in
analysis of a subsequent appeal therefrom). As described in CNFF's Request for Judicial Notice, filed with
this brief, judicial notice is appropriate because the I-5 EIR discusses the SANDAG litigation, and the
(footnote continued on next page)

1 Caltrans recognized that, to support its Project EIR here, it should not rely on analysis in the EIR
2 prepared for the RTP/SCS. The Project EIR expressly acknowledges the superior court’s ruling and the fact
3 that—when Caltrans released the FEIR—this ruling had been appealed but not decided. AR 1076, fn. 1,
4 1143, fn. 2. It then describes how the Project EIR “has been drafted to avoid the narrow alleged deficiencies
5 found by the Court. Where this Final EIR[] relies upon 2050 RTP information, that information has not been
6 challenged and is not part of the current lawsuit.” AR 1076, fn. 1. *See also* AR 1143, fn. 2 (“Caltrans’
7 environmental analysis . . . does not tier from the 2050 RTP EIR, or rely on the EIR’s certification.”). As
8 discussed below, Petitioner here disagrees that the Project EIR avoids the deficiencies found in SANDAG’s
9 climate analysis. To the contrary, Caltrans’ analysis suffers from omissions and analytic errors that exceed
10 those of SANDAG.

11 ARGUMENT

12 I. Standard of Review.

13 The EIR is “the heart of CEQA,” serving as an “environmental ‘alarm bell’ whose purpose it is to
14 alert the public and its responsible officials to environmental changes before they have reached ecological
15 points of no return.” *Laurel Heights I*, 47 Cal.3d at 392 (citations omitted). An EIR must reflect a good
16 faith effort at full disclosure, including “detail sufficient to enable those who did not participate in its
17 preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Id.* at
18 405; Guidelines § 15151. In addition to its role in promoting “informed self-government” (*Laurel Heights I*,
19 47 Cal.3d at 392), CEQA incorporates substantive requirements. A lead agency must adopt feasible
20 mitigation measures or alternatives to substantially lessen the project’s significant environmental impacts. §
21 21002; Guidelines § 15002(a)(3).

22 In reviewing the adequacy of an EIR, courts must determine whether the agency prejudicially abused
23 its discretion by either: (1) failing to proceed in the manner required by law, or (2) reaching a decision that is
24 not supported by substantial evidence. *Laurel Heights I*, 47 Cal.3d at 392. As the Supreme Court has
25 explained, “a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on
26

27 (footnote continued from previous page)

28 court’s decision contains facts relevant to the Project EIR’s flaws. Accordingly, CNFF cites this case to
provide historical context and support factual propositions, but does not cite it as legal precedent.

1 whether the claim is predominantly one of improper procedure or a dispute over the facts.” *Vineyard Area*
2 *Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 (“*Vineyard*”).

3 Accordingly, where an EIR fails to address an issue or omits relevant information, courts consider de
4 novo, as a matter of law, whether the agency violated CEQA’s disclosure requirements. *Citizens to Preserve*
5 *the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 428 (“*Ojai*”) (“[c]ertification of an EIR which is
6 legally deficient because it fails to adequately address an issue constitutes a prejudicial abuse of discretion”).
7 By contrast, courts use the more deferential “substantial evidence” test to review an agency’s “substantive
8 factual conclusions.” *Vineyard*, 40 Cal.4th at 435.

9 Here, this Court must determine *as a legal matter* whether the I-5 EIR is “sufficient as an
10 informational document.” *See Kings County*, 221 Cal.App.3d at 711. As CNFF explains, the EIR omits
11 fundamental information about the Project’s climate and air quality impacts, uses a legally improper baseline
12 for analyzing climate impacts, and fails to identify mitigation for the Project’s significant impacts.
13 Additionally, the EIR utilizes a legally improper study area in which to analyze the Project’s growth-
14 inducing impacts and neglects to respond to numerous, substantive comments as CEQA requires. Because
15 Caltrans thus failed to proceed in the manner required by law, the Court must overturn its approval of the
16 Project. *See Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 (a decision
17 approving a project “is a nullity if based upon an EIR that does not provide the decision-makers, and the
18 public, with the information about the project” required by CEQA).

19 While inapplicable to most of CNFF’s claims, the “substantial evidence” test does apply to its
20 challenge to Caltrans’ factual determination that some mitigation is infeasible. *See, e.g., Uphold Our*
21 *Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 598-99. It also applies to claims that the EIR
22 uses incorrect assumptions when measuring the Project’s GHG and air quality impacts, and improper
23 methods to analyze noise impacts. “Substantial evidence” is “evidence of ponderable legal significance,
24 reasonable in nature, credible, and of solid value.” *American Canyon Community United for Responsible*
25 *Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070. Here, no credible evidence, let
26 alone substantial evidence, supported Caltrans’ decision to utilize erroneous assumptions to measure GHG,
27 air quality, and noise impacts, or to dismiss certain mitigation as infeasible.

1 **II. The EIR’s Analysis of and Mitigation for Climate Impacts Violate CEQA.**

2 **A. The State Has Committed to Dramatically Reducing Greenhouse Gas Emissions by**
3 **2050.**

4 The science is conclusive: to avert the worst effects of climate change, we must quickly stabilize
5 atmospheric concentrations of GHGs. AR 49844-45. To do so, sources cannot continue emitting climate
6 pollutants at current levels. Rather, if current emissions levels remain constant, atmospheric concentrations
7 of GHGs will still rise because many climate pollutants, including carbon dioxide (“CO₂”), accumulate in
8 the atmosphere and exert their warming influence for decades or even centuries. AR 49845-48. Thus, the
9 cumulative nature of GHG emissions requires dramatic *reductions* in these emissions to preserve the climate
10 as we know it. AR 49845.

11 Specifically, scientists have concluded that by 2050, at least an 80 percent reduction of GHGs from
12 1990 levels is necessary to stabilize the climate and avoid the most catastrophic impacts of climate change.
13 AR 49511. In 2005, Governor Schwarzenegger signed Executive Order S-3-05, which adopted this long-
14 term downward trajectory as the foundation of state climate policy. *Id.* The following year, the Legislature
15 enacted AB 32. Health & Saf. Code § 38500 *et seq.* AR 49510. As the EIR describes, AB 32 “sets the
16 same overall GHG emissions reduction goals as outlined in Executive Order S-3-05, while further
17 mandating that CARB [California Air Resources Board] create a scoping plan” that functions as a roadmap
18 for achieving AB 32’s reduction goals. AR 2060. *See also* AR 49510, 49521-22 (AB 32 Scoping Plan).

19 CEQA also plays an important role in the state’s efforts to address climate change. EIRs must
20 analyze a proposed project’s GHG emissions, discuss whether the project conflicts with applicable GHG
21 reduction plans, and identify mitigation for any of the project’s significant climate impacts. Guidelines
22 §§ 15064.4, 15125(d), 15092(b)(2)(A). The EIR here failed to perform these critical functions.

23 **B. The EIR’s Flawed Analysis Greatly Understates the Project’s Climate Impacts.**

24 Although the state has committed to dramatically reducing its GHG emissions below existing levels,
25 the Project nonetheless allows transportation-related emissions on the I-5 to rise significantly over the
26 coming decades. Currently, vehicles using this section of the I-5 burn more than 4.1 million gallons of fuel
27 and emit 44,940 tons of CO₂ per day. AR 2067. The EIR discloses that if the Project is built, vehicles will
28

1 burn more than 5.8 million gallons of fuel and emit 63,920 tons of CO₂ per day in 2030. *Id.* Accordingly,
2 the Project allows GHG emissions to *rise more than 42 percent* over existing conditions.

3 Even though the Project facilitates this alarming increase in GHG emissions, the EIR claims that it
4 will actually *reduce* GHG emissions, and thereby help the state achieve its climate goals. AR 2067, 2069.
5 Then, based on its conclusion that the Project will not have significant climate-related impacts, the EIR
6 asserts that “mitigation is not required under CEQA.” AR 3839. The EIR reaches these surprising
7 conclusions by employing faulty assumptions and improper analysis. By mischaracterizing the Project’s
8 climate-related effects and failing to adopt all feasible mitigation, the EIR violates CEQA.

9 **1. The EIR Bases Its Analysis on an Unsupported Assumption that Adding**
10 **Freeway Capacity Will Not Cause Any New Vehicle Trips.**

11 The EIR derives its conclusion that the Project will reduce GHG emissions from a fundamental but
12 erroneous assumption: that “[t]he proposed project is not intended or expected to increase the amount of
13 driving.” AR 4617. *See also* AR 3836 (“the project would not generate traffic.”), 3725 (same), 3839.
14 Rather than cause additional vehicle trips, the EIR reasons, the Project will simply reduce traffic congestion
15 for vehicles already on the road. AR 2065, 3836, 4617. Then, because these vehicles now will allegedly
16 emit fewer GHG emissions at moderate speeds than they would in stop-and-go conditions, the EIR
17 concludes that this congestion relief will lower GHG emissions from what they would be without the
18 Project. AR 2063, 2067.

19 Other agencies and members of the public strongly criticized the EIR’s approach, citing abundant
20 evidence demonstrating that expanding highways causes people to drive more, and therefore emit additional
21 GHGs. For example, EPA commented that the EIR “did not appear to address [] emissions from demand
22 induced by increased [] highway capacity.” AR 39087. Likewise, the California Coastal Commission
23 warned that the EIR failed to analyze the GHG emissions caused by “additional trips, or the diversion of
24 trips from high-occupancy or non-vehicular modes to single-occupancy trips that otherwise would not occur
25 without the additional highway capacity provided by the project.” AR 2645. One commenter described
26 how “[n]umerous studies document the concept of induced travel.” (AR 3816-17). Furthermore, CNFF and
27 other commenters informed Caltrans of case law holding that highway projects such as this one induce
28 demand. AR 4073 (citing *Sierra Club v. U.S. Dept. of Transportation* (N.D. Ill., 1997) 962 F.Supp. 1037,

1 1043 [“Highways create demand for travel and expansion by their very existence.”]), 3893 (citing *Swain v.*
2 *Brinegar* (7th Cir. 1975) 517 F.2d 766, 777 [“‘need’ is often a self-fulfilling prophesy in the area of major
3 highway construction”]).

4 For its part, CNFF commissioned an expert study by Smart Mobility that demonstrates how widening
5 highways induces people to take more and longer trips, to shift from other travel modes to auto, and to take
6 auto trips with lower occupancies. AR 3702, 3715. In the long-term, highway widening can also cause
7 more or longer trips due to land development brought on by increased road capacity. AR 3715. As the
8 report explains, the EIR fails to fully account for this induced demand. For example, the EIR acknowledges
9 that the Project may redistribute some existing trips, because “reduced congestion on I-5 would encourage
10 more trips to use the freeway rather than surface streets.” AR 4649. *See also* AR 3725. It predicts that this
11 effect will cause a four percent increase in traffic on this section of I-5 compared to if the Project is not built.
12 AR 2454-55, 3725. However, this type of induced demand—shifting travel routes—accounts for only 20 to
13 30 percent of all induced demand, and the EIR ignores the other ways in which widened highways cause
14 increased driving. AR 3716-17. Another study describes how highway widening projects may reduce
15 congestion, and thus GHG emissions, for the first 5-10 years after new lanes are opened. AR 48724.
16 However, emissions caused by induced demand quickly erase any efficiency gains, ultimately leading to an
17 overall, significant increase in GHG emissions. *Id.*

18 The EIR does not attempt to rebut the studies cited in the comments or to explain why their findings
19 are inapplicable. Instead, it responds only that “[t]echnical experts may disagree and still produce defensible
20 technical analyses and conclusions.” AR 3715.⁵ But this response is legally inadequate and does not
21 provide substantial evidence supporting the EIR’s conclusion that the Project will not induce new vehicle
22 trips. When a commenter—especially an agency with highly relevant expertise, such as the EPA—
23 substantively criticizes an EIR’s analysis, the lead agency cannot just dismiss that criticism as a “technical
24 disagreement.” Instead, “the lead agency must address the comment in detail giving reasons why the
25 comment was not accepted.” *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603,

26 _____
27 ⁵ In an argument inconsistent with its “technical dispute” theory, the EIR also claims that it adequately
28 addresses induced demand. *See, e.g.,* AR 3818, 3939. But that claim is plainly wrong. The EIR accounts
for only one type of induced demand (route shifting) and ignores many others.

1 615-617 (internal citations and quotations omitted) (invalidating EIR that failed to respond to comment).
2 *See also Berkeley Keep Jets*, 91 Cal.App.4th at 1365-67 (invalidating EIR that failed to accurately and fully
3 respond to technical comments questioning the EIR’s assumptions).

4 Here, the EIR did not fulfill CEQA’s mandate to provide a “good faith, reasoned analysis” that
5 “g[ave] reasons why specific comments and suggestions were not accepted.” Guidelines § 15088(c). *See*
6 *e.g.*, AR 6367 (cursory response to EPA), 2645 (response to Coastal Commission), 3715 (response to
7 CNFF’s Smart Mobility Report). Instead, it just declared a “technical disagreement” and quickly dropped
8 the subject.

9 Caltrans’ own economic study also flatly contradicts the EIR’s assumption that the Project will not
10 affect the number of vehicle trips taken on the I-5. *See* AR 11593-11647. This study describes how, “[a]s
11 travel conditions improve in the [I-5 corridor], there would be an associated increase in visitation to the
12 entire San Diego region due to improved pass-through travel times.” AR 11628. *See also* AR 11597
13 (“Improved accessibility and reduced travel times . . . will have a direct positive impact on the tourism
14 economy . . . [including] an increase in daytrip visitation.”). Overall, the study concludes that the Project
15 would cause a 9 to 22 percent increase in visitation to regional tourist destinations compared to the situation
16 if the Project was not built. AR 11624. This results in an increase of 2.9 million extra visitors per year. *Id.*

17 The study also predicts that the Project will cause an increase in regional employment, creating 8,000
18 to 16,000 new jobs. AR 11597-98. In particular, it describes how decreased congestion will improve the
19 economics for freight businesses, and that some of this new profit will “be reinvested or spent to expand
20 output/production.” AR 11610. In other words, increased accessibility will induce more freight companies
21 to use the I-5 corridor, thereby creating more truck traffic. The new jobs, in turn, will cause new vehicle
22 trips from new employees, deliveries and other business needs.

23 Caltrans never attempts to explain the EIR’s and economic study’s fundamentally divergent
24 conclusions. Instead, the EIR completely ignores the economic study and its assertion that the Project will
25 significantly affect traffic volumes on the I-5. Moreover, Caltrans’ approach appears to be opportunistic.
26 When analyzing the Project’s air quality and GHG impacts, the EIR assures readers that that “the project
27 would not generate traffic” (AR 3836) and therefore will improve environmental conditions (AR 2063,
28 2462-63). However, when touting the Project’s alleged benefits outside the EIR, Caltrans boasts that the

1 Project’s congestion relief will cause millions more people to use the I-5 Freeway. This strategic approach
2 violates CEQA, which requires agencies to provide a consistent description of a project and its impacts. *See*
3 *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-56 (inconsistent
4 statements about a proposed mine’s production capacity rendered the EIR “fundamentally inadequate and
5 misleading”).

6 **2. The EIR Fails to Analyze the Project’s Consistency with the State’s Greenhouse**
7 **Gas Reduction Plans and Policies.**

8 CEQA requires EIRs to “discuss any inconsistencies between the proposed project and applicable . . .
9 plans for the reduction of greenhouse gas emissions.” Guidelines § 15125(d); *see also id.*, § 15064.4(b)(3).
10 The EIR acknowledges that the state has adopted various plans and policies to reduce GHG emissions,
11 including EO S-3-05, AB 32, and the Scoping Plan. AR 2059-61. It also proclaims that Caltrans
12 “recognizes . . . the importance of achieving the goals of EO S-3-05.” AR 4614. Despite the EIR’s
13 emphasis on the need to meet the state’s climate policies, however, that document provides virtually no
14 analysis of the Project’s consistency with AB 32 and the Scoping Plan, and completely ignores its
15 consistency with the 2050 GHG reduction goal in the Executive Order.

16 The EIR’s section on compliance with state GHG reduction goals is perfunctory. Under the heading
17 “AB 32 Compliance,” the EIR describes a few measures that Caltrans is taking to reduce GHG emissions in
18 the state. AR 2069-71. For example, Caltrans is assisting with “Smart Land Use” strategies that will
19 allegedly reduce GHG emissions by 7.8 million tons by 2020, and the agency is planning operational
20 improvements such as congestion relief that will supposedly reduce emissions by 2.17 million tons by the
21 same year. AR 2017. Likewise, the agency is implementing portions of the state’s Strategic Growth Plan by
22 reducing traffic congestion and employing demand management systems. AR 2069; *see also* AR 2464-65.
23 However, the EIR’s description of these general *statewide* measures does not inform the public whether the
24 *Project* is consistent with AB 32 or EO S-3-05. To analyze the Project’s consistency with state climate
25 policy and laws, Caltrans must provide much more information.

26 The decision in *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 841, 844 is on
27 point. There, the city determined that approval of a new Wal-Mart store would have no significant climate
28 impacts. The city purported to analyze consistency with AB 32 to determine the project’s impacts, and the

1 court agreed that consistency with AB 32 was a proper threshold for determining the significance of climate
2 impacts. *Id.* at 841. However, the court held that the EIR failed to properly analyze such consistency
3 because it neglected to compare the project’s emissions trajectory with the emissions reduction trajectory
4 required by AB 32. *Id.* at 841-43. It also held that the EIR failed to sufficiently analyze whether the project
5 was consistent with GHG reduction measures outlined in the AB 32 Scoping Plan. *Id.* at 843. Because of
6 these omissions, the court held that insufficient evidence supported the EIR’s finding that the project would
7 have no significant GHG impacts. *Id.* at 844.

8 In the present case, the EIR’s analysis of consistency with AB 32 is similarly flawed. For example,
9 the EIR never compares the Project’s GHG emissions trajectory with the emissions reduction trajectory
10 required by AB 32. AR 2069-71. Nor does the EIR analyze whether the Project is consistent with the
11 Scoping Plan’s measures for GHG reductions from the transportation sector. *Id.*; *see also* AR 49887-88
12 (updated Scoping Plan describing measures Caltrans should take). Given that the Project allows GHG
13 emissions to *increase* 42 percent above existing conditions, the Project almost certainly conflicts with AB
14 32’s mandate to *reduce* statewide GHG emissions to 1990 levels by 2020. The EIR provides no substantial
15 evidence to the contrary; instead, the document merely assumes that, because Caltrans is doing *something*,
16 this effort is sufficient. AR 2069-71.⁶ Such an approach violates CEQA. *Friends of Oroville*, 219
17 Cal.App.4th at 844.

18 The EIR is also deficient because it fails to analyze the Project’s consistency with the Executive
19 Order’s goal to reduce GHG emissions to 80 percent below 1990 levels by 2050. This long-term reduction
20 goal forms the core of California’s climate policy because it is the reduction level needed to stabilize our
21 climate. AR 49511, 49867; *Assn. of Irrigated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487,
22 1496 (describing Scoping Plan’s 2020 target as “a step toward the ultimate objective by 2050”).
23 Commenters criticized the EIR’s failure to address the Project’s consistency with the 2050 target, asking
24

25 ⁶ The EIR concludes that the Project will reduce GHG emissions by 0.5 percent compared to conditions if
26 the Project was not constructed, but will allow emissions to rise 42 percent over existing conditions. AR
27 2067. In other words, Caltrans claims that the EIR will *slow the growth* of GHG emissions, not that it will
28 *reduce* emissions. Accordingly, even using the EIR’s flawed analysis, the Project is inconsistent with the
state’s long-term climate policies, which require dramatic *reductions in existing* GHG emissions, and not
simply less *growth* in emissions. The EIR’s failure to analyze this inconsistency is prejudicial error.

1 “whether or not Caltrans is doing anything meaningful to meet the S-3-05 targets?” AR 4608. *See also* AR
2 3844 (requesting that the EIR “evaluate the I-5 Project’s specific contribution toward the [state’s] 2020 *and*
3 2050 reduction goals”) (emphasis added).

4 The EIR does acknowledge the Executive Order and describes how Caltrans is “actively involved on
5 the Governor’s Climate Action Team as CARB [California Air Resources Board] works to implement the
6 Governor’s EO[] S-3-05” AR 2069. *See also* AR 2060 (describing Executive Order’s goals). Remarkably,
7 however, the EIR *contains no information about the Project’s compliance with the Order’s 2050 goal*. Nor
8 did Caltrans meaningfully respond to comments regarding this lack of analysis. Instead, Caltrans confuses
9 the Executive Order’s goals with AB 32’s goals, claiming that the EIR “provides the analysis regarding
10 conformance with [] AB 32 and meeting the goal of achieving 1990 GHG emissions levels by 2020,
11 consistent with Executive Order (EO) S-3-05.” AR 4610.

12 This response ignores the critical fact that the Executive Order sets a goal not just for 2020, but also
13 for 2050. Because of this error, the EIR’s conclusion that the “Project would make a meaningful
14 contribution to achieving the goals of EO S-3-05” is unsubstantiated. AR 4614. The EIR offers no excuse
15 for refusing to analyze the Project’s consistency with the state’s 2050 goal, and this failure means that no
16 substantial evidence shows the Project’s consistency with it.

17 The EIR further tries to justify its conclusion that the Project is consistent with state climate policy
18 by relying on the SANDAG’s climate analysis for its RTP/SCS. Caltrans claims that: (1) the Project is
19 included in the RTP/SCS adopted by SANDAG in 2011, and (2) the EIR for this plan found that it would
20 meet AB 32 and SB 375’s GHG reduction goals. AR 2465, 3843, 4610-11. Caltrans’ tack fails for two
21 reasons. First, the Caltrans EIR equivocates on whether it relies on the GHG analysis conducted for the
22 SANDAG plan. When responding to comments regarding the EIR’s insufficient GHG analysis, the
23 document relies on the prior analysis from the SANDAG EIR. AR 2465, 3843, 4610-11. Elsewhere,
24 however, the EIR acknowledges that the SANDAG EIR was successfully challenged in court and describes
25 how the Project EIR therefore “does not tier from the 2050 RTP EIR, or rely on the EIR’s certification.” AR
26 1143, fn. 2, 1675. *See also* AR 40765; Guidelines § 15152 (describing “tiering” under CEQA).

27 Second, the SANDAG EIR did *not* analyze consistency with the state’s 2050 GHG reduction goal.
28 AR 49496-497 (trial court describing how SANDAG’s EIR “simply ignore[d]” the Executive Order’s GHG-

1 reduction goal). Because the SANDAG EIR did not analyze the plan’s long-term climate impacts, Caltrans
2 cannot rely on that nonexistent analysis to cure the Project EIR’s deficiency in this respect.

3 Analyzing the Project’s long-term climate impacts is particularly important in the present case. The
4 EIR assumes that the Project will reduce GHG emissions by improving traffic conditions in 2030. However,
5 as population continues to grow, traffic conditions will once again deteriorate after 2030; by 2050,
6 congestion levels on the widened I-5 may well be as bad or worse than they are now. *See* AR 48474 (study
7 describing how “expanding roads may reduce symptoms in the short term but exacerbate problems over the
8 long term”). Accordingly, in the long-term, the Project allows *more* vehicles to be stuck in traffic, and
9 therefore allows *more* emissions of GHGs than exist now or than would exist without the Project. An EIR
10 cannot overlook these long-term impacts, as the EIR did here. Guidelines § 15126.2(a) (EIRs must “giv[e]
11 due consideration to both the short-term and long-term effects” of a project).

12 **3. The EIR Uses an Improper Baseline to Analyze the Project’s Climate Impacts.**

13 An EIR’s core goal “is to inform decision makers and the public of any significant adverse effects a
14 project is likely to have on the physical environment.” *Smart Rail*, 57 Cal.4th at 447. To determine whether
15 a project will have significant environmental effects, “an EIR must delineate environmental conditions
16 prevailing absent the project, defining a ‘baseline’ against which predicted effects can be described and
17 quantified.” *Id.* CEQA generally requires that EIRs compare a project’s impacts against a baseline of
18 “existing conditions”—i.e., the actual conditions that existed at the time the notice of preparation for the EIR
19 was issued. *Id.* at 448; Guidelines § 15125(a). Consistent with this rule, CEQA specifically requires that
20 “when assessing the significance of impacts from greenhouse gas emissions on the environment[, agencies
21 should consider t]he extent to which the project may increase or reduce greenhouse gas emissions *as*
22 *compared to the existing environmental setting.*” Guidelines § 15064.4(b)(1) (emphasis added).

23 Agencies may employ a baseline other than existing conditions, and omit the existing conditions
24 baseline, only if use of an existing conditions baseline “would be uninformative or . . . misleading to
25 decision makers and the public.” *Smart Rail*, 57 Cal.4th at 452. In choosing, agencies must select a
26 baseline that “will give the public and decision makers the most accurate picture practically possible of the
27 project’s likely impacts.” *Id.* at 449.

1 **a. The EIR Does Not Analyze the Significance of the Project’s Greenhouse**
2 **Gas Emissions by Comparing Them with Existing Conditions, and It**
3 **Fails to Justify This Omission.**

4 The EIR does not assess the significance of the Project’s climate impacts by comparing the Project’s
5 GHG emissions to existing conditions—i.e., to existing GHG emission levels on the I-5. Instead, it
6 compares the Project’s GHG emissions to a hypothetical, future “baseline” of conditions that Caltrans
7 predicts would exist in the year 2030 if the Project were not built—the “No Build” alternative in that year.
8 AR 2069. As the EIR describes, “because the proposed project would reduce GHG emissions *relative to the*
9 *No Build alternative*, impacts would be less than significant.” AR 3832-33 (emphasis added).

10 The EIR’s selected baseline masks the project’s significant impacts and thereby violates CEQA.
11 First, the EIR deviates from CEQA’s requirement to assess GHG impacts “compared to the existing
12 environmental setting.” Guidelines § 15064.4(b)(1). Second, it does not justify this deviation by
13 demonstrating that use of an existing conditions baseline would be misleading or without informational
14 value. Instead, Caltrans apparently misunderstands how to use an existing conditions baseline. The EIR
15 claims that its “analyses show that *when compared with existing conditions*, the [Project] is estimated to
16 reduce 2030 CO₂ emissions in the San Diego region by approximately 340 tons per day.” AR 4166; *see also*
17 AR 3839 (Caltrans claiming that “the net impacts of project construction and operation would be improved
18 [GHG emissions] *over existing conditions*”) (emphases added). But the EIR does not use “existing
19 conditions”; instead, it estimates that the Project will cause a “decrease in operational GHG emissions *when*
20 *comparing the future build to the future no-build conditions*.” AR 2069 (emphasis added); *see also* AR
21 2067 (EIR, Table 4.2, indicating that the Project will reduce GHG emissions by 340 tons/day compared to
22 “2030 No Build” conditions).

23 Here, using an existing conditions baseline would not mislead but would provide essential
24 information. In particular, it would disclose that the Project allows GHG emissions to rise 42 percent by
25 2030, directly contravening state climate policies that require steep emissions reductions over this same time
26 period. Because the EIR fails to alert the public that the Project’s GHG trajectory contradicts the emissions
27 reductions necessary to stabilize the climate, it does not fulfil the statutory purpose of serving as an
28 “environmental alarm bell . . . [that will] alert the public and its responsible officials to environmental
 changes before they have reached ecological points of no return.” *Laurel Heights I*, 47 Cal.3d at 392.

1 An existing conditions baseline would also have disclosed the Project’s short-term impacts, whereas
2 Caltrans’ use of a future baseline caused the agency to ignore GHG-related impacts prior to 2030. Project
3 construction will take approximately 20 years (AR 1160) and entail lane closures and other disruptive work
4 (AR 1446-47, 2852), and Caltrans never contends that the Project will create more free-flowing conditions
5 or reduce congestion in the short- or medium-term. Indeed, the Project may well *increase* congestion and
6 GHG emissions during this lengthy time period, thereby offsetting any alleged long-term Project benefits.
7 AR 48725 (study describing how highway widening projects create substantial construction-related
8 congestion, thereby reducing fuel efficiency and increasing GHG emissions). As the Supreme Court
9 recently explained in addressing this precise situation, “[a]n EIR stating that in 20 or 30 years the project
10 will improve the environment, but neglecting, without justification, to provide any evaluation of the
11 project’s impacts in the meantime, does not ‘giv[e] due consideration to both the short-term and long-term
12 effects’ of the project.” *Smart Rail*, 57 Cal.4th at 455 (quoting Guidelines § 15126.2(a)).

13 For all these reasons, the EIR’s decision to omit an “existing conditions” baseline violates CEQA.
14 Caltrans has presented no evidence that using an existing conditions baseline would have been misleading or
15 without informational value; thus, its decision to use only a hypothetical, future baseline was a prejudicial
16 abuse of discretion. *Smart Rail*, 57 Cal.4th at 462-63.⁷

17 **b. The EIR’s Comparison of Project Impacts to Future Conditions Without**
18 **the Project Is Misleading.**

19 The Supreme Court recognized that comparing a project’s impacts with predicted, future conditions
20 may sometimes provide useful, additional information. *Smart Rail*, 57 Cal.4th at 461. However, agencies
21 may not normally substitute this comparative analysis for a comparison against existing conditions because
22 the existing conditions baseline serves important purposes. Among others, it is more understandable to the
23 public and does not involve the uncertainties inherent in predicting future conditions. *Id.* at 455.

24 ⁷ In *Smart Rail*, the Court rejected the agency’s use of a future baseline; however, a plurality of justices
25 determined that the error was not prejudicial. *Smart Rail*, 57 Cal.4th at 463-65, 447, fn. 2. The three
26 justices found that, because an existing conditions baseline would not have yielded different results, its
27 omission “did not deprive agency decision makers or the public of substantial information relevant to
28 approving the project.” *Id.* at 465. Here, in contrast, Caltrans’ use of a future baseline misled the public and
decision-makers: it masked the fact that the Project allows GHG emissions to rise significantly over existing
conditions, in contravention of state climate policy.

1 Here, the EIR’s analysis of future conditions demonstrates why the Supreme Court was concerned
2 about such an analysis. Caltrans used SANDAG’s Regional Transportation Model and Series 10 traffic
3 model to estimate future vehicular travel volumes without the Project (AR 10000, 19131-32), and therefore
4 emissions levels associated with that traffic (AR 2064). Yet, these models developed their travel volume
5 forecasts *based on the assumption that I-5 would be widened*. AR 10000, 19131-32. In other words, the
6 EIR does not even compare future emissions with the Project to future emissions from a true “no project”
7 alternative. Instead, it compares the impacts of an I-5 expansion with a baseline that assumes this same
8 expansion has already occurred.

9 One organization specifically raised this point in its comments on the EIR, warning that “[i]f the
10 ‘2030 no-build’ numbers were developed assuming the existence of the Project, with the additional travel
11 that it would induce, then they create a false, inflated ‘baseline’ that cannot possibly serve as a lawful point
12 of comparison.” AR 3836-37. It even cited a case that rejected an environmental document for making this
13 exact mistake. *Id.* In *Sierra Club*, 962 F. Supp. at 1043, the court overturned an EIR that “assumes the
14 construction of a highway [] and then applies that forecast to both the build and no-build alternatives.”⁸ The
15 court held that this approach created “a self-fulfilling prophecy that makes a reasoned analysis of how
16 different alternatives satisfy future needs impossible.” *Id.* Similarly here, the EIR uses studies that assume
17 the construction of the Project and then applies that assumed forecast to both the build- and no-build
18 scenarios. This flawed approach fails to accurately compare the Project’s impacts to what is likely to occur
19 without the Project, thereby distorting the Project’s true effect and violating CEQA.

20 **C. The EIR Fails to Identify and Adopt Feasible Climate Mitigation.**

21 An EIR’s central purposes are to identify a project’s significant environmental effects and to evaluate
22 ways of avoiding or minimizing them. §§ 21002.1(a), 21061. CEQA carries out these purposes by
23 forbidding agencies from approving projects with significant impacts unless they mitigate these impacts to
24 the extent feasible. § 21081(a), (b).

25 _____
26 ⁸ The case involves claims under NEPA, CEQA’s federal counterpart. California courts have long
27 “[r]ecogniz[ed] that the California act was modeled on the federal statute . . . [and] consistently treated
28 CEQA.” *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 201, superseded by statute on other grounds.

1 The EIR must follow key procedural requirements to ensure that the public and decision makers are
2 alerted to the potential for mitigating any significant impacts. Most importantly, an agency must evaluate a
3 mitigation measure in the EIR itself and cannot defer that evaluation. Guidelines § 15126.4(a)(1)(B). In
4 evaluating the measure, the agency must demonstrate that the mitigation measure will be either (1) effective
5 in reducing a significant environmental impact, or (2) ineffective or infeasible due to specific legal,
6 economic, environmental, social, or technological factors. §§ 21002, 21081(a)(1)-(3), 21061.1; Guidelines
7 §§ 15021(a)(2), (b), 15364. If the agency determines that the adoption of a mitigation measure is infeasible,
8 it must make detailed findings supporting its determination, and those findings must be legally accurate and
9 supported with substantial evidence. §§ 21081(a)(3), 21081.5; Guidelines §§ 15091(a)(3), (b).

10 **1. Caltrans Did Not Adopt Greenhouse Gas Mitigation Because It Erroneously**
11 **Concluded that the Project Would Have Insignificant Climate Impacts.**

12 Because the EIR determines that the Project will have no significant climate impacts, it asserts that
13 “mitigation is not required under CEQA.” AR 3839. As demonstrated above, however, the EIR bases this
14 conclusion regarding climate impacts on legally erroneous analyses, and no substantial evidence supports it.
15 Since the Project will have significant climate impacts, this court should order Caltrans to rescind its Project
16 approval and not readopt the Project until it first analyzes and includes all feasible mitigation.

17 **2. Caltrans Unlawfully Failed to Consider or Adopt Mitigation Measures**
18 **Suggested by the Public.**

19 CNFF and others criticized the EIR’s failure to identify feasible GHG mitigation measures. *E.g.*,
20 3840-42, 4617-20, 49219. Commenters also proffered specific measures for Caltrans to consider. For
21 example, one organization suggested that Caltrans could require the Project to: (1) use construction materials
22 with the lowest carbon footprint, (2) incorporate “cool pavement” that reflects more solar energy, and (3)
23 generate all or a portion of its own power (e.g., for lighting) from renewable sources such as photovoltaic
24 arrays. AR 3841-42. Another member of the public recommended that Caltrans commit to public education
25 efforts promoting transit. AR 5184.

26 The EIR responds that the “suggestions for additional GHG reduction strategies are noted” but
27 submits that no additional mitigation is needed because the Project already complies with state and federal
28 GHG reduction laws and incorporates some GHG reduction elements. AR 3839-40. This response is
legally inadequate. As demonstrated above, the Project's GHG increases are completely out of step with the

1 GHG reductions necessary to meet state climate goals. Further, even if the Project did comply with some
2 GHG reduction laws, CEQA separately obligates Caltrans to analyze the Project’s impacts and consider and
3 adopt all feasible mitigation. Courts have emphasized that agencies may not satisfy their CEQA duties by
4 simply claiming that their projects comply with other established regulatory standards. *Protect The Historic*
5 *Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 (agencies may not rely on
6 existing regulatory standards to automatically determine whether a project’s effects are significant); *Smart*
7 *Rail*, 57 Cal.4th at 462 (“an EIR must be judged on its fulfillment of CEQA’s mandates, not those of other
8 statutes”).

9 The response also ignores most of the mitigation measures suggested by commenters, in violation of
10 CEQA. Courts have instructed that “an adequate EIR must respond to specific suggestions for mitigating a
11 significant environmental impact unless the suggested mitigation is facially infeasible.” *Los Angeles Unified*
12 *School Dist. v. City of Los Angeles (“L.A. Unified”)* (1997) 58 Cal.App.4th 1019, 1029-31. Here, Caltrans
13 only attempted to demonstrate that one of the suggested measures was infeasible, claiming that “public
14 education is beyond the purview of Caltrans.” AR 5186. However, this excuse is contradicted by Caltrans’
15 own Climate Action Plan, which describes how the agency has committed to “[p]roduce reports, brochures,
16 web sites, public service announcements and other products,” and “[c]onvene educational forums” to raise
17 public awareness of climate change and clean transportation. AR 50016.

18 To the extent the EIR implies that the Project already contains elements that reduce its GHG impacts
19 to a less than significant level, this approach also fails because the EIR never demonstrates that these
20 elements will actually mitigate the Project’s significant effects, as required by CEQA. As explained by the
21 court in *Friends of Oroville*, 219 Cal.App.4th at 842, an EIR must “quantitatively or qualitatively ascertain
22 or estimate the effect of the Project’s mitigation measures on GHG emissions” to demonstrate that the
23 Project will comply with AB 32. Here, the EIR only describes the extent to which a few of Caltrans’
24 statewide GHG reduction measures will reduce GHG emissions. AR 2071 (quantifying reductions for half
25 of Caltrans’ statewide climate strategies), 3839-40 (not quantifying reductions), 4071-72 (not quantifying
26 reductions). Because the EIR fails to describe whether these measures will fully mitigate the Project’s
27 climate impacts—or even whether these statewide measures apply to the Project’s emissions—Caltrans may
28 not rely on them to support its determination that the Project will not have significant climate impacts.

1 In sum, CEQA required Caltrans to adopt all mitigation measures—whether suggested by
2 commenters or not—that could feasibly reduce the Project’s climate impacts. Caltrans prejudicially abused
3 its discretion in approving the Project without first adopting all feasible mitigation measures and describing
4 why other suggested measures were infeasible. *L.A. Unified*, 58 Cal.App.4th at 1029-31; *Friends of*
5 *Oroville*, 219 Cal.App.4th at 842-44.

6 **III. The EIR’s Air Quality Analysis Rests on Faulty Assumptions and Fails to Disclose the**
7 **Project’s Impact on Public Health.**

8 **A. The EIR Understates the Project’s Air Quality Impacts Because It Wrongly Assumes**
9 **that the Project Will Not Cause Increased Driving.**

10 The EIR’s air quality analysis—like its analysis of GHG impacts—assumes that the Project will not
11 cause any new vehicle trips. AR 12602 (“the I-5 NCC project will not affect truck traffic by means of
12 congestion reduction [or] capacity expansion.”), 2462-63 (EIR stating that the Project will not affect traffic
13 volumes but will reduce congestion, thereby improving air quality), 4617. Counterintuitively, Caltrans even
14 declares that this freeway expansion Project may *reduce* truck traffic by 7 to 13 percent. AR 12602-603.
15 Based on these contentions, Caltrans concludes that the Project will reduce toxic, diesel particulate
16 emissions by 5 percent below existing levels. AR 12603.

17 As demonstrated previously, the assumption upon which this analysis rests is simply wrong. The
18 Project will actually cause an increase in driving. *See* section II.B.1. In particular, Caltrans’ economic
19 benefits study concludes that the Project will provide more than \$100 million in cost savings to freight
20 companies per year (AR 11612), and that these companies will likely invest some of those gains in
21 expanding their operations (AR 11610). These economic benefits will create 8,000 to 16,000 freight-related
22 and other jobs in the region. AR 11646.

23 Because the EIR underestimates the number of car and truck trips caused by the Project, it
24 necessarily also understates Project-related emissions and air quality impacts. *See* AR 3393 (City of Solana
25 Beach commenting that the EIR “must be revised to more accurately reflect induced traffic and the toxic air
26 pollution . . .that will accompany it”), 3817, 3820-21 (similar comments from a community group). The
27 EIR’s failure to accurately analyze and disclose these air quality impacts violates CEQA. *Berkeley Keep*
28 *Jets*, 91 Cal.App.4th at 1367 (invalidating EIR that used “scientifically outdated information” to analyze a
project’s air quality impacts).

1 **B. The EIR Did Not Adequately Analyze the Public Health Impacts Caused by the**
2 **Project’s Emission of Toxic Air Pollutants.**

3 The EIR also never examines the health impacts resulting from Project-related emissions. The EIR
4 acknowledges that the Project will cause emissions of certain air pollutants—including air toxics—to rise.
5 AR 3828 (the Project “may result in increased MSAT [mobile source air toxics] emissions in certain
6 locations”), 1694 (Table 3.14.12 showing 11 to 12 percent increase in emission of Naphthalene and
7 Polycyclic organic matter over existing conditions), 12603 (12 percent increase in emissions of fine
8 particulate matter, or “PM₁₀”). It also describes how the Project will shift sections of the freeway closer to
9 residents who live adjacent to it. AR 1690. As the EPA informed Caltrans, this change “can significantly
10 increase MSAT exposure near the roadway because concentrations of MSATs drop off exponentially [with
11 distance].” AR 38907-908.

12 The EIR ignores EPA's warning and never analyzes how the Project’s emissions will impact public
13 health. It simply quantifies the emissions of various air pollutants, briefly mentions generic health risks
14 caused by these pollutants, and stops there. AR 1691 (quantifying particulate emissions), 1694 (quantifying
15 MSATs); 12580-85 (describing various air pollutants). However, as EPA and others protested, this cursory,
16 generic information fails to alert the public to the actual health risks caused by the Project’s emissions. AR
17 6364-65, 3825-27. For that reason, EPA asked that Caltrans conduct a proper health risk assessment that
18 analyzed the Project’s impacts on nearby receptors, and described why such analysis was both necessary and
19 feasible. AR 6364-65; *see also* AR 3825-27. Caltrans dismissed this entreaty. AR 6366 (EIR describing
20 how “the health effects from these emissions have not been estimated”), 2463-64 (EIR acknowledging lack
21 of health risk analysis).

22 The EIR’s refusal to disclose the Project’s actual, expected health impacts violates CEQA’s
23 requirement that an EIR discuss “health and safety problems caused by the physical changes” that a
24 proposed project will precipitate. Guidelines § 15126.2(a). An agency’s perfunctory listing of a pollutant’s
25 *general* health impacts cannot satisfy its obligation to inform the public of a Project’s *actual* impacts.
26 *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220
27 (“*Bakersfield Citizens*”).
28

1 The decision in *Bakersfield Citizens* is on point. 124 Cal.App.4th at 1216, 1219-20. There, EIRs on
2 two development projects listed various air pollutants emitted by the projects and acknowledged generally
3 that these pollutants could cause health problems. However, the EIRs never analyzed the actual health
4 impacts of the projects' emissions. *Id.* at 1219-20. The court rejected this approach, emphasizing that
5 CEQA requires an EIR to actually "correlate the identified adverse air quality impacts [of a project] to
6 resultant adverse health effects." *Id.* The EIR could not simply include "brief references to respiratory
7 illnesses" "[b]uried in the description of [] various substances that make up the soup known as 'air
8 pollution.'" *Id.* at 1220.

9 Just as in *Bakersfield Citizens*, the EIR here fails to correlate the Project's emissions of particular air
10 pollutants with specific health implications. AR 1676-1701, 6366 (Caltrans recognizing that "the health
11 effects from these emissions have not been estimated"). Instead, the EIR simply quantifies the amount of air
12 pollutants that the Project will emit and then includes generic "references to respiratory illnesses" from air
13 pollutants. AR 1691, 1694, 12580-585. For example, Caltrans' Air Quality Analysis recognizes only that
14 "PM₁₀ can cause increased respiratory disease, lung damage, and premature death." AR 12581. Such
15 general information sheds no light on whether, or to what extent, 11 to 12 percent increases in emission of
16 PM₁₀, Naphthalene, and Polycyclic organic matter may harm individuals *in this particular situation*.
17 Without such analysis, the EIR violates CEQA.

18 Instead of providing the analysis requested by EPA and others, Caltrans responded with a flurry of
19 excuses. First, the agency lamented the limited number of "tools and techniques for assessing project-
20 specific health outcomes as a result of lifetime MSAT exposure," and opined that health risks from exposure
21 are "subject to debate." AR 2463, 3826. Caltrans also complained that "[t]here are no established
22 regulatory concentration targets for the priority MSATs" (AR 2464), and that estimating future emissions
23 and health risks would require it to assume changes in travel patterns and vehicle emissions (AR 3826).
24 Caltrans also protested that these uncertainties and limitations made it infeasible to predict the health
25 impacts caused by the Project's emissions. AR 3826, 1698-1701.

26 Record evidence disproves Caltrans' excuses. Notably, EPA—which Caltrans acknowledges is the
27 "lead authority" with regard to air quality issues (AR 12640)—rejected Caltrans' assertion that such analysis
28 is infeasible. The federal agency strongly "disagrees with the claim in the Draft EIS . . . that ' . . . available

1 technical tools do not enable [Caltrans] to predict the project-specific health impacts of the emissions
2 changes associated with implementation of the proposed project.” AR 6364. It emphasized that “[t]ools
3 and models are available that EPA (as well as other agencies) routinely use effectively” (*id.*), and requested
4 that Caltrans “[e]liminate incorrect statements regarding technical shortcomings and uncertain science (*id.*
5 at 6365).” *Id.* When Caltrans responded to this comment by again refusing to do the analysis (*see* AR
6 6366), EPA tried once more, telling Caltrans that a health risk analysis:

7 remains necessary for the project sponsors and the public to properly understand the
8 potential MSAT impacts and to inform design and mitigation measures. This is especially
9 important given that the project is an expansion of an already major freeway in close
10 proximity to a number of residences and sensitive receptors.

11 AR 38907-08.

12 Other commenters described the well-established procedures for assessing health risks from vehicle
13 emissions and reminded Caltrans how it and other transportation agencies have successfully analyzed health
14 risks for other highway projects. AR 3827, 48514, 48528-32, 42570, 49225-36, 37186-544, 35770-984. For
15 example, a report by the American Association of State Highway and Transportation Officials describes how
16 “[m]odeling tools are widely available that are capable of predicting MSAT impacts from transportation
17 projects.” AR 49236. Indeed, Caltrans previously analyzed health risks for a different transportation
18 project. AR 35795 (health risk assessment for I-710 project used a methodology consistent with Office of
19 Environmental Health Hazard Assessment and South Coast Air Quality Management District guidance),
20 35782, fn. 2 (Caltrans was lead agency for I-710 project). Another transportation agency's analysis of a
21 similar highway project produced maps identifying locations where emissions would cause a significant risk
22 of cancer. AR 37236-37.

23 Tellingly, even Caltrans’ own staff disagrees with the position taken in the agency's EIR. In internal
24 correspondence, the staff bluntly admonished that the agency should “not say that since there are no ambient
25 standards for MSATs it’s impossible to determine significance. That is simply wrong. . . . HRAs [health risk
26 assessments] have been done for other projects . . . and if one is done then generally accepted health risk
27 criteria can be used.” AR 41129. The Staff's internal emails also revealed the reason for Caltrans’
28 recalcitrance: the agency “do[es] not want to set a precedent by doing a Health Risk Analysis that may

1 negatively impact the schedule of future projects.” AR 44524. Clearly, Caltrans was able to assess the
2 Project’s health risks; it simply chose not to do so.

3 The EIR’s omission is especially glaring because SANDAG previously assured the public that
4 agencies such as Caltrans would analyze the health risks when approving implementing transportation
5 projects. SANDAG did not conduct a health risk assessment for the RTP/SCS, claiming that the analysis
6 was not feasible when adopting its broad, regional transportation plan. *Cleveland Nat. Forest Foundation*,
7 180 Cal.Rptr. at 572. However, SANDAG represented that agencies could and would conduct health risk
8 analyses when approving individual transportation projects like this one. *Id.* (SANDAG EIR stating that
9 exposure levels would “be determined [at] the next tier of environmental review when facility designs of
10 individual projects became available”); AR 49504 (SANDAG EIR stating that agencies “can and should
11 require, where warranted, the completion of health risk assessments using dispersion modeling”). But now
12 Caltrans also shirks that responsibility, once again denying the public vital information on health risks.

13 Even if Caltrans had correctly concluded that no universally accepted method exists for correlating
14 health impacts to pollution levels, that conclusion would provide no excuse. CEQA still obligated the
15 agency to “find out and disclose all that it reasonably can.” *Berkeley Keep Jets*, 91 Cal.App.4th at 1370
16 (quoting Guidelines § 15144). In *Berkeley Keep Jets*, petitioners successfully challenged an EIR for the Port
17 of Oakland’s airport expansion, claiming that the EIR failed to analyze health risks associated with toxic air
18 contaminants. *Id.* at 1371. The Port raised the same argument as Caltrans does here—that there was no
19 accepted methodology for determining impacts to health—but the court refused to accept that explanation.

20 The court noted that members of the public had pointed the Port to numerous studies on the subject,
21 including eight performed by EPA. *Id.* at 1367-70. The lack of a “precise, or ‘universally accepted,’
22 quantification of the human health risk from TAC [toxic air contaminant] exposure does not excuse the
23 preparation of any health risk assessment.” *Id.* at 1370. As the court explained, “[d]rafting an EIR . . .
24 involves some degree of forecasting,” and the Port “must educate itself about the different methodologies”
25 available to assess health risks. *Id.* (quoting Guidelines § 15144).

26 As in *Berkeley Keep Jets*, the EPA and others directed Caltrans to numerous studies demonstrating
27 the feasibility of conducting a meaningful health risk analysis. AR 3827, 6365, 48514, 48528-32, 42570,
28 49225-36, 37186-544, 35770-984. They even went further, describing ways in which Caltrans could

1 meaningfully assess health impacts even if the agency did not conduct a full-blown health risk assessment.
2 AR 6365 (EPA requesting that Caltrans identify Project segments with the largest increases in vehicles,
3 emissions changes, and distance reductions to sensitive receptors), 49216 (CNFF describing another type of
4 localized air quality analysis), EPA and others also emphasized why it is important to inform the public and
5 decision-makers of the Project’s risks. AR 6364-65, 3825-27, 38907-08. Where, as here, an EIR fails to
6 meaningfully analyze air quality impacts, and commenters have suggested methods to cure that failure, the
7 lead agency must make “reasonably conscientious effort[s] . . . to collect additional data.” *Berkeley Keep*
8 *Jets*, 91 Cal.App.4th at 1370. Caltrans made no such efforts.

9 Finally, Caltrans also claims that it could omit a health risk assessment because the Project would
10 allegedly reduce emissions of many toxic air pollutants and therefore have no significant impact. AR 3827-
11 28. Two key facts, however, belie this argument. First, toxic air pollutants have *local* effects (AR 48516,
12 48574-76), whereas Caltrans analyzed only *regional* emissions of various pollutants (AR 1691, 1694-95).
13 As EPA explained yet again, Caltrans’ regional analysis “is misleading because it does not discuss localized
14 impacts as ‘hot spots’ along the proposed alignments and does not consider proximity to sensitive
15 receptors.” AR 6365. Second, even if regional emissions of some pollutants will decline, the EIR
16 acknowledges that emissions of other pollutants will rise. AR 3828, 1694, 12603. Caltrans may not ignore
17 local impacts caused by some air pollutants just because the Project may cause regional improvements for
18 other pollutants. Rather, CEQA requires agencies to analyze whether “*any* aspect of the project . . . may
19 cause a significant effect on the environment, regardless of whether the overall effect of the project is
20 adverse or beneficial.” Guidelines § 15063(b)(1) (emphasis added).

21 In short, the EIR’s omission of any health risk analysis constitutes prejudicial error. *Bakersfield*
22 *Citizens*, 124 Cal.App.4th at 1219-20.

23 **C. Caltrans Failed to Mitigate the Project’s Significant Air Quality Impacts.**

24 Because Caltrans concludes that the Project will not have significant air quality impacts, it imposed
25 no mitigation pursuant to CEQA. AR 2040. As described above, however, the EIR’s analysis is faulty and
26 the Project will actually cause significant air quality impacts. Caltrans must therefore adopt all feasible
27 mitigation measures. § 21081.

1 Numerous methods are available for Caltrans to mitigate the Project’s air pollution impacts. EPA
2 asked Caltrans to consider Project design changes to reduce exposure to MSATs. AR 38908. Other
3 agencies utilize mechanical ventilation and air filtration to reduce impacts in affected buildings. AR 48533-
4 34 (City of San Francisco guidance on analyzing and mitigating impacts on receptors near busy roadways),
5 37192-93 (health risk assessment for a different highway project recommended installation of “a heating,
6 ventilating, and air conditioning (HVAC) retrofit program . . . for residences with potential incremental
7 cancer risks greater than 10 in a million.”). Even Caltrans staff acknowledged the unacceptable lack of
8 mitigation:

9 The current MSAT analysis results show that the emissions for the build alternatives are
10 higher than those of the base year for some toxic contaminants . . . While the EIR/EIS
11 acknowledges this result, it is NOT providing any solutions to mitigate this significant
12 adverse environmental impact. . . [F]or those sensitive receptors exposed to higher MSAT
13 emissions . . . the EIR/EIS should provide a list of possible mitigation measures, such as
14 installation of special air filters for the heating and air conditioning units of the buildings.

15 AR 42105.

16 Unfortunately, the agency rejected its staff’s advice. The EIR’s wholesale failure to provide
17 mitigation for these significant impacts violates CEQA. *L.A. Unified*, 58 Cal.App.4th at 1028-31.

18 **IV. The EIR Fails to Adequately Analyze the Project’s Growth-Inducing Impacts.**

19 CEQA requires agencies to analyze a project’s growth-inducing impacts, including the ways in
20 which the project may foster economic or population growth. Guidelines § 15126.2(d). A project can
21 induce growth by either directly causing it (e.g., building homes) or by removing barriers that limit growth
22 (e.g., expanding infrastructure). *Id.*; AR 13768 (Community Impact Assessment recognizing that projects
23 that “remove barriers to future growth” are growth-inducing). In addition to describing the ways in which a
24 project may induce growth, agencies must analyze the environmental impacts of that growth. *Stanislaus*
25 *Audubon Society, Inc., v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158. California courts have long
26 recognized that road construction projects have growth-inducing impacts because they influence the amount
27 and direction of future development. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1335-36,
28 1338 (rejecting EIR’s conclusion that road construction project would not have significant growth-related
environmental effects).

1 Here, the Project will significantly expand the capacity of one of the busiest freeways in the San
2 Diego region. The EIR and related studies predict that this expansion will reduce traffic congestion and
3 provide faster travel times for tourists, freight operations, and others throughout the region. AR 1001,
4 11611, 11619. These outcomes, in turn, will spur economic development and create 8,000 to 16,000 new
5 jobs. AR 11597-98.

6 Tellingly, Caltrans' economic study compares the Project to two highway expansion projects in other
7 states that stimulated considerable growth. It describes how those projects "led to shifts in commercial real
8 estate development patterns" (AR 11635) and "dramatically" changed land use patterns (AR 11638). The
9 Caltrans study further describes how "very significant growth occurred following the project." AR 11638
10 (Minnesota highway project). *See also* 11536 (Utah highway project "resulted in a significant *direct*
11 increase in jobs") (emphasis in original). Importantly, the study concludes that the I-5 widening will cause
12 similar economic growth and changes in land use. AR 11640-41.

13 Although Caltrans' economic benefits analysis identifies and lauds the Project's growth-inducing
14 potential, its EIR completely dismisses these same effects. Far from acknowledging that the Project will
15 bring new jobs, people, and vehicles to the region, the EIR asserts that the Project "would not substantially
16 affect the location, rate, type, or amount of growth in the project vicinity." AR 2455. *See also* AR 1351
17 ("project-related growth is not considered reasonably foreseeable"), 3943 ("The proposed project was not
18 found to be growth inducing"). As described in section II.B.1, above, it also claims that the Project will not
19 cause any new vehicle trips. AR 3725, 3836, 3839, 4617. Inexplicably, the EIR utterly ignores Caltrans'
20 economic study, which flatly contradicts the EIR's conclusion that the Project will not affect growth.
21 Instead, the EIR attempts to justify its conclusion in various, unconvincing ways.

22 First, the EIR claims that the Project will not induce growth "due to [] limits on growth, including
23 land use controls within local and regional plans and policies." AR 2455, 3893. However, courts have long-
24 rejected the notion that zoning and land use controls automatically limit growth because "[z]oning is subject
25 to change and amendment of a general plan is not a rare occurrence." *Stanislaus Audubon Society, Inc.*, 33
26 Cal.App.4th at 157. Accordingly, no assurance exists that "the area surrounding the project will not one day
27 be rezoned . . . thus permitting [] development." *Id.*; *see also City of Davis v. Coleman* (9th Cir. 1975) 521
28 F.2d 661, 676 (agencies must analyze growth-inducing impacts despite the fact that such growth may be

1 uncertain and “depend[ent] on the plans of private parties and local government outside the direct control of
2 [the lead agency]”).

3 Next, the EIR asserts that the Project will not cause growth because the I-5 corridor is already built
4 up and “[f]ew vacant developable parcels of land are remaining in the immediate vicinity of I-5.” AR 1348.
5 *See also* AR 3892 (growth potential restricted “due to the urbanized nature of the study area and limited
6 availability of developable land”). However, the EIR’s analysis only examines a small area immediately
7 surrounding the freeway corridor. AR 13530 (map showing study area for impacts analysis), 1348-49 (EIR
8 analyzed growth potential only in portions of the cities of San Diego, Del Mar, Solana Beach, Encinitas,
9 Carlsbad, and Oceanside). It ignores the Project’s potential to promote growth elsewhere in the County,
10 outside of the limited area analyzed in the EIR.

11 One commenter specifically criticized the EIR’s narrow study area, pointing out that the Project may
12 induce growth in areas slightly farther to the east of I-5 that are not highly developed. AR 3890-92. For
13 example, the EIR fails to analyze the Project’s effects in unincorporated areas such as Bonsall and
14 Fallbrook. AR 3891, 17906 (map showing that these communities are not highly developed). It also ignores
15 potential impacts in cities such as Vista and San Marcos, which are not as urbanized as the immediate I-5
16 corridor, even though the EIR elsewhere acknowledges that portions of these cities are within the “project
17 area” and its “travelshed.” AR 1087. Many of these communities are situated only a few miles from the I-5,
18 and the Project will improve commute times from them to the City of San Diego, thereby making
19 development more likely. *See* AR 49797 (Caltrans guidance suggesting that transportation projects may
20 induce growth within an area defined by the project’s “commuteshed”).

21 The EIR never meaningfully responds to this criticism. It neither justifies the narrow study area nor
22 provides evidence that the Project will not affect growth in outlying areas. Instead, the document summarily
23 concludes that “[t]his large area surrounding the 27-mile corridor is considered adequate for a
24 comprehensive growth analysis.” AR 3890. The only explanation that it provides to excuse the lack of
25 analysis is the following unintelligible passage:

26 [D]ue to the urbanized nature of the study area and limited availability of developable land,
27 there are no known projects in the vicinity that are dependent on implementation of the
28 proposed project. As such, it can be inferred that further growth in the project area and
surrounding region is planned and would most likely occur with or without implementation

1 of the proposed project. *This conclusion applies to outlying rural areas not currently*
2 *planned for development as well as the immediate corridor.*

3 AR 4028 (emphasis added).

4 The EIR's reasoning here is simply nonsensical. The document acknowledges the existence of
5 undeveloped, rural areas in the region, yet claims that the Project will not spur growth in them for the same
6 reason it allegedly will not induce growth in the immediate I-5 corridor: because these areas are already
7 urbanized and lack developable land. It states that growth is already planned in the surrounding region, yet
8 asserts that surrounding rural areas are *not* planned for growth. Then, without any support, it proclaims that
9 further growth in the surrounding region would "most likely" occur with or without the Project. Given its
10 internal contradictions, convoluted logic, and unsupported conjecture, the paragraph provides no credible
11 support for the constrained study area.

12 CEQA requires agencies to analyze impacts over the entire area where one might reasonably expect a
13 project's impacts to occur. *Kings County*, 221 Cal.App.3d at 721-24; *see also* Guidelines § 15360 ("The
14 area involved [in an EIR's analysis] shall be the area in which significant effects would occur either directly
15 or indirectly."). As the Supreme Court explained, "an EIR may not ignore the regional impacts of a project .
16 . . .; on the contrary, a regional perspective is required." *Citizens of Goleta Valley v. Santa Barbara County*
17 *Bd. of Supervisors* (1990) 52 Cal.3d 553, 575 (citing Guidelines § 15125). Here, the EIR utilizes a narrow
18 study area that ignores the Project's potential to induce considerable economic growth and affect land use
19 patterns at a regional level. Caltrans' own economic study demonstrates that the Project will significantly
20 change travel patterns in areas as far away as Los Angeles and Orange County. AR 11629 (Project will
21 cause 8 percent increase in daytrip visits from Los Angeles and Orange County).

22 If the Project will induce daytrip visitors from those relatively distant regions, it will certainly affect
23 travel times from rural areas of the County that are much closer to the Project. Accordingly, the omission of
24 information regarding the Project's impacts on regional growth violates CEQA. *Kings County*, 221
25 Cal.App.3d at 721-24 (invalidating EIR that failed to analyze impacts over sufficiently broad geographic
26 area); *Berkeley Keep Jets*, 91 Cal.App.4th at 1365-67 (invalidating EIR that failed to accurately and fully
27 respond to substantive comments).

1 Last, because the EIR finds that the Project will not induce growth, it does not analyze the
2 environmental impacts of that growth. AR 3893 (“there would be no growth related impacts attributable to
3 the project.”) For example, the EIR ignores the air quality impacts caused by emissions from millions of
4 additional tourist- and freight-related vehicle trips on the I-5 resulting from the Project. AR 11624 (Project
5 will cause 2.9 million tourist-related vehicle trips per year), 11610-12 (Project will cause freight business to
6 grow). The document also overlooks impacts resulting from the thousands of new jobs the Project will
7 cause. AR 11597-98. These effects include not only the emission of air pollutants from new employee- and
8 other business-related vehicle trips, but also the impacts of new housing construction in the area. See AR
9 4617, 3836 (EIR assumes that Project will not cause any new vehicle trips or related emissions). The EIR’s
10 failure to disclose or analyze these growth-related impacts constitutes prejudicial error. Guidelines §
11 15126.2(d) (EIR must analyze *impacts* of growth, not just describe potential growth); *Napa Citizens for*
12 *Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 373-74 (EIR must disclose
13 “environmental consequences of tapping” water resources to serve population growth induced by project).

14 **V. The EIR’s Inadequate Analysis of the Project’s Noise Impacts and Its Failure to Provide**
15 **Feasible Mitigation Violate CEQA.**

16 **A. The EIR’s Noise Analysis Uses Significance Criteria that Fail to Properly Account for**
17 **the Project’s Significant Impacts.**

18 “The Legislature has declared in CEQA that ‘it is the policy of the state’ to ‘[t]ake all action
19 necessary to provide the people of this state with . . . freedom from excessive noise.’” *Berkeley Keep Jets*,
20 91 Cal.App.4th at 1379 (quoting § 21001(b)). Accordingly, “through CEQA, the public has a statutorily
21 protected interest in quieter noise environments.” *Id.* To carry out these policies, agencies must analyze
22 proposed projects’ noise impacts and must determine whether those impacts are “significant.” Guidelines §
23 15064(a) – (d), Appdx. G, § 12. The determination of significance “is critical, because once ‘significant
24 effects’ have been identified in the EIR, an agency must explore implementing feasible mitigation measures
25 or alternatives to avoid or reduce the effect.” *Berkeley Keep Jets*, 91 Cal.App.4th at 1373.

26 Here, the EIR fails to accurately measure the Project’s noise impacts or consistently describe these
27 impacts to the public. First, the EIR acknowledges that the Project will cause 5-6 decibel increases for many
28 nearby, sensitive receptors (AR 2046-48), and it describes how this increase in noise levels is “readily
perceptible to the human ear” (AR 2047). Then, however, it categorically dismisses these impacts as being

1 insignificant, even though the increases may be significant in light of existing, already noisy conditions.
2 *E.g.*, AR 2046 (finding potentially significant impacts at receptors in segment 9⁹ with increase of 7-10
3 decibels, but ignoring receptors with increase of 5 decibels or less), *id.* (potentially significant impact at
4 receptor in segment 10 with increase of 8 decibels, but ignoring receptors with increase of 5 decibels or
5 less), 2047 (finding increases of 5-6 decibels to be not significant), 2048 (potentially significant impact at
6 receptor in segment 14 with increase of 8 decibels, but ignoring receptors with increase of 6 decibels or
7 less). Likewise, it claims that 3-decibel increases will not cause significant noise impacts because this noise
8 increase is “barely perceptible to the human ear.” AR 2043-45, 2047-49. For each of these 3 – 6 decibel
9 increases in noise, the EIR never considers whether the increase may a tipping point for receptors already
10 exposed to excessive noise. *Id.*

11 Oddly, the EIR does consider existing noise levels for another purpose: to justify its conclusion that
12 various admittedly large noise increases will *not* be significant. For example, the EIR recognizes that some
13 receptors in segment 18 may experience significant, unmitigated noise impacts, yet claims that the Project
14 “would not significantly contribute to the existing noise levels [because n]oise levels along Segment 18 are
15 currently loud and would remain loud.” AR 2050-51. Likewise, it describes how noise levels will rise by
16 up to 8 decibels for many receptors in segment 6 and how no sound walls will be built for these receptors,
17 yet concludes that the Project will not cause significant impacts for this segment overall because noise there
18 is already “loud and would remain loud.” AR 2044-45. *See also* AR 2046 (acknowledging noise increase of
19 7-10 decibels is potentially significant, yet “would be consistent with the other noise receptors and the
20 general noisy conditions along this segment of the I-5”).

21 The EIR may not rely on the already-noisy condition of the freeway to conclude that perceptible
22 increases in that noisy environment are *per se* insignificant. *Gray*, 167 Cal.App.4th at 1122-23. On the
23 contrary, if conditions are already noisy, then even small noise increases may be significant, and large ones
24 will be momentous. *Id.* Nor may the EIR ignore existing conditions when determining whether a moderate
25 increase in noise is significant.

26
27 _____
28 ⁹ For purposes of measuring noise impacts, the EIR divides the 27-mile Project into 22 segments, and separately analyzes noise impacts at receptors within each segment. AR 1709, 2043-53.

1 Numerous courts have rejected noise analyses that contained the same flaws found in Caltrans' EIR.
2 For example, *Gray*, 167 Cal.App.4th at 1105-06, involved a county's approval of a new aggregate mine.
3 The county's EIR concluded that the mine would increase noise by less than 2.1 decibels, which it claimed
4 would be unnoticeable and therefore insignificant. *Id.* at 1122-23. The court rejected this analysis, noting
5 that existing noise levels already exceeded relevant noise standards. Thus, "even though a 2.1 dBA noise in
6 isolation will not be noticeable, when added to an already high noise level, it could cause a tipping point of
7 noise problems for the general public." *Id.* at 1123. *See also L.A. Unified*, 58 Cal.App.4th at 1024-26
8 (increase of 2.8 decibels could be significant where noise levels near a school already exceeded relevant
9 safety levels).

10 So too here, the EIR concludes that many noise increases of 6 decibels or less—far greater impacts
11 than at issue in *Gray* or *L.A. Unified*—would not be significant. However, it ignored whether these
12 increases would be significant because existing noise levels already meet or exceed relevant criteria. AR
13 27516 (for many receptors near I-5, noise levels are already at or above relevant, federal noise criteria). This
14 approach flatly violates CEQA. *Gray*, 167 Cal.App.4th at 1123; *L.A. Unified*, 58 Cal.App.4th at 1025-26.

15 In addition to these errors, the EIR reached contradictory conclusions regarding the significance of
16 the Project's noise impacts. In some places, the EIR emphasizes that the Project will not cause significant,
17 unmitigated noise impacts. For example, it states that the Project's only unavoidable, significant
18 environmental effect would be to aesthetics (AR 2057), and that "[mitigation] measures would reduce
19 potential impacts to [noise to] less than significant levels under CEQA" (AR 2041-42). *See also* AR 2076.
20 Yet elsewhere, the EIR declares that noise impacts for "[t]wo segments of the 27-mile project have been
21 determined to be significant after mitigation." AR 2053. Caltrans even adopted findings that describe how
22 the "benefits of the project [] outweigh the potentially significant [noise-related] effects on the
23 environment." *Id.* *See also* AR 50. These findings would be unnecessary if the Project had fully mitigated
24 its noise impacts. § 21081. Finally, in other places Caltrans takes yet another position: that noise impacts
25 "may remain potentially significant after . . . mitigation." AR 4 (emphasis added).

26 Caltrans simply has not determined whether the Project will cause significant noise impacts. For that
27 reason—and because the EIR failed to consider existing noise levels surrounding the Project—the EIR fails
28 to serve its purpose as "an informational document" [] that . . . provide[s] public agencies and the public in

1 general with detailed information about the effect which a proposed project is likely to have on the
2 environment.” *Laurel Heights I*, 47 Cal.3d at 391 (citation omitted).

3 **B. The EIR Fails to Consider Feasible Measures to Mitigate the Project’s Noise Impacts.**

4 As the Project EIR acknowledges, “[i]f a proposed project is determined to have a significant noise
5 impact under CEQA, then CEQA dictates that mitigation measures must be incorporated into the project
6 unless such measures are not feasible.” AR 1706. *See also* § 21081. An agency may approve a project with
7 significant impacts only if it first finds that specific economic, legal, social, technological or other
8 considerations make mitigation measures identified in the EIR infeasible. § 21081.

9 Agencies can mitigate highway traffic noise in various ways. First, they can construct noise barriers
10 such as sound walls or earthen berms. AR 4225, 36225, 36255 Agencies can also install double-paned
11 windows, insulation, or other treatment measures to impacted buildings. AR 36225, 37673. These measures
12 can reduce sound levels by 10 decibels or more. AR 42385. Certain types of pavement can also reduce tire
13 noise. AR 36231. Such measures are particularly effective because 75 to 90 percent of overall wayside
14 noise levels near highways comes from the sound of tires on pavement. AR 37655

15 Caltrans recognized that all of these measures can mitigate noise impacts. AR 36221, 36225, 36231.
16 Although the EIR’s analysis is confusing, it appears to recognize that the Project will cause significant noise
17 impacts. AR 2053, 50-56. Caltrans was therefore required to consider and adopt all feasible mitigation to
18 reduce the Project’s impacts. § 21081. Instead of doing this, Caltrans focused almost exclusively on one
19 type of mitigation—sound walls. In many instances, however, Caltrans determined that constructing sound
20 walls was infeasible due to topographical or space constraints, or because they would unreasonably block
21 scenic views. AR 37. In those cases, Caltrans was required to—but failed to—consider other potentially
22 feasible ways to mitigate noise impacts.

23 **1. The EIR Fails to Consider Sound Insulation to Mitigate Noise Impacts.**

24 Caltrans’ own guidance acknowledges that sound insulation can address noise impacts: “[i]n cases
25 where a [sound] barrier clearly is not feasible because of driveway access or other issues, improvement of
26 building shell acoustical insulation is then considered.” AR 36221-22. In noting that one proposed sound
27 wall for this Project was too expensive, the Federal Highway Administration likewise concluded that “[i]t
28 would appear that alternatives, such as individual treatment, would be more appropriate.” AR 42278.

1 Because this measure is potentially feasible, CEQA required the EIR to consider adopting it for all receptors
2 that have significant, unmitigated impacts. § 21081. The EIR did not do so.

3 Instead of considering sound insulation for all significant impacts, Caltrans used federal NEPA
4 guidelines that recommend insulation only in locations where a Project causes “severe” noise impacts—i.e.,
5 where exterior noise levels equal or exceed 75 decibels or are 30 decibels above existing conditions. AR
6 1709, 2461, 3876-77. Using this guidance, the EIR recommends “individual abatement”—i.e., sound
7 insulation—for only 11 receptors that will experience “severe” noise impacts. AR 27360, 27412, 27476,
8 27570, 27646, 27666; *see also* AR 2376 (Caltrans will mitigate impacts in compliance with the Noise
9 Abatement Decision Report, found at AR 27333-27672). Accordingly, the EIR never considers the
10 feasibility of sound insulation for numerous receptors that will be exposed to significant noise impacts, even
11 where the EIR determines that sound walls are infeasible. *See, e.g.*, AR 2046 (Segment 10, Receptor
12 R10.6), 2048 (Segment 13, Receptor R13.8), *id.* (Segment 14, Receptor R14.6), 2050 (Segment 18,
13 Receptors 18.1, 18.8, 18.9, 18.27).

14 Caltrans may not use federal NEPA guidance to justify its decision, under CEQA, to consider sound
15 insulation only for “severe” noise impacts as opposed to *any* significant noise impact. The court in *Berkeley*
16 *Keep Jets*, rejected an agency’s similar reliance on federal guidance regarding noise impacts. 91
17 Cal.App.4th 1344. There, the Port of Oakland certified an EIR that analyzed the noise and other impacts
18 caused by expanding the Oakland airport. *Id.*, at 1350. The Port used federal NEPA standards to measure
19 the Project’s noise impacts, and petitioners claimed that these standards failed to account for the project’s
20 full impacts. *Id.* at 1377-83. The court held that the Port prejudicially abused its discretion by relying solely
21 on federally approved methodologies (*id.* at 1380-82), noting “there are important distinctions between the
22 requirements imposed by CEQA and by NEPA in assessing noise impacts” (*id.* at 1379).

23 So too here, Caltrans may not rely on federal guidance to curtail its CEQA duties. As the EIR itself
24 explains, “[t]he requirements for noise analysis and consideration of noise abatement and/or mitigation []
25 differ between NEPA and CEQA.” AR 1706. *See also* AR 2042. Although the EIR analyzes noise impacts
26 under CEQA and NEPA separately (AR 1706, 2042), it fails to separately analyze noise mitigation. Instead,
27 the EIR relies solely on federal criteria to determine whether to adopt sound walls and sound insulation. AR
28 27476 (noise report recommending individual building improvements only to mitigate “severe” impact),

1 2044 (finding potentially significant noise impacts in segment 6 under CEQA but describing mitigation only
2 pursuant to federal requirements), 2046 (same for segments 9, 10), 2047 (same for segment 11), 2049
3 (segment 17), 2050 (segment 18), 2051 (segment 19). As in *Berkeley Keep Jets*, this approach is unlawful.

4 Crucially, this curtailed approach caused the EIR to overlook potentially feasible noise mitigation.
5 Caltrans will construct a sound wall only if it will reduce noise impacts by at least 5 decibels and will cost
6 \$32,000 or less per affected receptor. AR 1708, 27518 (Caltrans will pay more if the noise is particularly
7 loud or mitigation particularly effective). Accordingly, in locations where sound walls are infeasible (*e.g.*,
8 AR 1712, 1725, 1729, 1733), Caltrans was required to consider whether sound insulation could have
9 achieved effective noise abatement for a similar, reasonable cost. Its failure to do so, or to make findings
10 that such mitigation was infeasible, was prejudicial error.

11 **2. The EIR Fails to Consider Quiet Pavement to Mitigate Noise Impacts.**

12 Caltrans also failed to justify its refusal to require quiet pavement to reduce noise. CNFF and others
13 asked Caltrans to consider this mitigation, and one group submitted an expert study that describes how use
14 of rubberized asphalt or other quieter pavement reduces traffic noise levels by 4 decibels. AR 3880, 42574,
15 48892, 48914. In response, Caltrans deferred its decision whether to require quiet pavement, stating that
16 “[a] conclusion has not been made about practicality and effectiveness [for quiet pavement], so this
17 surfacing is not currently included in noise abatement measures.” AR 3881. CEQA forbids this approach.

18 One of the EIR’s core purposes is to determine whether there is practical and effective mitigation for
19 a project’s significant impacts. §§ 21002.1(a), 21061, 21081. The EIR may not generally defer this
20 determination, but must evaluate each mitigation proposal that is not “facially infeasible.” *L.A. Unified*, 58
21 Cal.App.4th at 1029-31. For every mitigation measure evaluated but rejected, the agency must demonstrate
22 that the measure is infeasible due to specific legal or “economic, environmental, social and technological
23 factors.” § 21081(a)(3); *Village Laguna of Laguna Beach, Inc. v. Bd. of Supervisors* (1982) 134 Cal.App.3d
24 1022, 1034 (CEQA “demands that each of those mitigation measures . . . which are identified in the EIR and
25 are not adopted must be expressly rejected as infeasible”). An EIR may defer evaluation of mitigation only
26 if the document contains strict standards to govern the agency’s future consideration and adoption of the
27 mitigation. Guidelines § 15126.4(a)(1)(B); *Communities for a Better Environment v. City of Richmond*
28 (2010) 184 Cal.App.4th 70, 94-95.

1 The *City of Richmond* case is instructive. There, the City acknowledged that a Chevron refinery
2 expansion would cause significant climate impacts. *Id.* at 91. However, instead of including a GHG
3 mitigation plan in the EIR, the City allowed Chevron to adopt a mitigation plan later, outside the EIR
4 process. *Id.* at 91-92. The court rejected this approach: “[w]e emphasize . . . that the time to analyze the
5 impacts of the Project and to formulate mitigation measures to minimize or avoid those impacts was during
6 the EIR process, *before* the Project was [approved].” *Id.* at 95 (emphasis in original).

7 The Project EIR violates these principles. It defers consideration and adoption of quiet pavement,
8 yet provides no timeline or performance standards to guide future consideration of the measure. *See* AR
9 3880-81 (EIR stating that Caltrans is “actively researching” quiet pavement, but providing no standards to
10 guide its decision whether to later require the measure).¹⁰ Caltrans also failed to find that the measure is
11 economically, technologically or otherwise infeasible. AR 50-56. Caltrans states that it may not use federal
12 funding to pay for quiet pavement (AR 2461, 3880), but this does not make the measure infeasible; the
13 agency’s own guidance says that “Caltrans may consider using State-only funds to pay for quieter
14 pavement.” AR 36231. Just as in *City of Richmond*, Caltrans’ decision to study quiet pavement in the
15 future, outside of the EIR process, violates CEQA.

16 **CONCLUSION**

17 For the foregoing reasons, Petitioner respectfully requests that the Court issue a writ of mandate
18 directing Caltrans to vacate its approval of the Project and certification of the EIR.

19 DATED: May 1, 2015

SHUTE, MIHALY & WEINBERGER LLP

20
21 By: 
22 ERIN B. CHALMERS

23 Attorney for CLEVELAND NATIONAL FOREST
24 FOUNDATION

25 675473.5

26 _____
27 ¹⁰ Caltrans also defers its decision on whether to construct sound walls. AR 1711. But in contrast to its
28 approach with quiet pavement, Caltrans provides specific cost, technological, and other criteria it will later
use to determine whether sound walls are feasible. *Id.*; AR 12409, 12413-421.

1 **PROOF OF SERVICE**

2 *Cleveland National Forest Foundation v. California Department of Transportation*
3 *Case No. 37-2013-00078391-CU-TT-CTL*
4 *Superior Court of California, County of San Diego*

5 At the time of service, I was over 18 years of age and **not a party to this action**. I am
6 employed in the City and County of San Francisco, State of California. My business address is 396
7 Hayes Street, San Francisco, CA 94102.

8 On May 1, 2015, I served true copies of the following document(s) described as:

9 **PETITIONER'S OPENING BRIEF**

10 on the parties in this action as follows:

11 **SEE ATTACHED SERVICE LIST**

12 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
13 persons at the addresses listed in the Service List and placed the envelope for collection and
14 mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly &
15 Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same
16 day that the correspondence is placed for collection and mailing, it is deposited in the ordinary
17 course of business with the United States Postal Service, in a sealed envelope with postage fully
18 prepaid.

19 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
20 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
21 document(s) to be sent from e-mail address Mulligan@smwlaw.com to the persons at the e-mail
22 addresses listed in the Service List. I did not receive, within a reasonable time after the
23 transmission, any electronic message or other indication that the transmission was unsuccessful.

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

26 Executed on May 1, 2015, at San Francisco, California.

27 
28 Sean P. Mulligan

1 **SERVICE LIST**
2 **Cleveland National Forest Foundation v. California Department of Transportation**
3 **37-2013-00078391-CU-TT-CTL**
4 **Superior Court of California, County of San Diego**

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