JOHN P. ROSE, CSBN 285819
jrose@biologicaldiversity.org
ARUNA PRABHALA, CSBN 278865
aprabhala@biologicaldiversity.org
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, CA 94612
Telephone: (510) 844-7100
Facsimile: (510) 844-7150
Attorneys for Petitioner/Plaintiff
Center for Biological Diversity

Alexander Hall, CSBN 354050
ahall@nrdc.org
Michael E. Wall, CSBN 170238
mwall@nrdc.org
NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter St, Fl 21
San Francisco, CA 94104-4540
Telephone: (415) 875 8262
Facsimile: (415) 795 4799
Attorneys for Petitioners/Plaintiffs
Natural Resources Defense Council, Inc., and
Planning and Conservation League

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL DIVERSITY; NATURAL RESOURCES DEFENSE COUNCIL, INC.; and PLANNING AND CONSERVATION LEAGUE, non-profit corporations, Petitioners/Plaintiffs, v. CALIFORNIA DEPARTMENT OF TRANSPORTATION, a public entity; and DOES 1 through 20, inclusive, Respondents/Defendants.	Case No.: 24CV077619 PETITIONERS' OPENING MEMORANDUM OF POINTS AND AUTHORITIES Assigned for all Purposes to: Honorable Michael Markman, Dept. 23

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

INTRODUCTION

Widening highways does not fix congestion. The California Department of Transportation ("Caltrans") acknowledges as much in its guidance documents: Building more lanes might provide temporary relief, but this very fact tempts more drivers onto the road. Congestion soon returns—but with more cars on the road and a concomitant increase in cumulative miles driven. More driving leads to worse air pollution, more greenhouse gas emissions, and degraded wildlife habitat.

Despite this, Caltrans approved the Yolo 80 Corridor Improvements Project ("Project"). The Project would add a tolled lane in each direction of the Yolo 80 Corridor, which includes segments of Interstate 80 (I-80) and United States Route 50 (US-50). Caltrans now claims, contrary to established literature and its own guidance, that this highway widening will ease congestion with minimal environmental impacts. To arrive at this conclusion, Caltrans skewed the environmental review: It considered an unreasonably narrow range of alternatives by disregarding an environmentally better option suggested by expert sister agencies and designated in the regional transportation plan. It ignored evidence from its own traffic consultants that it had overestimated project benefits and underestimated impacts. It refused to fully mitigate the Project's impacts due to an arbitrary budget limit it set on itself. And it hand-waved an expert sister agency's concerns about the Project's impacts on wildlife. Each of these errors, among others, violated the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*) and its implementing regulations, the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 *et seq.*; hereafter "Guidelines"). Collectively, these errors reflect the work of an agency intent on rushing the process to conclusion rather than complying with state law.

Caltrans had reason to rush. It needed to approve the Project before September 30, 2024,

to avoid losing an $86 million federal grant that would fund the Project. Conducting additional or corrected environmental analyses in response to the comments of agencies and the public would have caused delays, risking this federal funding. The agency's motivation is understandable. It is not, however, a permissible excuse for violating state law.

In its haste to approve the Project's Environmental Impact Report (EIR), Caltrans committed several abuses of discretion. First, it considered an unreasonably narrow range of alternatives, failing to analyze an alternative that tolled more than one lane in each direction even though the regional transportation plan specified such a configuration. Multiple tolled lanes, operating in tandem, would better reduce congestion than the single tolled lane that Caltrans considered, and would also have generated more revenue that could fund measures to mitigate the Project's harms to the environment. Instead of analyzing this alternative or explaining the environmental impact of deviating from the regional transportation plan, Caltrans shrugged this alternative off with a suggestion that it would be considered later. CEQA is not satisfied by someday-maybe intentions; it requires consideration of a reasonable range of alternatives before project approval.

Second, in its assessment of Project impacts, Caltrans used flawed modelling tools and assumptions that oversold the Project's efficacy and undersold resulting environmental harms, misleading the public and decisionmakers. In particular, the model Caltrans used to forecast traffic assumes that drivers will not change their departure time or end destination in the face of congestion. Instead, the model predicts that in the future, drivers will mindlessly pile onto already congested freeways until congestion becomes so bad that they divert to a 20-mile detour because, with so many drivers on the road at the exact same time, the detour is faster. Anyone who has ever left their house a little earlier or later to avoid the worst traffic knows that many

drivers are—unlike Caltrans' model—capable of and likely to change their departure time to avoid the worst congestion. Caltrans' contrary, and false, assumption materially impacted its assessment of the Project's effects. Caltrans' modeling predicts that the Project's new lane will accommodate more drivers, eliminating those drivers' otherwise (presumed robotic) decision to take a much longer route rather than leaving earlier or later. And because the modeling assumes that the new lane will eliminate long detours, it also concludes that the new lane will reduce total vehicle miles traveled. In the real world, though—a world in which non-robotic drivers make mindful decisions about how to avoid the worst traffic—the new lane would be unlikely to provide that same level of benefits.

While the record is replete with evidence that Caltrans' modeling got this issue wrong, Caltrans never faced up to its error. Caltrans insists that its model complies with applicable standards, and should therefore be credited notwithstanding the substantial, unrebutted evidence of major modeling flaws. But the record shows that Caltrans' model does not meet its own standards. Caltrans buried that evidence in appendices rather than addressing it.

The model also did not accurately account for how adding a new lane would influence and interact with nearby land uses; this failure led to the model further overstating how much the Project might reduce vehicle miles traveled. The need to consider these land-use interactions is both well-known and clear in the record: Additional highway capacity can initially reduce commute times for far-flung neighborhoods, encouraging people to move further from job centers, increasing the length of their commutes, and therefore adding total miles driven. And, over time, as more people move further out, more sprawling land uses are built to accommodate this induced demand. As more people fill the added lane, a new congested equilibrium is reached, and yet more highway capacity may be added. Caltrans is aware of this, and aware that

changes in land use are the most important of all the variables in Caltrans' model. But Caltrans failed to take land use changes into account. Instead, Caltrans used the same land use assumptions when modeling every alternative. In essence, even when modelling what traffic would look like without the Project, Caltrans applied land uses that presupposed that the Project had been built. That's not even remotely plausible: Without added highway capacity, further development would likely be curbed, leading to fewer drivers on the road and fewer miles traveled than if the Project were built. Caltrans ignored this, sandbagging the No Build alternative with driving that would only come to pass with the Project, and thereby understated the difference in miles driven with and without the Project.

These errors significantly distort Caltrans' environmental assessment. Caltrans used the model's traffic outputs not only to evaluate how the Project would change traffic patterns, but also to estimate the Project's impact on air quality, greenhouse gas emissions, and energy use. Because of Caltrans' traffic-modeling errors, the EIR's assessment of each of these other impacts is also flawed.

Third, while the EIR acknowledges that the project will have significant transportation impacts, Caltrans has declined to mitigate more than half of those impacts. Caltrans claims that, limited by budget, it couldn't afford to do more. But Caltrans' budget was self-determined. No substantial evidence in the record shows that Caltrans could not have obtained more funding.

Fourth, Caltrans inadequately evaluated the Project's impacts on wildlife. Light pollution from highway lighting and signage can disrupt species' circadian rhythms, disturb foraging and migration, and cause species which are attracted to light to collide with the light source. Caltrans failed to analyze the Project's lighting impacts—and, as an unsurprising result, failed to mitigate those impacts. Caltrans also failed to adequately respond to an expert sister agency, the

California Department of Fish and Wildlife ("Fish and Wildlife"), which proposed mitigation measures to protect several sensitive species.

Because Caltrans' analysis and findings are not supported by substantial evidence and Caltrans failed to follow proper procedures, Caltrans' certification of the EIR was unlawful. The Court should issue a writ directing Caltrans to set aside its certification of the EIR for the Project and suspend all Project activity that could result in any change or alteration to the environment until Caltrans complies with the requirements of CEQA.

LEGAL BACKGROUND

CEQA was adopted to "[e]nsure that the long-term protection of the environment . . . shall be the guiding criterion in public decisions." (Pub. Resources Code, § 21001, subd. (d).) "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Laurel Heights Improvement Assn. v. Regents of U. of Cal.* (1988) 47 Cal.3d 376, 390, cleaned up.)

CEQA requires agencies to prepare an EIR for projects that may have a significant environmental impact. (Pub. Resources Code, § 21100, subd. (a).) Before drafting an EIR, the lead agency must send a notice of preparation to alert other agencies affected by the project. (*Id.* at § 21080.4; Guidelines, § 15082, subd. (a).) These agencies must respond with significant environmental issues, alternatives, and mitigation measures that must be explored in the EIR. (Guidelines, § 15082, subd. (b).) The lead agency then must prepare a draft EIR and circulate it for public comment. (*Id.* at §§ 15084-87.) After the public has a chance to provide that comment, the lead agency must prepare the final EIR, including responses to the comments and any revisions to the draft EIR in response to the comments. (*Id.* at §§ 15088-89.)

CEQA's environmental review process protects the environment and informed self-government, and is intended to demonstrate "that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights, supra*, 47 Cal.3d at p. 392, citations omitted.) The EIR is the "heart of CEQA." (*Ibid.*, citations omitted.)

The EIR must disclose a project's significant environmental impacts. (Pub. Resources Code, § 21100, subd. (b)(1).) Senate Bill 743 (2013) revised how a project's transportation impacts are analyzed, with the goal of promoting "the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." (Pub. Resources Code, § 21099, subd. (b)(1).) Under these revisions, a project's transportation impacts are measured by vehicle miles traveled (VMT), which is "the amount and distance of automobile travel attributable to a project." (Guidelines, § 15064.3, subd. (a).) This analysis is separate from and in addition to the analysis of other environmental impacts required by CEQA. (See Pub. Resources Code, § 21099, subd. (b)(3).)

"The core of an EIR is the mitigation and alternatives sections." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.) Whenever feasible, agencies must avoid or significantly reduce environmental effects by implementing project alternatives, mitigation measures, or both. (See Pub. Resources Code, § 21001, subd. (g); Guidelines, § 15002, subd. (a)(3); *Laurel Heights*, *supra*, 47 Cal. 3d at p. 401.)

In particular, "[a]n EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project . . . which: (1) offer substantial environmental advantages over the project proposal; and (2) may be feasibly accomplished in a successful manner considering the economic, environmental, social and technological factors involved." (*Citizens of Goleta Valley*, *supra*, 52 Cal.3d at p. 566, cleaned up.) Alternatives can be

eliminated from detailed consideration for "(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." (Guidelines, § 15126.6, subd. (c).) "A potentially feasible alternative that might avoid a significant impact must be *discussed* and *analyzed* in an EIR so as to provide information to the decision makers about the alternative's potential for reducing environmental impacts." (*Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, 1304, original italics.)

Agencies must implement all feasible measures to mitigate any significant environmental impacts. (See Pub. Resources Code § 21002.1, subd. (b).) A project with unmitigated significant environmental impacts may be approved only if the agency finds that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (*Id.* at § 21081, subd. (b).) "But even when a project's benefits are found to outweigh its significant environmental effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible." (*Yerba Buena Neighborhood Consortium, LLC v. Regents of U. of Cal.* (2023) 95 Cal.App.5th 779, 792, cleaned up.)

The adequacy of an EIR is reviewed for abuse of discretion. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) An agency abuses its discretion if it fails to proceed in a manner required by law or reaches a decision unsupported by substantial evidence. (*Ibid.*; Pub. Resources Code, § 21168.5.)

STATEMENT OF FACTS

California's environment and communities are already facing the effects of climate change, as documented by the California Air Resources Board ("the Air Board"), the lead state agency for climate change and air pollution regulation. Drought, wildfire, and extreme heat,

among other impacts, are increasing in severity and frequency. (AR013089 [EIR at 4-382 (Air Board's 2022 Scoping Plan for Achieving Carbon Neutrality)].) The largest wildfire season in state history occurred in 2020, drought conditions have persisted for over twenty years, and California's hottest recorded summer was 2021. (*Id.* at AR013089-94.)

The transportation sector accounts for about half of statewide greenhouse gas emissions and is by far California's single largest source of carbon pollution. (*Id.* at AR013258.) Although vehicle efficiency improvements could lower emissions, this progress could be negated if drivers continue to increase how much they drive. Accordingly, reducing the cumulative total of miles driven by 25% per capita by 2030 is indispensable to meeting California's climate and air quality goals. (*Id.* at AR013266-68.)

Caltrans' own guidance, which it issued to implement Senate Bill 743, recognizes that increasing highway capacity increases the total amount of driving. (AR013633 [EIR at 4-928 (Caltrans Transportation Analysis Framework)].) Adding a lane temporarily alleviates traffic, reducing the perceived "cost" of driving, but this temporary relief induces more drivers onto the road, with two effects. First, people drive more, and so total miles driven increases. Second, because more people start driving, eventually the added lane also fills with traffic. In Caltrans' own words, this "reduc[es] the effectiveness of capacity expansion as a strategy for alleviating traffic congestion." (*Id.* at AR013635.)

It is against this backdrop that Caltrans proposed to expand highways in Solano, Yolo, and Sacramento counties. (AR012177 [EIR at 1-1].) The Project would add a high-occupancy toll lane for free use by vehicles with three or more riders in each direction of traffic. (*Id.* at AR012207 [EIR at 1-32].) This Project is part of Caltrans' larger pattern of pushing for highway expansions, even as it acknowledges the various shortcomings of expansion projects. One

Caltrans official has described the agency as "a construction company" that measures success based on the number of projects built. (See AR004532-33.)

The Project is estimated to cost around $466 million. (AR038040.) About $86 million of that will come from a federal Infrastructure for Rebuilding America grant. (*Ibid*.) The United States Department of Transportation awarded this grant to the Yolo County Transportation District, which then passed the money on to Caltrans. (See AR040307.)[1] The federal grant money had to be obligated by September 30, 2024, or it would be lost. (AR038301.) This put Caltrans under pressure to complete the EIR sufficiently in advance of that deadline to be able to put the Project out to bid and award the contract. (See AR046065 [email from Yolo County Transportation District to Caltrans urging that "[w]e cannot access those federal funds until environmental review is completed"].)

Caltrans went to considerable lengths to obtain that federal funding. Before the EIR for this Project, Caltrans separately approved what it called a "pavement rehabilitation project" within the same boundaries as the Project. CEQA requires all parts of a project to be considered together, rather than piecemealed across separate reviews to minimize the impacts of each part. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358.) Caltrans justified undertaking a separate, abbreviated environmental review for the rehabilitation project, rather than analyzing it as part of this Project, by claiming that the "pavement rehabilitation" was entirely "independent" of the roadway widening. (AR012725-26 [EIR at 4-20 to 21].) But the funding applications for the Project show otherwise: Caltrans used

---

[1] According to an interview with a Yolo County Transportation District official, Caltrans had applied for this grant several times already but had been rejected each time. So, to make it look like the Project has local support, Caltrans ghostwrote most of the eventually successful application and asked the Yolo County Transportation District to submit it. (AR004488.)

the "rehabilitation" project to prepare for the highway expansion and to help support the argument for funding. Specifically, Yolo County Transportation District's federal funding application, which Caltrans provided feedback on (see AR041556 ["Yolo 80 INFRA Draft Application Review – COB Today"]), affirmatively represented that "[w]ork from [the pavement rehabilitation project] will be leveraged to assist with the construction of the HOV lanes for the Project." (AR040305.) "The widening and re-pavement through the pavement project would reduce the cost and schedule of the Project." (*Id.* at AR040306.)[2] The grant application also relied on the "pavement rehabilitation" project's state funding as "a state funding match contribution" for the highway-widening Project in an effort to make the Project more competitive for federal funding. (AR040307.)[3]

Caltrans alerted other agencies about its intention to prepare an EIR for the Project on June 7, 2021. (AR000021.) In response, agencies asked Caltrans to consider an alternative with multiple tolled lanes in each direction. The Sacramento Metropolitan Air Quality Management District, which has jurisdiction over air pollution in the Project area (AR003590), requested an alternative "that incorporates two [tolled] lanes in each direction, including one that uses an existing lane." (*Id.* at AR003593; see also AR018568 at tab 3 [Caltrans document noting that a multiple tolled lanes alternative was "[r]equested by Yolo County"].) The Sacramento

---

[2] In its application for state and local funds for the Project, Caltrans similarly acknowledged that "[w]ork leveraged from the pavement rehabilitation project will accommodate the managed lanes, reduce the cost, and schedule of the Project." (AR038137; see also AR018549 [another funding application admitting that "the project will utilize the widened and paved median shoulders from a pavement rehabilitation project as a portion of the new managed lane facilities"].)

[3] Similarly, in its other applications, Caltrans used the money for the pavement rehabilitation project as matching funds for this Project. (See AR018549 [claiming that the pavement rehabilitation funds would "lay the foundation for the project and will serve as 209% of the funding request and 15.6% of the project cost"].)

Metropolitan Air Quality Management District informed Caltrans that multiple tolled lanes operating in tandem could better alleviate congestion. (AR003593.) A Caltrans risk assessment, which was written by Caltrans staff who were separate from the team working on this Project, also recommended an alternative with more tolled lanes. (AR009179.) The risk assessment noted that more tolling would bring in more funds for mitigation. (*Id.* at AR009176-77.) The risk assessment also expressed frustration that Caltrans "has said that the additional analysis [for a multiple tolled lanes option] would take too much time, but that assertion was made many months ago, leaving time for such work." (*Id.* at AR009177.)

Caltrans published a draft EIR for the Project on November 9, 2023. (AR000170.) The draft EIR did not include any alternatives with more than one tolled lane in each direction. (AR000173-74.) Many comments on the draft EIR also asked for an alternative with multiple tolled lanes. For example, the Air Board, the statewide air pollution regulator, requested that Caltrans consider an alternative in which multiple lanes were tolled, since that approach would do more to reduce traffic congestion while also generating more revenue that could be used to mitigate the Project's impacts. (See AR012752-53 [EIR at 4-47 to 48].) The Air Board noted that Caltrans has several ways to toll multiple lanes, including tolling all the existing lanes in the corridor or converting an existing lane to a tolled lane while also adding a tolled lane. (*Ibid.*) The Air Board also noted that the controlling regional land use and transportation plan—the Sacramento Area Council of Governments' "Metropolitan Transportation Plan/Sustainable Communities Strategy"—specifies that the Project would have two tolled lanes in each direction. (*Ibid.*) State law requires such regional plans in order to lay out how the region will meet state climate goals. (See Sustainable Communities and Climate Protection Act, Gov. Code. § 65080.) The plan referenced by the Air Board lists all planned transportation projects in the region,

including the Project at issue here—and it specifically identifies the Project as having more than one tolled lane in each direction. (See AR012753 [EIR at 4-48]; AR013455 [EIR at 4-750 (Air Board's evaluation of the regional plan showing "Multilane Express Lane" in the Yolo 80 Corridor)].) Despite that regional plan, and despite the Air Board's and others' requests, Caltrans' final EIR did not analyze any alternatives with more than one tolled lane in each direction.

To forecast traffic conditions with and without the Project, Caltrans relied on SACSIM19, a regional travel demand model. (AR034979.) SACSIM19 is a model that predicts how transportation networks in the Sacramento region (El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba counties) will respond to changes. (*Ibid*.) Caltrans then used the model's traffic forecasts to estimate the Project's impacts on greenhouse gas emissions, air pollutant emissions, and energy. (See AR012438-42 [EIR at 2-196 to 2-200]; AR012512 [EIR at 2-270]; AR001215-26 [Air Quality Report].)

SACSIM19 is what is known as a "static assignment model," meaning that it cannot vary driver behavior: It assumes that no matter the traffic conditions, drivers will act in the same way—and, in particular, that drivers will not change their departure times or destinations to avoid congestion. In other words, SACSIM19 assumes that drivers will robotically pile onto already congested freeways, at predetermined times and to reach predetermined destinations, regardless of traffic. (See AR035030 [Caltrans' traffic consultant admitting that SACSIM19 can "result in volumes that exceed capacity"]; AR012755 [EIR at 4-50 (Air Board comment)].) Resting on that inflexible assumption, SACSIM19 predicts that congestion will eventually get so bad that it would be faster to take a 20-mile detour than to take the Project's route. (AR012360 [EIR at 2-118] ["By horizon year 2049, I-80 and US 50 in the project area would become so

congested that travelers would seek longer paths to have a lower travel time."]; AR033631 ["Due to study area congestion, drivers would divert long distances (primarily to I-5 and SR 113 via Woodland) to travel more quickly."].)

Caltrans used SACSIM19's prediction that drivers would eventually drive all those additional miles as the baseline against which to compare the Project's impacts. Caltrans asserted that because the Project adds another lane, and therefore adds highway capacity, "travelers would shift back to I-80," avoiding the lengthy detour that SACSIM19 concluded they would otherwise take. (AR012360 [EIR at 2-118].) Based on this assertion, Caltrans erroneously concluded that, in the long term, the Project would actually lower the number of vehicle miles traveled in the region. (See AR035024 [showing SACSIM19 predicts lower vehicle miles traveled with the Project than without].)

This conclusion flies in the face of established literature and Caltrans' policies. Research has shown that, in the long term, adding lanes induces more driving, not less, increasing total miles driven. (AR013611-12 [EIR at 4-906 to 907 (citing "ample support in the literature")].) This is not a novel or controversial conclusion: Caltrans' own Transportation Analysis Framework recognizes that adding highway capacity leads to an increase in the total amount of driving. (AR013633 [EIR at 4-928].)

Caltrans used SACSIM19's traffic and vehicle miles traveled predictions to estimate other environmental impacts. Based on the SACSIM19 calculation that drivers would drive fewer miles if the Project were built, the agency asserted that the Project would lower greenhouse gas emissions, air pollution, and energy use. (See AR012438-42 [EIR at 2-196 to 2-200]; AR012512-14 [EIR at 2-270 to 272]; AR001215-26 [Air Quality Report].)

In response to the draft EIR, the Air Board, California's authority on air pollution, asked

Caltrans to use a dynamic assignment model instead of SACSIM19. A dynamic assignment model, unlike SACSIM19, does not assume that drivers are inflexibly locked in to predetermined departure times and destinations, regardless of traffic conditions. (See AR012755-56 [EIR at 4-50 to 51 (Air Board comment)].) A dynamic assignment model could, unlike SACSIM19, assess that drivers might leave a little earlier or later, or head to a different destination (a different movie theater, say), to avoid congestion. This more realistic form of modeling would, in turn, tend to lower the prediction of how many miles travelers would drive without the Project. (*Ibid.*)

The Air Board noted that some guidelines recommend dynamic assignment models for projects similar to this one. (See *id.* at AR012756.) That could hardly surprise Caltrans, which—along with its own consultants—recognized that SACSIM19 was deeply flawed. However, Caltrans refused to analyze the Project with a dynamic assignment model because "a new tool or significant additions to SACSIM 19 would be needed" (AR012726 [EIR at 4-21].) And time to meet the September federal funding deadline was running short.

On top of its inability to model realistic human behavior, SACSIM19 also does not account for traffic changes caused by land use changes. A project which adds transportation capacity, like this one, will induce land use changes, which in turn will affect the transportation network. For example, people consider transportation options when choosing home or business locations, as do local governments when making development policy decisions. Over time, these land use changes lead to changes in transportation networks (AR013634-35 [EIR at 4-929 to 930]), such as highway expansions near new developments. For this reason, Caltrans' own guidelines recognize that land uses can affect transportation networks and vice versa. (*Ibid.*) And land-use inputs significantly affect what outputs SACSIM19 produces. As Caltrans' traffic consultant noted, "model inputs [in SACSIM19] for land use growth have the largest effects on

future travel demand." (AR033520.)

Because of this relationship, Caltrans' guidance explains that a model is flawed if the model does not alter its land use inputs "as a result of transportation system changes." (AR013641 [EIR at 4-936 (Caltrans Transportation Analysis Framework)].) However, Caltrans did not account for land use changes caused by the Project when using SACSIM19. Instead, Caltrans used the same land-use assumptions to analyze all the alternatives, including the No Build alternative. (AR035030 ["Caltrans directed that the model land uses be maintained without changes . . . for all alternatives, including the no build alternative."].) As a result, SACSIM19 does not account for the land use changes and associated traffic impacts caused by each alternative, especially the baseline No Build alternative. (AR037215 ["What is not captured is how the no build alternative would affect long-term effects on trip generation and land use growth allocations."].) Common sense suggests, for example, that if no new lanes are added, there will be less new development in the area; that, in turn, would lead to fewer drivers on the road than if new lanes are added. And fewer drivers on the road under the No Build alternative would mean that building the Project would not appear to reduce driving by as much as Caltrans claims. As Caltrans' own traffic consultant explained, if SACSIM19 *had* accounted for land use changes, "the predicted [vehicle miles traveled] reduction with the build alternatives would likely be lower." (AR035032; see also AR035030 [the model "may not capture the full difference between no build and build alternatives"].)

After reviewing the draft EIR, the Air Board, a state agency with expertise on and jurisdiction over the connection between land use and transportation as it relates to climate and air pollution goals, asked Caltrans to factor land use changes into SACSIM19. (AR012756-57 [EIR at 4-52 to 53].) So, too, did other commenters. (See, e.g., AR013043 [EIR at 4-338].) With

the federal-funding deadline approaching, however, Caltrans chose not to develop a No Build land-use input; Caltrans cited time and budget risks. (See AR030531.)

Because of its various shortcomings, SACSIM19 did not meet the requirements for transportation impact analysis under Senate Bill 743. Therefore, for that specific purpose, Caltrans used a different model, the National Center for Sustainable Transportation ("National Center") calculator. (AR012360 [EIR at 2-118].) The National Center calculator estimated that the Project would lead, not to a reduction in vehicle miles traveled, but to more than 100 million additional vehicle miles traveled—every single year. (*Id.* at AR012366 [EIR at 2-124].) This estimate is much higher than SACSIM19's. (Compare AR035024 [SACSIM19 results] with *id.* at AR035031 [National Center calculator's results].) Transportation impacts revealed by Caltrans' use of this other model are the only significant environmental impact Caltrans admitted to in the EIR. (See AR012676-77 [EIR at 3-41 to 42].)

The Project is estimated to cost around $466 million. Of that sum, $105 million will come from state funds and about $86 million from the federal grant. (AR038040.) Caltrans budgeted about 16 percent of the total Project's cost for mitigation, claiming that this was the maximum amount feasibly obtainable from grants. (AR036602.) The record does not contain substantial evidence to support that conclusion. Although Caltrans knew from at least as early as February 2021 that the Project would likely cause a significant increase in vehicle miles traveled (see AR033623 at table 3), necessitating mitigation, Caltrans did not seek funding to mitigate the full impacts of the Project. (See, e.g., AR038144 [grant application apparently conceding that "the Project will pursue a Statement of Overriding and Consideration (sic)"]; cf. also AR009177 [risk assessment noting that Caltrans asked for a Statement of Overriding Considerations prior to circulating the draft EIR, which is "improper per CEQA"].) With its self-imposed mitigation

budget cap, Caltrans could only mitigate about half of the Project's induced vehicle miles traveled. (AR012367 [EIR at 2-125].) As the internal risk assessment team noted, the unmitigated additional driving casts doubt on whether the Project can meet its purpose, "as any newly induced traffic can re-congest the road." (AR009177.)

Petitioners,[4] expert sister agencies, and other organizations and individuals submitted comments on the draft EIR raising the issues contained in this brief. Caltrans published the final EIR on April 30, 2024 (AR012134.) In its responses to comments, Caltrans summarily dismissed most of the issues raised by sister agencies and the public, including those from expert sister agencies like the Air Board and Fish and Wildlife. (See, e.g., AR012796 [EIR at 4-91 (response to Fish and Wildlife comment deeming mitigation "adequate" so "[n]o changes to the Draft EIR/EA are necessary," without further analysis)].) Caltrans published the Notice of Determination on May 1, 2024. (AR000001.) Petitioners filed their petition for writ of mandate and complaint for declaratory and injunctive relief on May 29, 2024.

ARGUMENT

I. Caltrans' EIR unlawfully failed to assess alternatives that would feasibly attain the Project's objectives with fewer environmental impacts.

An EIR must consider a reasonable range of alternatives "which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the

---

[4] Petitioners are the Center for Biological Diversity, the Planning and Conservation League, and Natural Resources Defense Council, Inc. Petitioners have standing because their members in California and in the Project counties will be harmed by the Project, and because enforcing Caltrans' public duty to comply with CEQA is central to their missions, as evidenced by their comments on the draft EIR. (AR012901, AR013038, and AR013742 [EIR at 4-196, 4-333, and 4-1037]; see also Center for Biological Diversity, *About Us* <https://www.biologicaldiversity.org/about/>; Planning and Conservation League, *About Us* <https://pcl.org/about-us/#>; Natural Resources Defense Council, *About NRDC* <https://www.nrdc.org/about>.)

significant effects of the project." (Guidelines, § 15126.6, subd. (a).) A feasible alternative that would substantially lessen a project's impacts must be discussed with enough detail to inform decision makers about its impact-reducing potential. (See *Habitat & Watershed Caretakers*, *supra*, 213 Cal.App.4th at p. 1304.) Caltrans violated this core CEQA requirement.

Multiple commenters, including the state's Air Board, asked Caltrans to consider an alternative with more than one tolled lane in each direction. Such an alternative would better reduce congestion while generating more revenue for mitigation. This alternative was feasible, would achieve the Project's objectives, and could substantially lessen the Project's environmental effects. Caltrans' failure to consider it was unlawful.

Notably, the region's transportation plan called for this Project to be designed around multiple toll lanes in both directions. (See pp. 15-16, *supra* [describing the regional plan].) To construct such a configuration, Caltrans could add a tolled lane, as its preferred alternative does, and then convert an existing general-purpose lane to a tolled lane. Caltrans has committed to considering such a conversion in the future. (See AR036602 ["Caltrans will initiate a Project Initiation Document (PID) for a new project in July 2025 which will include, but not be limited to, alternatives such as the addition of toll lanes and *the conversion of general-purpose lanes*." (emphasis added)].) But, facing an impending federal funding deadline, Caltrans decided not to consider this alternative in the Project's EIR.

Caltrans tried to explain this omission by suggesting that another tolled lane was legally infeasible—prohibited by Government Code section 64112 and section 129 of title 23 of the United States Code. (AR012724-25 [EIR at 4-19 to 20].) This claim is not entitled to deference (*Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238 [legal feasibility of a mitigation measure reviewed de novo]) and is difficult to square with Caltrans' simultaneous

commitment to assess such a conversion starting in July 2025. (See, e.g., AR036602.)

As suggested by Caltrans' plan to consider converting regular lanes to tolled lanes, a second toll lane is legally feasible. The statutes Caltrans cites may prohibit *direct conversion* of a regular lane into a tolled lane, but those statutes do not prohibit converting a general-purpose lane into a carpool lane, and then converting that carpool lane into a tolled lane. In fact, the record shows that the Federal Highway Administration presented Caltrans with this very option, explaining that a general-purpose lane could be converted to a tolled lane in two steps—and that the "[t]wo steps can be executed at the same time." (AR042256-57 [Regulatory Framework for Conversion of Freeway Lane to Priced Lane].) As the Federal Highway Administration explained, this process is authorized by sections 166 and 810 of title 23 of the Code of Federal Regulations. (*Id* at AR042257-58.) Sections 149 and 149.7 of the Streets and Highways Code provide state authorization for the same process. Caltrans nowhere explains why it didn't pursue that two-step conversion process in connection with a multiple-tolled-lane alternative.

Adding a second tolled lane to the highway would have met the Project objectives. Those purposes include: 1) easing congestion and improving overall person throughput; 2) improving freeway operations on the mainline, ramps, and at system interchanges; 3) supporting reliable transport of goods and services throughout the region; 4) improving modality and travel time reliability; and 5) providing expedited traveler information and monitoring systems. As Caltrans concluded, managed lanes (such as tolled lanes) "manage traffic congestion, accommodate travel demands, and improve modality and travel time reliability." (AR012695 [EIR at 3-60].) Caltrans used this argument to support its choice of an alternative with one tolled lane. (AR012207 [EIR at 1-31].) Having more than one tolled lane would have the same benefits; as the Sacramento Air Management District noted, multiple tolled lanes "in tandem" are more effective at managing

congestion than just one. (AR003593.) Easing congestion would improve freeway operations and support reliable goods and services transport.[5]

In attempting to justify its failure to consider another tolled lane in the final EIR, Caltrans hypothesizes that more tolled lanes could "*potentially* negatively impact heavy freight vehicle movement through the region," (AR012724 [EIR at 4-19], emphasis added.) "[A]n EIR should not exclude an alternative from detailed consideration merely because it would impede to some degree the attainment of the project objectives." (*Yerba Buena Neighborhood Consortium*, *supra*, 95 Cal.App.5th at p. 791,) In any event, Caltrans offers no evidence or analysis to support its speculation that making a second lane tolled would worsen congestion. If it *knew* that to be true, presumably it would not now be planning to do what its rush to complete the EIR didn't allow: assess whether to place tolls on another lane in the future. For now, the record shows that, when arguing in support of its preferred alternative, Caltrans claims that tolled lanes ease congestion, and less congestion supports the movement of goods. (See, e.g., AR012207 [EIR at 1-31].)

Similarly, Caltrans' other reasons for refusing to consider tolling more than one lane are speculative and unsupported. Caltrans claims that multiple tolled lanes "would likely result in many of the diversion, VMT, equity, and environmental justice issues would result from the Tolling All Lanes alternative, but perhaps to a lesser degree." (AR012724 [EIR at 4-19].) But Caltrans did not assess these questions; it instead simply hypothesized a concern. An alternative that tolls more than one lane in each direction could still offer drivers a choice between the remaining, untolled general-purpose lanes and tolled lanes. Further, Caltrans claims that the Project's environmental justice and equity impacts would be ameliorated by mitigation measures

---

[5] Expedited travel information and monitoring systems would be accomplished by the accessory work planned for all the alternatives. (See AR012185, AR012189 [EIR at 1-9, 13].)

(AR012328-29 [EIR at 2-86 to 87]), but does not explain why these same measures would not work for tolling more than one lane.

Finally, tolling more than one lane in each direction would offer substantial environmental benefits. Caltrans admits that the Project would increase vehicle miles traveled. Caltrans failed to budget enough to fully mitigate this impact. Another tolled lane would increase revenue for mitigation to reduce the Project's significant environmental impacts, and should have been considered. (AR012753 [EIR at 4-48 (Air Board comment)]; see also *id.* at AR014072 [EIR at 4-1367 ("Future potential toll revenue . . . would continue to provide ongoing mitigation.")]; AR036602 ["Further mitigation funding may be supplemented . . . with excess net tolling revenue."].)

II. Caltrans violated CEQA by falsely claiming the Project was consistent with the regional transportation plan.

"An EIR must 'discuss any inconsistencies between the proposed project and ... regional plans' including 'regional transportation plans.' (Guidelines, § 15125, subd. (d).) This determination must be supported by substantial evidence." (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 540.)

Caltrans repeatedly claims that the Project does not conflict with applicable plans, summarily pronouncing that the Project is included in the relevant regional transportation plan. (See, e.g., AR012657 [energy], AR012662 [greenhouse gas emissions], AR012695 [climate change] [EIR at 3-22, 3-27, 3-60].) Caltrans' pronouncement ignores one critical fact: In the regional transportation plan, the Project was configured with two tolled lanes in each direction. (See pp. 15-16, *supra*.) Caltrans is not building the project found in the regional transportation plan; it is building something more environmentally harmful.

III. Caltrans used a faulty baseline with inadequate support, violating CEQA.

Environmental baselines, including projected future conditions, must be "reliable projections based on substantial evidence in the record." (Guidelines, § 15125, subds. (a)(1), (2).) Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Pub. Resources Code, § 21082.2, subd. (c).) "Argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous . . . is not substantial evidence." (*Ibid.*) An accurate description of the baseline is crucial because "without such a description, analysis of impacts, mitigation measures and project alternatives becomes impossible." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953.)

Caltrans used SACSIM19 to project future conditions without the Project. This was the baseline for environmental review. However, Caltrans knew that SACSIM19 was not reliable because Caltrans' traffic consultant consistently pointed out errors in SACSIM19. For example, Caltrans knew that SACSIM19 assumed irrational driver behavior, resulting in an overestimate of the number of vehicle miles traveled. SACSIM19 thereby inflated the baseline against which the Project's impacts were measured. (See pp. 16-18, *supra*.) As Caltrans' traffic consultant conceded, "the model completes all origin-destination (OD) trips during peak hours even if the congested travel time would require longer than one hour to complete the trip," even though "[t]his is not realistic and would not occur with a [dynamic assignment model]." (AR033518.)

Caltrans also knew that land use inputs in SACSIM19 have the largest effects on traffic predictions, but—short on time—chose not to factor in land use changes. That led to further inflation of the baseline. (See pp.18-20, *supra*.) "[E]vidence which is clearly inaccurate or erroneous . . . is not substantial evidence." (Pub. Resources Code. § 21082.2, subd. (c).)

Caltrans defended its choice not to use a dynamic assignment model by arguing that "a new tool or significant additions to SACSIM19 would be needed." (AR012726 [EIR at 4-21].)[6] In other words, Caltrans chose not to use a more accurate model because doing so would take more time. Similarly, Caltrans did not utilize a land use input that accurately reflected conditions without the Project because SACSIM19 did not come preloaded with one, and it would take time to develop such a land use input. (See AR030531.)

Caltrans' problem, however, is that it knew the model it used was unreliable and did nothing to address that. Caltrans contends that its use of SACSIM19 is "consistent with current modeling standards, guidelines, and practices and was approved for use by SACOG." (AR012722 [EIR at 4-17].) But this defense fails to acknowledge, let alone address substantial evidence—including Caltrans' own consultants' assessment—that Caltrans knew the model was making the Project appear less environmentally harmful than the Project actually would be.

Moreover, Caltrans' claim of consistency with "current modeling standards" is not supported by the record. Here, unlike in cases like *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 372, Caltrans's methodology did not comply with industry standards. The *California Regional Transportation Plan Guidelines*, the standard Caltrans chose, requires that "[a]t least 75 percent of the roadway links . . . be within the maximum desirable deviation" of observed real-world conditions. (AR037171.) In initial test runs of SACSIM19, "the percentage within the maximum deviation [was] less than 75 percent" (*Id.* at AR037194.) And the record shows that, even after refinement, only 66 percent of

[6] Caltrans also claimed, without any evidentiary support, that a dynamic assignment model would provide few benefits. (AR012726 [EIR at 4-21].) However, conclusory statements are not substantial evidence. (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 542.)

SACSIM19's model runs were within the maximum deviation. (*Id.* at AR037196.) The Air Board pointed out this shortcoming in its comment, but Caltrans did not respond to this point. (AR012757 [EIR at 4-52 (Air Board comment)].) Far from complying with existing standards, Caltrans' unlawful use of SACSIM19 to set the Project's baseline violated those standards and made it impossible for decisionmakers and the public to understand the Project's actual impacts or whether the Project would even achieve its purposes.

IV. Caltrans violated CEQA by rejecting, without substantial evidence, feasible mitigation measures for transportation impacts.

Caltrans admits that the Project will induce drivers to drive an additional 100 million miles per year. (AR012677 [EIR at 3-42].) Caltrans claims that it could only feasibly mitigate about half of this impact. (See pp. 20-21, *supra*.) That claim does not survive scrutiny.

"Whether a measure is feasible is a factual finding reviewed for substantial evidence." (*People ex rel. Bonta v. County of Lake* (2024) 105 Cal.App.5th 1222, 1236, citation omitted.) A conclusion that a mitigation measure is economically infeasible must be supported by enough financial evidence to allow a comparison. (See *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599-601.)

The allegedly "substantial" evidence that Caltrans cites to support its assertion that more mitigation was infeasible is its own *ipse dixit* that more funding was not available. But the record does not show that Caltrans sought funding for additional mitigation; instead, it shows that Caltrans from the outset planned incomplete mitigation, and then sought and received enough funding to meet that incomplete mitigation goal.

From early in the Project's planning Caltrans knew it would likely cause a significant increase in the number of miles driven. (See p. 20, *supra*.) Caltrans' internal guidance states that

"[t]he level of induced travel projected generally represents the level of VMT to be mitigated." (AR013699 [EIR at 4-994].) And "state agencies . . . shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities." (Pub. Resources Code, § 21106.) Further, the federal grant that Yolo County and Caltrans received specifically stated that those funds could be used for environmental mitigation. (AR038277.) Despite this, Project grant applications did not even *ask* for enough funding to mitigate the Project's effects. Caltrans nowhere explains why more money was not sought. Therefore, there is no "evidence that the additional costs . . . are sufficiently severe as to render it impractical to proceed with the project." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1181.)

Rather than mitigating the Project's acknowledged impacts, Caltrans adopted a statement of overriding considerations that claimed that further mitigation was infeasible due to financial constraints. However, a statement of overriding considerations must be supported by substantial evidence in the record. (Guidelines, § 15091, subd. (b).) An agency cannot simply bypass CEQA's mitigation requirement by declining to fund or seek funding for adequate mitigation; otherwise, CEQA's mitigation requirement would often be rendered meaningless. Caltrans' finding of infeasibility violated CEQA because it was not supported by substantial evidence.

V. Caltrans violated CEQA's information disclosure requirements by failing to analyze or disclose the Project's lighting impacts on wildlife.

CEQA requires that the EIR include detailed analysis of all potentially significant impacts, and the lead agency "must use its best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.) The de novo standard of review applies to the determination of informational sufficiency of an EIR, including "whether a description of an

environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact . . . ." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514.)

Here, the EIR failed to adequately describe the lighting impacts of the Project, particularly on wildlife and migratory birds. Fish and Wildlife and other commenters described how the Project would have both temporary and permanent lighting impacts, which can disrupt the circadian rhythms of many wildlife species as well as the migratory patterns of birds. (See AR012784-85 [EIR at 4-79 to 80 (Fish and Wildlife comment)]; AR003523-24 [Fish and Wildlife comment on Notice of Preparation].) Petitioner Center for Biological Diversity also cited studies that roads and their attendant lighting disturb and disrupt the behavioral patterns of wildlife. (AR012905 [EIR at 4-200], citing AR011056 [Conservation Biology study noting that roadway lighting can have negative effects on many animals such as birds, including by disturbing breeding patterns, interfering with migration, and increasing the probability that they will be preyed upon] and AR010727 [Environmental Law Institute study noting edge effects of development on birds].)

Despite multiple organizations and expert agencies raising this issue, the EIR contains no analysis of the Project's lighting impacts on wildlife. Indeed, the biological resources section of the EIR does not include a single mention of the Project's lighting impacts on wildlife, let alone any actual analysis or studies. (See AR012646-54 [EIR at 3-11 to 19].) Instead, Caltrans dismisses the possibility of lighting impacts without any analysis or evidence in its responses to comments (See AR012797 [EIR at 4-92] [EIR's response to Fish and Wildlife comments], AR012919-20 [EIR at 4-214 to 215] [similar response to Center for Biological Diversity's comments].) Moreover, Caltrans refused Fish and Wildlife's recommendations to conduct certain analyses, including a Light Output Analysis. (AR012797 [EIR at 4-92].)

The omission of any analysis of the Project's light impacts violates CEQA's information disclosure mandate. (See *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431 [EIR may not understate information concerning severity of impacts and skew perspective to downplay seriousness of impact]; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1050-1051 [EIR may not avoid important environmental considerations and sweep "serious criticisms [] under the rug"]; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 104, overruled on other grounds [EIR fails as an informational document by "omitting or ignoring contrary information"].)

VI. Caltrans violated CEQA's substantive requirements by failing to adopt all feasible mitigation measures for the Project's lighting impacts on wildlife.

Lead agencies may not approve a project as proposed if there are feasible mitigation measures that would avoid or substantially lessen the project's significant environmental effects. (Pub. Resources Code, § 21002.) An EIR is inadequate if it does not discuss such mitigation measures. (See *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 433].)

Here, Caltrans did not meet this requirement. Fish and Wildlife provided multiple recommended mitigation measures to reduce the lighting impacts of the Project on wildlife, including light output limits of under 2700 kelvin, reflective signs and road striping, and light pole shielding in coordination with Fish and Wildlife to reduce spillage of light. (AR012785 [EIR at 4-80]; see also AR003523-24 [Fish and Wildlife comments on Notice of Preparation recommending mitigation measures].)

Caltrans did not commit to any of these measures, but instead indicated they would pursue them if "practicable." (AR012797 [EIR at 4-92].) More specifically, the "Avoidance,

Minimization, and/or Mitigation Measures" or "AMMs" set forth in the EIR do not include any of these commitments. (See AR000770-75 [biological resources AMMs contain no measures to reduce lighting impacts on wildlife].) Caltrans' half-hearted commitment to mitigation measures does not meet CEQA's standards because they are not included in the EIR (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92-93 [mitigation measures must be disclosed in an EIR so the public and decisionmakers can evaluate, before project approval, whether they will be effective].) Even if Caltrans had included Fish and Wildlife's measures in the EIR with the qualification "if practicable," that would render the measures vague and unenforceable in violation of CEQA. (See *Cal. Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 180 & 198-200 [finding that "vague" and "noncommittal" mitigation measures do not comply with CEQA]; Guidelines § 15126.4, subd. (a)(2) [mitigation measures "must also be fully enforceable" by the public agency through permit conditions or other legally binding instruments].) Notably, Caltrans provided no analysis or evidence demonstrating that the measures recommended by Fish and Wildlife were infeasible. (See *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134 [lead agency "bears the burden" of showing that it approved the project only after evaluating feasible mitigation measures].) As such, Caltrans violated CEQA.

VII. Caltrans failed to follow CEQA's procedural requirements in rejecting the California Department of Fish and Wildlife's recommended mitigation measures for the Project.

Lead agencies must follow strict procedural guidelines when evaluating or rejecting mitigation measures proposed by an expert agency. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940.) To reject an expert agency's mitigation proposal, the

EIR must (1) lay out competing views of interested agencies, (2) identify areas of disagreement, and (3) address these disagreements in detail. (*Ibid*.) Whether an EIR satisfies this requirement is reviewed de novo. (*Id.* at p. 935.)

Caltrans did not meet these procedural requirements. Here, Fish and Wildlife recommended clear and enforceable mitigation measures to adequately protect bats, among other species. In particular, Fish and Wildlife concluded that AMM BIO-13, AMM BIO-14, and AMM BIO-15 as proposed in the EIR were vague and unenforceable, and then provided recommendations on how to revise these measures to comply with CEQA. (AR012782-83 [EIR at 4-77 to 78].) For instance, Fish and Wildlife recommended AMM BIO-13 be revised in the following ways: (a) include pre-construction surveys in all previously undisturbed areas, (b) biologists should be approved by Fish and Wildlife, (c) survey methods should be provided to Fish and Wildlife, and (d) if occupied roost sites are detected, construction should not commence until after consultation and concurrence by Fish and Wildlife that construction should commence. (*Id.* at AR012782; see also AR003535-36 [Fish and Wildlife recommending similar measures in comments on Notice of Preparation].)

Caltrans refused to implement any of Fish and Wildlife's recommendations for AMM BIO-13, AMM BIO-14, and AMM BIO-15, and instead provided short responses to each recommendation that "Caltrans deems" each measure "adequate" and "[n]o changes to the Draft EIR/EA are necessary." (AR012796-97 [EIR at 4-91 to 92].) Caltrans' responses did not comply with the procedural elements outlined in *Banning Ranch*.

Like the comments from the Coastal Commission in *Banning Ranch*, the comments concerning the shortcomings of AMM BIO-13, AMM BIO-14, and AMM BIO-15 came directly from Fish and Wildlife, an agency with a "vital regulatory role under [CEQA]." (*Cal. Assn. of*

Prof. Scientists v. Dept. of Fish & Game (2000) 79 Cal.App.4th 935, 942; *Banning Ranch*, *supra*, 2 Cal.5th at p. 941.) Also, as in *Banning Ranch*, Caltrans' response provided none of the CEQA-mandated analysis of why Fish and Wildlife's opinions were incorrect or why its recommendations were not feasible. (*Banning Ranch*, *supra*, 2 Cal.5th at p. 932; see also *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal. 3d 929, 935 ["EIR must contain facts and analysis, not just the agency's bare conclusions or opinions."].) The EIR does not describe or lay out Fish and Wildlife's views on the deficiencies with AMM BIO-13, AMM BIO-14, and AMM BIO-15, identify areas of disagreement between Fish and Wildlife and Caltrans, or address those disagreements in any detail. (See AR012796-97 [EIR at 4-91 to 92].) Caltrans' failure to comply with these requirements violates CEQA.

To the extent Caltrans had discussions with Fish and Wildlife about these measures outside of the EIR, such discussions are irrelevant to whether Caltrans complied with CEQA, as the analysis required by *Banning Ranch* must take place in the EIR. (See *Communities for a Better Environment*, *supra*, 184 Cal.App.4th at pp. 92-96. ["[T]he development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public."].)

CONCLUSION

For the foregoing reasons, Caltrans violated CEQA by approving the Project and certifying the EIR. Petitioners request that this Court issue a writ of mandate compelling Caltrans to set aside and vacate its certification of the EIR and approval of the Project, and to refrain from all Project activity that could result in any change or alteration to the physical environment until it complies with CEQA.

DATED: January 14, 2025

Respectfully submitted,

_____

JOHN P. ROSE, CSBN 285819
jrose@biologicaldiversity.org
ARUNA PRABHALA, CSBN 278865
aprabhala@biologicaldiversity.org
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, CA 94612
Telephone: (510) 844-7100
Facsimile: (510) 844-7150
Attorneys for Petitioner/Plaintiff
Center for Biological Diversity

_____

Alexander Hall, CSBN 354050
ahall@nrdc.org
Michael E. Wall, CSBN 170238
mwall@nrdc.org
NATURAL RESOURCES DEFENSE COUNCIL
111 Sutter St, Fl 21
San Francisco, CA 94104-4540
Telephone: (415) 875-8262
Facsimile: (415) 795-4799
Attorneys for Petitioners/Plaintiffs
Natural Resources Defense Council, Inc., and Planning and Conservation League

PROOF OF SERVICE

I, Alexander Hall, declare that I am over the age of 18 and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is: 111 Sutter St., Fl. 21, San Francisco, California. On January 14, 2025, I served true copies of the following attached document(s):

Petitioner's Opening Memorandum of Points and Authorities

The documents were served electronically to the email address set forth below:

Jessica Amgwerd
California Department of Transportation
P.O. Box 1438
Sacramento, CA 95812-1438
Email: Jessica.Amgwerd@dot.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 14, 2025, at Berkeley, California.

Alexander Hall

Printed Name

Signature