ERIN E. HOLBROOK, Chief Counsel
ALAN M. STEINBERG, Deputy Chief Counsel
PAUL BROWN, Assistant Chief Counsel
JESSICA M. AMGWERD, Attorney SBN 155757
ERIN QUINDO, Attorney SBN 357759
California Department of Transportation
1120 N Street (MS 57), Sacramento, CA 95814
P.O. Box 1438, Sacramento, CA 95812-1438
Telephone: (916) 654-2630
Facsimile: (916) 654-6128

Attorneys for Respondent/Defendant,
California Department of Transportation

(NO FEE PURSUANT TO GOV'T CODE § 6103)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL DIVERSITY; NATURAL RESOURCES DEFENSE COUNCIL, INC.; and PLANNING AND CONSERVATION LEAGUE, non-profit corporations, Petitioners/Plaintiffs, vs. CALIFORNIA DEPARTMENT OF TRANSPORTATION, a public entity; and DOES 1 through 20, inclusive, Respondents/Defendants.	Case No.: 24CV0777619 **RESPONDENT CALIFORNIA DEPARTMENT OF TRANSPORTATION'S OPPOSITION BRIEF** DATE: May 19, 2025 TIME: 10:00 A.M. DEPT.: 23 JUDGE: Hon. Michael Markman Action Filed: May 29, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

23 UNITED STATE CODE

42 UNITED STATE CODE

49 UNITED STATE CODE

CALIFORNIA

STREETS AND HIGHWAYS CODE

PUBLIC RESOURCES CODE

REVENUE AND TAXATION CODE

REGULATIONS

UNITED STATES

CALIFORNIA CODE OF REGULATIONS

INTRODUCTION

As the state moves closer to meeting its goal of net zero by 2045, the California Department of Transportation (CALTRANS) is tasked with meeting California's transportation needs and reducing greenhouse gas (GHG) emissions. In 2020, Senate Bill 743 (SB 743) became effective, amending the California Environmental Quality Act (CEQA) and establishing Vehicles Miles Traveled (VMT) as a new metric. CALTRANS is now required to analyze how transportation projects increase VMT, and if so, it is required to consider, avoid, and mitigate those increases. The Guidelines for the Implementation of the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15064.3, subd. (a); hereafter Guidelines.) As a result, CALTRANS has developed policies, procedures, training, and a statewide SB 743 Team to ensure all feasible measures are taken to avoid or mitigate increased VMT.

GHG reduction is a complex process with iterative solutions. Complete VMT avoidance and mitigation requires collective wisdom and effort at the federal, state, regional, and local levels. Advances are cumulative and build on prior successes. Feasible mitigation measures are evolving. Complete VMT avoidance and mitigation are not possible for every transportation project.

In this context, CALTRANS, in partnership with Yolo County Transit District (YCTD), developed the Yolo 80 Corridor Improvements Project (Project) on Interstate 80 and the U.S. 50. The Project uses multiple solutions to address the "heavy congestion and stop-and-go traffic contributing to accidents, increased vehicle emissions, increased travel costs, and reduced travel-time reliability" in Davis, West Sacramento, and Sacramento on two federal interstate highways. (Administrative Record "AR" 40313.) In this area, "traffic volumes are near or more than the roadway capacity as of 2014." (AR 40304.) This Project will create the first tolled managed lane for 28.4 miles in the region with a lower income bracket than the state average. This congested route is crucial for the "reliable transport of goods and services throughout the region." (**AR 12181.** [1]) The

[1] The Final Environmental Impact Report (EIR) is found in the Administrative Record at Bate Stamp numbering: **AR 12132-14102.** When the Final EIR is cited, the AR numbering will be in bold.

Project will meet transportation needs, reduce vehicle GHG emissions, reduce travel time, and increase multimodal networks.

CALTRANS, local agencies, and the public have spent years envisioning, scoping, planning, and obtaining partial funding to develop the Project. Now, three non-profit corporations, the Center for Biological Diversity (CBD), Natural Resources Defense Council (NRDC), and Planning and Conservation League (P&CL) (PETITIONERS), seek to derail this crucial and long overdue work by attempting to impose requirements beyond CEQA and its implementing regulations. This lawsuit lacks merit because CALTRANS' EIR met all legal requirements.

STATEMENT OF FACT

A. CONTEXT OF THE YOLO 80 CORRIDOR IMPROVEMENTS PROJECT

1. Purpose and Need for the Project

For over seven years, CALTRANS and YCTD have worked to address the severe traffic congestion on the Yolo Causeway in Davis, California, and the I-80 and U.S. 50 corridors, where the Project is located. (AR 3026.) After conducting a "preliminary investigation of the traffic congestion" in 2013, modeling showed that adding a High Occupancy Vehicle (HOV) *lane* through the project area would significantly reduce the traffic in the Corridor. (AR 47251.) The EIR identified the Project's purpose as follows:

- Ease congestion and improve overall person throughput[2]
- Improve freeway operation on the mainline, ramps, and system interchanges
- Support reliable transportation of goods and services throughout the region
- Improve modality[3] and travel reliability
- Provide expedited traveler information and monitoring systems (**AR 12181.**)

The EIR identifies the Project's needs as follows:

- Recurring congestion during the morning and afternoon peak periods exceeds the current design capacity, limiting person throughput.

[2] Throughput is the number of people moving efficiently through a region.

[3] Modality is the variety in modes of transportation. This includes access and multiple options for the movement of people and goods. Examples include access to transit, carpool, bicycle, and pedestrian facilities.

- Operational inefficiencies lead to the formation of bottlenecks due to short weaving and merging areas and lane drops.
- Inefficient movement of goods and services impedes regional and interstate economic sustainability.
- The corridor users rely heavily on single-occupancy vehicles with limited multimodal options such as transit, carpool, bicycle, and pedestrian facilities, resulting in unreliable travel times.
- Lack of real-time traveler information and coordinated traffic communication systems impedes timely response to roadway incidents, resulting in secondary collisions and increased nonrecurring congestion. (**AR 12181**.)

The Project's necessity is undisputed: it will ameliorate severe traffic congestion, decrease pollution, improve overall travel times considerably, advance multimodal goals, and address future transportation needs for the expected population growth. (**AR 12181-12182**, 38136.)

2. The Project Conception and Development Was a Long-Term Team Effort

The Project resulted from years of work between multiple agencies with a Project Development Team (PDT),[4] a Steering Committee,[5] and significant public involvement. (**AR 12706-12716**.) In May 2019, CALTRANS, YCTD, Sacramento Council of Government (SACOG), Yolo County, UC Davis, and the Cities of Davis and West Sacramento entered into a charter for the Project. (AR 42226.) CALTRANS conducted significant community outreach on the Project before filing its Notice of Preparation (NOP). (AR 21, **12706-12707**.) Most travelers on the "I-80/US-50 corridor during the peak commute periods originate primarily in the Cities of Davis, West Sacramento, and Sacramento." (AR 21986.) Participants from these areas expressed "opposition to tolling" from the workshops, but no one asked for multiple tolling lanes. (AR 4857-4899, 4999, 5019.) The opposition is unsurprising. The Project community study area has a median household income of $70,759 (below the state level), with 21.5% of the individuals below the poverty level

[4] The PDT met monthly from October 3, 2017 through early 2024, and included: (1) Yolo County Transit District (YCTD), (2) Sacramento Council of Government (SACOG), (3) West Sacramento, (4) the City of Davis, (5) Yolo County, (6) University of California (UC) Davis, and (7) CALTRANS. (**AR 12708**.)

[5] The Steering Committee consisted of CALTRANS and seven local stakeholders: (1) YCTD; (2) City of Sacramento; (3) Yolo County; (4) SACOG; (5) City of Davis; (6) UC Davis; and (7) the Bicycle Coalition. From June 6, 2018 through January 8, 2024, the Steering Committee held fifteen public meetings seeking community input. (**AR 12707**, 29592-29594.)

(more than double the state level). (AR **12306-12307**, 43353.) The Project will be the first tolled lane in the Sacramento region. (AR 38259.)

The NOP was filed on June 7, 2021, and revised, and additional community outreach was done during the 2021 scoping period. (AR 5081, **12706**.) Again, no members of the public advocated for more than one tolling lane. (AR 5081.) Although CALTRANS received numerous letters from public agencies during the scoping period, only one, the Sacramento Metropolitan Air Quality Management District (SMAQMD), suggested two tolling lanes. (AR 3593.)

3. The Project Met All of the Senate Bill 1 Requirements

Adding another highway lane can be a necessary but insufficient solution to relieve long-term traffic congestion. The Legislature addressed this in 2017 under Senate Bill 1 (SB 1),[6] creating the Solution for Congested Corridors Program to "address mobility, community, and environmental challenges along highly traveled corridors" and to expand travel choices. (Sts. & Hy. Code, §§ 2192.4, 2390; **AR 12180**.) To fund road maintenance and rehabilitation, improve highly congested corridors, and reduce GHG emissions, SB 1 added additional registration fees, increased the gasoline and diesel taxes, and altered the transportation funding process. (Rev. & Tax. Code, §§ 7360, 11050, 60050; Sts. & Hy. Code, § 2030 *et seq.*; Gov. Code, § 14460 *et seq.*; AR 38260.) Additionally, recognizing some essential projects would still add freeway lanes and increase VMT, the additional freeway lanes must be managed lanes[7] to receive state funding. (Str. & Hwy. Code, § 2391.) Responding to SB 1, CALTRANS provided statewide and regional guidance on managed lanes. (AR 42349-42350.) It also developed statewide and regional long-range planning documents to ensure compliance, including the Congested Corridor Plans, where the long-term vision is for the "I-80 to be an 8-to 12 lane freeway with managed lanes." (Rev. & Tax Code, § 11053, subd. (b); AR **12180**, 47262.)

---

[6] SB 1 made significant amendments to six state statutes: the Government Code, the Health and Safety Code, the Revenue and Tax Code, the Public Utilities Code, the Vehicle Code, and the Streets and Highways Code.

[7] Managed lanes include: (1) tolled express lanes; (2) limiting use to vehicles with two or more people; (3) limiting use to trucks or freight; and (4) "operational strategies . . . to manage overall traffic congestion." (**AR 12185**; Gov. Code, § 14106.)

B. SACOG AND CALIFORNIA AIR RESOURCES BOARD

SACOG is the Metropolitan Planning Organization (MPO) "for the Sacramento region." (AR 31612-31613.) An MPO is a legal entity designated for an "urbanized area with a population of more than 50,000 individuals". Under federal and state law, it prepares a Regional Transportation Plan (RTP) every 4 years. (49 U.S.C. §5303(d); 23 U.S.C. § 134(i).) The RTP sets goals for the next twenty years for "transportation investment and land use strategy" in the region to promote "jobs and economic opportunity, transportation options, and affordable housing" while improving air quality and reducing GHG emissions. (AR 31622.) Updates to the RTP require an EIR. (Gov. Code, § 65080, subd. (b)(2)(A).) An RTP also contains a transportation project list, which includes programmed projects with funding commitments. (AR 31684.) Under state law, an MPO must also prepare a Sustainable Communities Strategy (SCS), updated every four years. (Gov. Code, § 65080, subd. (b)(2)(A); AR 31612-31614.)

In developing their RTPs, MPOs use Travel Demand Models (TDMs), which must be consistent with the California Transportation Commission's (CTC) guidelines. (Gov. Code. § 14522.1, subd. (a)(1).) A TDM "is any relatively complex computerized set of procedures for predicting future trip making as a function of land use, demographics, travel costs, the road system, and the transit system. These models may cover an entire metropolitan area, a single city or county, of the entire State." (**AR 13665**.) To receive federal funding, an MPO must also develop a Transportation Improvement Program (TIP) that is consistent with the RTP and include "a priority list of proposed Federally supported projects" to be carried out 4-years after the TIP is adopted.[8] (23 U.S.C. § 134(b)(6), (j)(1)(2)(A).) The RTP[9] is the long-range planning document; the TIP is the short-range implementing document that enables programmed projects to be funded and built.

///

[8] States also prepare statewide transportation plans and TIPs that are consistent with the MPO RTPs and TIPs. (49 U.S.C. § 5304.)

[9] Under federal law an RTP is to be consistent with the state's transportation plan. (AR 31615-31616; 23 U.S.C. § 135; 49 U.S.C. § 5304; 23 C.F.R. § 450.214.) SACOG's RTP was consistent with CALTRANS California Transportation Plan. (**AR 12700**.)

1. SACOG's 2020 RTP/SCS Lists the Project as Having One Tolling Lane

SACOG combined its 2020 RTP with its SCS in one large document supported by an EIR filed with the State Clearing House. (AR 31593-32670, 44639-44829.) SACOG's RTP included the Project in its Project List (AR 31763) and its TIP (AR 38036- 38044).[10] In SACOG's 2020 RTP, the Project (CAL121276) is described as follows:

> On I-80 west in Davis in both directions from the Kidwell Rd 1C in Solano County (D4) to the US-50/I-5 interchange and I-80/West El Camino interchange in Sacramento: Construct managed lanes;[11] Pedestrian/bicycle facilities and ITS elements (project description may change based on results from the Managed Lanes Study. Project is being evaluated for Expressed Toll Lanes, High Occupancy Toll Lanes, HOV lanes and reversible lanes). EA 3H900.

(AR 31763.) The above language was purposefully vague for flexibility in planning and design. Notwithstanding the PETITIONERS' assertions, SACOG's 2020 RTP did **not** characterize the Project as having two express toll lanes in both directions. (AR 31593-32670.)

2. CARB's 2020 Evaluation of SACOG's RTP

Federal law assigns the responsibility for air quality to the states. (42 U.S.C. § 7407.) The California Air Resources Board (CARB) is a state agency that monitors GHG emissions and the air quality in California's air basins. (Health & Saf. Code, §§ 38510, 39607.) CARB establishes and updates the regional GHG emission reduction targets for MPOs. (Gov. Code, § 65080, subd. (b)(2)(iv).) After an MPO adopts an updated RTP, it is submitted (along with a description of the technical methodology used and an estimation of the GHG emissions in the region) to CARB. CARB cannot "approve" the RTP/SCS but rather indicates "acceptance" or "rejection." (Gov. Code, § 65080, subd. (b)(I).)

---

[10] The TIP referred to the Project as being a "(HOT)3+ lane in each direction with connectors. (AR 38040.)

[11] The word "lanes" aptly describes the Project. Traveling East on the I-80, after the Yolo Causeway I-80 splits into two: the I-80 North-East and the US 50 East. At this fork, the single managed lane then becomes two managed lanes. (AR **12182-12183**, 38217, 38137.)

In October 2020, CARB completed its "Evaluation of SACOGs' SB 375 Sustainable Communities Strategy," which included reviewing the Project within the "Proposed Managed Lanes in the SACOG Region." (AR 13426-13501.) CARB created a diagram depicting the scope of the managed lanes in the next twenty years. (AR 13455.) CARB noted that collectively, the "roadway capacity expansion projects" in the RTP would increase regional VMT from 7% to 12% "between 2016 and 2040." (AR 13453.) Further, CARB's 2020 Evaluation found SACOG's approach to roadway capacity expansion projects reasonable.

During the circulation of CALTRANS' Draft EIR, CARB reversed its opinions drastically on the reasonableness of SACOG's TDM. (**AR 12748, 12752-12753**.) In January 2024, it disingenuously described SACOG's RTP Project description as follows:

> [SACOG's RTP/SCS] specifies two express lanes for the Corridor, one added and the other converted from an existing lane. In the travel demand model SACOG used to assess passenger vehicle GHG per capita reduction in its regional plan, the Corridor was specified as follows:
>
> Dual express lane each direction. SOVs tolled. One lane added, one converted from the GP lane during peak hours (7 A.M.-10 A.M. and 3 P.M.-6 P.M.).

(**AR 12752-12753**.) Coming from "a sister agency," this inaccuracy (confusing the twenty-year planning with the short-term four-year planning) was missed but was relied upon by CALTRANS, the SB 743 Team, the CTC, the Governor's Office, the public, and PETITIONERS. In hindsight, the disinformation is glaringly apparent in perusing the 1,017-page RTP in the Project List. (AR 31763.)

3. SACOG's TDM Was Consistent With State Guidelines.

An MPO's TDMs must follow CTC guidelines. CTC develops TDM guidelines with input from CALTRANS and CARB. (Gov. Code, § 14522.1.) Local transportation planning agencies are encouraged to use an MPO's TDM, provided it is consistent with CTC's guidelines. (Gov. Code, § 14522.2.) Having found SACOG's TDM reasonable in 2020, CARB's objections to the TDM two years later are not credible.

SACOG's regional TDM, or SACSIM19, "provides travel volume, mode, and pattern data based on traffic volume counts, land uses, household travel surveys, and other socio-demographic

data." (AR 33560.) Because SACSIM19 did not contain all travel pattern information (e.g., tracking of location, mode, and time of day), it incorporated data from Replica.[12] CALTRANS and its consultant, Fehr & Peers, used Replica and SACSIM to modify much of its modeling to design the Project and evaluate its effects.

The Project was crucial for SACOG to meet all its long-term commitments, including air quality, land use, GHG reduction, and transportation requirements. (AR 31593-31595.) In 2020, when it reviewed SACOG's RTP and TDM, CARB chose to emphasize qualitative factors ("strategies, actions, and investments") over quantitative factors ("modeling outputs") and accepted SACOG's eight performance metrics, which came from the TDM. (AR **13431-13432**.) Regardless, in October 2020, CARB evaluating SACOG's RTP stated the following:

> CARB staff reviewed SACOG's approach to capturing the short- and long-term VMT/GHG impacts of its 2020 SCS roadway capacity expansion projects and found them to be reasonable in the context of aggregate impacts on SCS performance.

(**AR 13453**.) CARB reversed its opinion about SACOG's modeling in its comments letter to CALTRANS' Draft EIR. (**AR 12754-12763**.)

C. THE PROJECT

1. Project Description

The portion of the Project in Solano County will not have lanes managed because Solano Transportation Authority's RTP does not currently provide for them. (**AR 12180**.) Hence, the Project's "length is approximately 20.8 miles." (AR 12177. 12186.) Beginning from the Yolo County line, it will expand the I-80 from "a six-lane freeway with three lanes in the eastbound and westbound directions" to an eight-lane freeway consistent with the Congestion Corridor Plans adding additional High Occupancy Toll (HOT 3) lanes to the I-80 East. (**AR 12179-12180**.) The

[12] Replica is a platform with large datasets for modeling multi-modal transportation, demographics, land use and infrastructure that uses information from "electronic devices and a synthetic population generator" to create the travel pattern information that SACSIM19 lacks, <https://www.replicahq.com/> (AR 33560.)

Project adds 9.5 miles East and Westbound of managed lanes in the center along I-80. (AR 38197.) It will connect to the area's existing managed lane at the I-80 West El Camino Interchange and on the U.S. 50 with the managed lane ending at the US-50/I-5 Interchange. (**AR 12182-12183.**) It includes auxiliary lanes, ramp metering, and a managed lane direct connector at Yolo County I-80 PM[13] 9.5-10. (**AR 121870.**)

The Project has three segments. (**AR 12139.**) On the I-80, Segment 1 goes from Solano County (PM 40.7 to PM 44.7) and Yolo County (PM 0.0 and PM 9.55); Segment 2 goes from Yolo County (PM R9.6 to R11.7) and Sacramento County (PM M0.0 to M1.35); Segment 3 is on the U.S. 50 from Yolo County (PM 0.0 to PM 3.2) and Sacramento County (PM L0.0 to L0.616). (**AR 12184-12185.**) Segment 1 is funded, with construction to begin in 2025. (AR 7468.)

2. Consideration of Multiple Proposed Alternatives in the Draft and Final EIR

The Draft EIR began circulation on November 13, 2023,[14] with thirteen alternatives proposed. (AR 232, 239-254, **12716.**) In addition to a No-Build Alternative, twelve Build Alternatives were proposed and considered in the Draft EIR. (**AR 12183-12184.**) The Draft and Final EIR described the No Build Alternative 1 as follows:

> No Build Alternative 1 would maintain the existing conditions, and no work would be conducted to relieve current traffic congestion to improve traffic flow, mobility, and travel time reliability while at the same time reducing vehicle emissions and travel costs. No Build Alternative 1 would not provide a transportation facility that functions for all users, including bicyclists, pedestrians, local transit services, and freight. Recurring traffic demand would continue to exceed the highway's current design capacity, resulting in severe traffic congestion and impaired mobility. Additionally, the transportation network would not include adequate facilities for all modes of transportation.

[13] Post Miles (PM) start at the county line or from the beginning of a route, normally starting at zero except when a realignment, relinquishment or adoption of a segment occurs that either extends or shortens the route. In California, PMs increase from south to north or west to east. "R" in the Postmile system refers to first realignment, "M" refers to realignment of R mileage, "L" refers to overlap postmile.

[14] To accommodate requests by several public agencies and non-profits, CALTRANS extended the 53-day Draft EIR circulation period another seven days to January 12, 2024. (**AR 12716.**)

(**AR 12198.**) The twelve build alternatives included six alternatives that did not include "an I-80 managed lane direct connector" (alternative a) and six that did (alternative b). (**AR 12183-12184.**) The six Build Alternatives that included the direct connector are as follows:

- "Build Alternative 2b: Add a high-occupancy vehicle lane in each direction for use by vehicles with two or more riders (HOV 2+) and build an I-80 managed lane direct connector.
- Build Alternative 3b: Add a high-occupancy toll lane in each direction for free use by vehicles with two or more riders (HOT 2+) and build an I-80 managed lane direct connector. Single-occupied vehicles would pay a fee for lane usage.
- Build Alternative 4b: Add a high-occupancy toll lane in each direction for free use by vehicles with three or more riders (HOT 3+) and build an I-80 managed lane direct connector. Vehicles with less than three riders would pay a fee for lane usage.
- Build Alternative 5b: Add an express lane in each direction (i.e., everyone would pay a fee to use the lane, regardless of the number of riders) and build an I-80 managed lane direct connector.
- Build Alternative 6b: Add a transit-only lane in each direction and build an I-80 managed lane direct connector.
- Build Alternative 7b: Repurpose the current number one general-purpose lane for use by vehicles with two or more riders (HOV 2+); no new lanes would be constructed. Build an I-80 managed lane direct connector." (**AR 12183-12184.**)

3. Circulation Period, Deliberation, and Project Approval

During the Draft EIR's circulation, YCTD indicated that it preferred Alternative 4b of the thirteen options. (AR 5702.) After the circulation period ended on January 12, 2024, CALTRANS provided Master Responses and written responses to all comments.[15] (AR 232, 12721-12724.) Months after the comment period ended, CARB wrote CTC, trying to get the funding and kill the Project. (AR 3607-3609.) CTC found CARB's input unpersuasive. (AR 9678-9694.)

Only 50% of the VMT from the Project could be feasibly mitigated. (AR **12677**, 36596, 47424.) Accordingly, the decision to approve the Project and issue a Statement of Overriding Considerations (SOC) was carefully weighed. (AR 16085-16086.) All projects that cannot mitigate VMT below a significant level must have Director approval. (AR 46058.) In March 2024, before the EIR was certified and approved, meetings were held with the SB 743 Team, YCTD, the District 3

[15] Relevant to this litigation are the following comments on the Draft EIR with CALTRANS' responses: (1) CARB (**AR 12748-12766**); (2) CDFW (**AR 1277-12800**); (3) SMAQMD (**AR 12835-12850**); (4) CBD (**AR 12901-12924**); (5) P&CL (**AR 13742-13752**); and (6) NRDC (**AR 123038-13732**).

Director, Project Management, and CALTRANS' Director Tony Taveres to discuss whether the Project should be approved. (AR 47306.) The Governor's Office even weighed in on the decision. (AR 16085.) On April 30, 2024, the EIR was certified and approved with Alternative 4b selected. (AR 16084, **12207**.) Although it was not feasible when the Project was approved, CALTRANS also agreed it would initiate a future project for a second tolled lane "in the Yolo 80 footprint" in 2025. (AR 47306.)

Because the unmitigated VMT was close to 50%, the EIR found the Project would have significant and unavoidable impacts on transportation, necessitating written findings. (AR 16087-16097; Guidelines, § 15091.) On April 30, 2024, CALTRANS issued a SOC. (AR 11372-11374; Guidelines, § 15093.)

In May 2024, CTC, as a responsible agency, also considered the Project's EIR in its independent judgment and issued its own Findings of Fact and SOC in support of the Project. (AR 39700-39710, 39711-39713, 27576-27611.)

4. Unavoidable Significant Transportation Impacts and Less Than Significant Biological Resource Impacts

a. Findings of Unavoidable Significant Impacts on Transportation

The Project added lanes to the highway, increasing annual VMT by 106-110 million. (AR 12677, 47412, 47413.) CALTRANS committed to spending $55 million to reduce "approximately 57.1 million annual auto VMT" with the following mitigation measures:

- "Implement a Voluntary Trip Reduction Program in Yolo County
- Expand Capitol Corridor Frequency between Martinez and Sacramento
- Implement Microtransit in yolo County
- Expand YoloBus Route 42
- Expand Causeway Connection Route 138
- Expand Unitrans
- Expand Putah Creek Trail to connect to Future Nishi Student Housing Development Site" (AR 12677, 47424. 36593-33602.)

These seven measures will mitigate approximately 50% of the Project's induced VMT. (AR 36596, 47424.) CALTRANS mitigation measures do not include the tolling revenue, in part, because although the initial revenue studies at the planning level showed that one tolling lane would be profitable in the future, more tolling studies were needed. The planning level revenue studies did not

consider more input (equity considerations of fare reductions, time of toll operation, toll pricing, and whether the pricing would be dynamic). The Capital Area Regional Tolling Authority will ultimately determine the tolling revenue. SACOG's grant application for additional tolling studies was denied. (AR 47432, 47445-46.) The EIR found that the transportation impacts were significant and unavoidable even with the mitigation measures. (**AR 12162, 12676**.)

b. Impacts to Biological Resources Were Found to be Less Than Significant

The Project will go above the Yolo Bypass Wildlife Area and the Sacramento River, with the potential to impact an extensive range of Biological Resources (e.g., Special-Status Plant Species, Special Status Animal Species, Riparian Habitat or Sensitive Natural Communities, Migratory Wildlife Corridors), including bats. The Project's biological study area(BSA) totaled approximately 1,147.22 acres to ensure all environmental concerns were addressed. (**AR 12520.**) In 2021, the National Marine Fisheries Service (NMFS) provided CALTRANS with "a federally listed anadromous fish species with potential to occur" in the area, and the United States Fish and Wildlife Services (USFWS) provided "a list of federally listed species with a potential to occur within the BSA." (AR 20665, **12107-12131**.) Its coordination with USFWS also included (1) an early site visit; (2) Section 7 consultation under Endangered Species Act; (3) "review of key habitat areas" (4) discussion and analysis "of potential effects and avoidance measures for each species"; (5) formal consultation initiation and meetings; and (6) issuance of a Biological Opinion (**AR 12089-12105, 12210, 12709**.) CALTRANS also coordinated with the California Department of Fish and Wildlife (CDFW), held a field site visit, and obtained recommendations for the Project. (**AR 12709**).

From 2021 through 2023, within the BSA, CALTRANS conducted ten specific Biological Resources studies to determine whether the Project would impact biological resources and what avoidance or mitigation measures were feasible. (**AR 11879.**)[16] Because the Yolo Bypass Wildlife

[16] The ten Biological Resources Studies referenced in the EIR Appendix (**AR 12520**) are the following documents: (1) Nesting Swainson's Hawk Protocol Survey Report (AR 21304-21377); (2) Bat Species of Special Concern Habitat Assessment (AR 21187-21255); (3) Botanical Resources Survey Report (AR 20862-20943); (4) Giant Garter Snake Habitat Assessment (AR 21105-21186); (5) Nesting Burrowing Owl Protocol Survey (21378-21428); (6) Tricolored Blackbird Nesting Habitat Assessment (AR 21256-21303); (7) Valley Elderberry Longhorn Beetle Habitat Assessment (AR 2142-21532); (8) Aquatic Resources Delineation Report (AR 20944-21104); (9) Biological Assessment (AR 200084-20579); and (10) Natural Environment Study (AR 20597-20861).

Area has one of the most significant numbers of Mexican free-tailed bats, CALTRANS used current literature and standard best practices in analyzing and addressing environmental impacts, avoidance, and mitigation measures for bats from transportation projects. (AR 10799-11010.) It also coordinated with local wildlife professionals "about the bat population on the causeway" (**AR 12708**), conducted due diligence with a wildlife ecologist/bat specialist (AR 28461), and hired qualified consultation. (AR 28460.)

Based on the studies, field site visits, consultations, and coordination with USFWS and CDFW, CALTRANS analyzed the biological impacts, and following CEQA Guidelines, CALTRANS made findings (of less than significant impact or less than significant impact with mitigation) on all the required six categories (a-f) relating to the Biological Resources. (**AR 12152-12153**.) The bases for these findings are found in the EIR in Chapter 2, providing a comprehensive discussion of the Biological Resources in the Project area (**AR 12519-12635**), and Chapter 3, discussing the impacts, the mitigation measures, and the six required CEQA findings CEQA (**AR 12646-12654**.) During construction, multiple Standard Mitigation Measures will be applied (**AR 11831-11836**.)

With the numerous avoidance/mitigation measures in place, the effects on the Biological Resources were found to be less than significant. (**AR 12646-12652**.) CALTRANS issued written findings regarding the impacts and adverse environmental effects on the Biological Resources, specifically referencing lighting impacts on bats during construction. (**AR 16089**; Guidelines, § 15091.)

D. PROJECT COSTS AND FUNDING

The entire Project costs approximately $465M, with $55M going towards VMT mitigation. (AR 18095, 23547, 38040, 38578.) This Project was listed as part of the RTP; thus, it qualified for regional, state, or federal funding. (AR 31763.) Only Segment 1, totaling $200M, is funded through Regional, Federal, and State funding.

1. Regional Funding Provided By SACOG

SACOG provides preconstruction transportation funding for projects in the Sacramento region. (AR 32671-32701.) Federal and state grants for construction money are available through the

U.S. Department of Transportation (USDOT) and CTC. SACOG's Federal Statewide Transportation Improvement Program programmed and approved the Project. (AR 38170, 38036.) SACOG provided $9,010,000 for preliminary engineering work. (AR 38175-38180.)

2. INFRA Grant (Federal) Funding

In October 2017, CALTRANS and YCTD collaborated to obtain federal funding (aka an INFRA Grant) for the Project. (AR 2243.) USDOT awards INFRA Grants for multimodal freight and highway projects of national or regional significance to improve the safety, efficiency, and reliability of freight movement and people in and across rural and urban areas. (23 U.S.C. § 117.) These grants are highly competitive and hard to obtain.[17] (AR 38267.) YCTD, a non-profit, was the Project sponsor, but CALTRANS, with a larger staff and significantly more experience with funding, drafted the application. (AR 38251, 45826.)

YCTD submitted three unsuccessful applications to USDOT requesting $125,500,000 for all Project Segments. (AR 38250-38261, 39449.) Finally, in 2021, after submitting its fourth application, it was successful.[18] (AR 40300, 38252.) The $85.9 million award was "the second highest" in the nation but only funded Segment 1. (AR 27827, 39449.) YCTD was "grateful" for CALTRANS's help, acknowledging that it led to the awarding of the INFRA grant. (AR 4226.) Internally, CALTRANS acknowledged this enormous achievement. (AR 39487-89.) YCTD cannot apply for additional INFRA funds until Segment 1 is completely constructed. (AR 7468.)

3. State Funding From CTC

CTC is a CEQA-responsible agency that approves state funding for transportation projects. (Sts. & Hy. Code § 70; Cal. Code Regs., tit. 21, § 1503.1.2; AR 27576.) CTC denied the initial funding request for the Project in 2021. (AR 38130-38224.) In April 2024, SACOG and CALTRANS submitted a subsequent application requesting $42M in state funding and $63M of regional financing under SB 1. (AR 7465, 38130-38224.) Projects seeking SB 1 funds must "have a Comprehensive Multimodal Corridor Plan (CMCP)." (AR 38260; Sts. & Hy. Code, § 2391.) SB 1

[17] YCTD's successful INFRA Grant Proposal highlighted that the Project would "improve air quality and reduce GHG emissions in the short-term by reducing the number of vehicles that are idling in stop and go traffic." (AR 40314.)

[18] For INFRA Grant purposes, the Project is considered a large project. (AR 38278.)

funding is available for "highway improvements, truck corridor improvements, and consideration of freight infrastructure improvements that enable zero-emission goods movement." (AR 38141.) The applicant must also show the Project that the benefits exceed the costs, which was met by a "benefit-cost ratio of 2.9." (AR 38194-38215.)

In May 2024, CTC's Staff recommended the Project be approved, accepted, and funded. (AR 27576-27577.) At the May 16, 2024, CTC meeting, responding again to the CARB letter to CTC, CTC found the Project was consistent with SACOG's RTP/SCS, and CTC unanimously awarded $105M for the Project's Segment 1 work. (AR 27576-27611.)

E. ANALYSIS OF VMT AND VMT MITIGATION

1. CALTRANS VMT Guidelines

Following the enactment of SB 743, the Office of Planning and Research (OPR) prepared Guideline § 15064.3, requiring a project's transportation impacts to be measured by the increases to vehicle miles traveled (VMT) instead of Level-of-Service.[19] (Pub. Resources Code, §21099, subd. (b)(1); AR 13679.) Induced VMT is the additional VMT directly resulting from a project and applies to both Land Use Projects and Transportation Projects. (Guidelines, §15064.3, subd. (b).)

To comply with SB 743, CALTRANS, with input from OPR and CARB, created two technical documents: (1) Transportation Analysis Framework (1st ed 2020) (TAF); and (2) Transportation Analysis under CEQA (1st ed 2020) (TAC) (AR 13624-13669, 13671-13729.) CALTRANS must follow TAC and TAF on all projects increasing VMT. (AR 13679.) Under TAF, CALTRANS must use either the National Center for Sustainable Transportation (NCST) Calculator, the MPO's TDM, or a combination of both. (AR 13632, 13637, 13647.) The NCST Calculator "uses elasticities to estimate induced travel associated with" adding new general purpose or HOV lanes. (AR 13637-13638.) The TDM comes from MPOs and is "used to measure network performance and identify deficiencies, to forecast future levels of service under anticipated levels of growth and change, and generate the traffic data and projections needed for air pollution emissions estimates."

[19] Level-of-Service (LOS) measures how well traffic flows. Although LOS is no longer used to measure a Project's transportation impact under CEQA, it is still used for analyzing other impacts and is required under federal law (i.e., the National Protection Environmental Act (NEPA) and the Clean Air Act and accompanying regulations.) (AR 1217; 40 C.F.R. § 93.123(b)(1)(ii).)

(AR 13640.) MPOs TDMs "vary considerably" but are "widely used in California and throughout the United States as transportation system analysis and forecasting tools." (AR 13640.)

2. CALTRANS SB 743 Team

CALTRANS projects that may increase VMT must be vetted and approved by the SB 743 Team. (AR 28145-28149, 13668-13669) This team reviews and approves methodology, ensures the TAC and TAF are adhered to, and is vigilant to oversee that all feasible VMT avoidance or mitigation is done. (AR 12711, 28145-28149.) The SB 743 Team was involved at all critical points in the Project's VMT analysis. (AR 7581-7583.) Before a Draft EIR can be circulated, projects that cannot fully mitigate induced VMT require a risk assessment from the SB 743 Team and the Director. (AR 7582.) During this process, the SB 743 Team strictly scrutinized the Project and established requirements (e.g., rejecting the consultants' recommendation that the VMT elasticity be 0.39 instead of 0.71, disallowing VMT reduction due to traffic diversion, and elongating the EIR process to ensure all VMT was reduced or mitigated.[20]) (AR 8963, 41999, 47412.)

Early on, CALTRANS knew that the Project would increase VMT and sought avenues to avoid or mitigate it. (AR 2237, 28318.) Circa mid-2023, after YCTD asked for a dual express tolling lane, the SB 743 Team instructed the PDT to consider it, even though the Draft EIR was to be circulated that summer. (AR 2239-2243, 9169-9180.) Complying with this request would have required, at minimum, an additional eleven months of analysis and resulted in the forfeiture of the 86M INFRA Grant, which would have likely killed the Project. (AR 47182-47187.)

3. VMT Analysis by Consultants Fehr & Peers

In 2021, before filing its NOP, CALTRANS and its consultants, Fehr & Peers, began analyzing the background data to determine the induced VMT. (AR 3374-33506.) To measure induced VMT, they first considered using a modified version of SACSIM19 and the NCST Induced Travel Calculator. (AR 41545.) Generally, both metrics can be used to analyze the transportation impacts (aka the induced VMT from the Project). (AR 41545.) The SACOG TDM did not meet the

[20] This was most notable in June 2023, when the Project was close to having the Draft EIR completed for circulation. The 743 Team requested analysis of a two tolling lane alternative be considered in the 11th hour.

TAC/TAF standards to be used to calculate the induced VMT. (AR 13647, 13641, 13665, 13682.) CALTRANS' TAF recommends using the NCST Induced Travel Calculator to forecast a transportation project's long-term VMT and isolates "the effect of just adding lane miles." (AR 41546.) The initial limitations for using the NCST Calculator on the Project (inability to calculate tolling or managed lanes) were resolved. (AR 41546.) Ultimately, CALTRANS used the NCST calculator to measure the Project's induced VMT impacts and used a modified version of SACOG's TDM for analyzing the environmental effects (e.g., GHG emissions, air quality, and energy).

4. CALTRANS Applied All Feasible VMT Measures

VMT avoidance and mitigation measures are complicated. (AR 41320-41526.) CALTRANS is required to follow TAF when performing its induced travel analysis. (AR 13679.) The administrative record shows CALTRANS did an exhaustive search to find feasible mitigation projects to fund. (AR 8097.) Most of the mitigation projects were not feasible for a sundry of reasons.[21]

STANDARD OF REVIEW

In reviewing an EIR, the court presumes an EIR's correctness. (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117.) The burden is on the party challenging an EIR to show it is inadequate. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 614.) The standard of review in CEQA cases is abuse of discretion. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) "Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence." (*Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1375.) Questions of law are reviewed as to whether the agency proceeded in a manner required by law.

[21] Some of the mitigation measures rejected included: (1) expanded sidewalks (AR 47413, 47415); (2) fully funded projects (e.g., Truxel Road bridge, Green Line RT Extension, and Downtown Riverfront Streetcar) (AR 7227, 47417); (3) reducing Transit Fares 50% for Yolobus; (AR 47423) (4) increasing parking costs; (AR 47418); (5) providing funding for housing construction or subsidies (AR 47422); (6) VMT credit for mobility Hub (AR 2384); and (7) VMT credit for Bike/Pedestrian improvements on the Causeway (AR 2384).

The substantial evidence standard applies to questions of fact such as conclusions, findings, and determinations and challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 386.) "In applying the substantial evidence standard, 'the reviewing court must resolve all reasonable doubts in favor of the administrative finding and decision.'" (*Laurel Heights Improvement Assn v. Regents of University of California* (1988) 47 Cal.3d 376, 393.) Substantial evidence is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, §15384, subd (a); (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 985.) The Petitioner must lay out all evidence, including evidence favorable to the other side, and show why it is lacking. (*King & Gardiner Farms LLC, v. County of Kern* (2020) 45 Cal.App.5th 814, 850-851.) The Petitioner cannot carry out its burden if it fails to provide all evidence. (*Ibid.*)

ARGUMENT

I. THE PROJECT WAS CONSISTENT WITH SACOG'S REGIONAL TRANSPORTATION PLAN

The Petitioner's argument that the Project was inconsistent with SACOG's RTP is based on misinformation from an agency that became overly ideological, impairing its objectivity. The lack of objectivity is demonstrated by CARB's mischaracterizing of the Project in SACOG's RTP. This canard is not substantial evidence. The evidence shows that SACOG's RTP project description had a single tolling lane in each direction. The EIR was consistent with SACOG's RTP and thus complied with Guideline, § 15125, subd. (d). Throughout SACOG's RTP, the Project was consistently

described as having a single tolling lane.[22] (AR 18531-18533. 38037-38044.) The evidence shows the Project was consistent with the RTP.

II. THE THIRTEEN ALTERNATIVES PERMITTED A REASONED CHOICE

An EIR must "identify alternatives to the project." (Pub. Resources Code § 21002.1, subd. (a), §21061, §21100, subd. (b)(4).) CALTRANS met this requirement. It selected feasible alternatives from the scoping process that the public and local partners supported. (AR 12724.) Where there are "feasible alternatives or feasible mitigation measures which would substantially lessen the significant environmental effects," a project should not be approved. (Pub. Resources Code, § 21002.) Feasible is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (Guidelines §15364; *See also* Pub. Resources Code, §21061.1.)

"CEQA establishes no categorical legal imperatives regarding the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts ...." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566; Guidelines § 15126.6, subd. (a).) An alternative is considered reasonable if it meets most of the project objectives and lessens the Project's significant effects. (Pub. Resources Code, § 21002; Guidelines §15126(c).)

1. The Range of Alternatives Is Not Manifestly Unreasonable

"The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." (CEQA Guidelines §15126(f).) PETITIONERS have not met their burden of proof, showing the thirteen alternatives did not constitute a reasonable range of alternatives. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 614.)

The selection of alternatives "will be upheld, unless the challenger demonstrates 'that the alternatives are manifestly unreasonable." (*Center for Biological Diversity v. Dept of Fish and*

[22] The Project description in the Metropolitan Transportation Improvement Plan (MTIP) also did not depict two tolling lanes in each direction. (AR 38040. 23 U.S.C. § 134, subd., (b)(6), (c).) A project's description in the MTIP "shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project." (23 U.S.C. § 134, subd., (j)((2)C).)

Wildlife (2015) 234 Cal.App.4th 214, 256.) PETITIONERS have not addressed any of the thirteen alternatives. Nor have they set forth arguments why this wide range of alternatives is manifestly unreasonable. Further, there is no argument about how the thirteen alternatives do not permit a reasoned choice. When analyzing alternatives, absolute perfection "is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives, so far as environmental aspects are concerned." (*Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, 1039.) CALTRANS met this requirement.

2. The EIR Addressed the Infeasibility of A Two Tolling Lane

No evidence shows that a dual lane would meet the project objectives, including easing congestion and throughput for freight and people. Further, the recommendation by CARB and SMAQD for two tolling lanes in each direction was not feasible and addressed in the EIR. (AR 12724-12725.) This option would require converting a general-purpose lane into a tolling lane. "Current State and Federal regulations prohibit converting a general-purpose lane to a tolled lane." (AR 12724. Gov. Code, § 64112; 23 U.S.C. § 129.) Under California law, highway projects cannot convert a general-purpose lane into a tolled lane. (Gov. Code, § 64112, subd. (b).) Under federal law, tolling lanes are restricted to initial construction or reconstruction of a toll highway." (23 U.S.C. § 129.)[23]

This proposal was also deemed infeasible because it "would likely result in many of the diversion, VMT, equity, and environmental justice issues." (AR 12724.) Taking away a general-purpose lane would force drivers to re-route and increase VMT,[24] remain on the congested, un-tolled lanes, or pay for using one of the two tolled lanes. Further, converting a "general-purpose lane to a toll lane would lead to more demand and less reliability on the existing" two un-tolled lanes, "which would impair freight mobility and lead to unreliable travel times. Due to these impacts on freight, the purpose and need of the Project would not be met." (AR 12724.)

[23] High-occupancy vehicle lanes can be converted to a toll lane, but this is a process for future consideration.

[24] Re-routing would be using "Highway 113 and County Road 29 to bypass the queue," which increases VMT but is quicker if the Causeway is congested. (AR 4861.)

Lastly, this option was time-wise and fiscally infeasible. (AR 9125.) The Draft EIR, which was to be circulated in the summer of 2023, was delayed by the CALTRANS SB 743 Team to analyze if two tolling lanes were feasible. It wasn't. It would set the Project back almost a year. It would have sacrificed $86M in federal funding because the quantitative engineering work required to revise the draft EIR before circulation would not be completed until August 31, 2024. (AR 7368, 47182-47187.)

3. Arguing For Theoretical Benefits of Having Two Tolled Lanes in Each Direction Does Not Establish Feasibility.

Without supporting evidence, PETITIONERS asserted that two tolled lanes in each direction were feasible. The grant money necessary for further studies on tolling revenue and "pricing was rejected." (AR 13460.) Further, the evidence showed the single-tolling lane would initially lose money and take years to become profitable. (AR 46180, 47354.) Further, although CALTRANS has committed to analyzing whether a future project to convert a general-purpose lane to an HOV and make it a tolling lane is feasible, such an analysis takes time. Additional studies, including tolling, will be required. (AR 36602.)

Alternative recommendations by agencies do not establish reasonableness or feasibility. (AR 3593, 18568.) Further, CALTRANS "is not required to consider specific alternatives proposed by members of the public or outside agencies." (*Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 703.) YCTD's request[25] for this in 2023 was immaterial before it knew federal funding would be jeopardized. "An EIR need not consider every conceivable alternative to a project." (CEQA Guidelines §15126.6(a).) Rather, EIR must consider a reasonable range of potentially feasible alternatives to foster informed decision-making and public participation. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.) An alternative is not reasonable if it kills the Project.

III. THE BASELINE IS ADEQUATELY SUPPORTED IN THE EIR AND AR

[25] YCTD clearly abandoned this position. (AR 5702.)

CALTRANS is the state agency authorized to construct and control all state highways in California. (Str. & Hwy Code, § 90; Gov. Code, § 14001, 14002.5.) PETITIONERS challenge the CALTRANS methodology used to establish the baseline, as the "lead agency [it] enjoys substantial discretion in its choice of methodology." (*Center for Biological Diversity v. Dept of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 228.) PETITIONERS argue the baseline was inadequate because CALTRANS used SACOG's TDM and assert this methodology has three deficiencies: (1) it uses a static traffic assignment instead of a dynamic assignment (Opening Brief (OB); (2) it does not factor in land use changes for its traffic predictions (Opening Brief (OB) pp. 26:27); and (3) the static testing component did not pass all three CTC validation tests. These arguments are inaccurate and/or lack credibility for the following reasons.

1. CALTRANS Calibrated the TDM for More Precision.

CALTRANS was required to use SACOG's TDM under TAC and TAF. However, CALTRANS adjusted SACSIM19 to meet the needs of the Project. CALTRANS calibrated and validated SACSIM19, making modifications and additions "on both a static and dynamic basis." (**AR 12726.**) The calibrations/validations included factoring in the network and land changes. Building a complete dynamic traffic assignment[26] was unnecessary. It would have little impact because "many trips cannot shift the time of travel on weekday peak due to work/school times, delivery schedule, etc." (AR 12726.) Also, even if drivers could take their trips at different times of day, these trips are still being made at other times, thus not reducing VMT.

SACOG's TDM assumed "the proposed network" (which included the Project) in its land use forecasts. (AR 41546.) Hence, when CALTRANS tested the alternatives against the no-build for future years, it modified the TDM, taking out the Project for the no-build alternative.

2. CALTRANS has discretion when Choosing the methodology, including the TDM.

[26] A dynamic traffic assignment is an operational analysis tool that merely shifts trip departure times in response to peak period congestion, and has no bearing on the number of trips made or the resulting Daily VMT totals.

CALTRANS and SACOG determined early on that "the methodology used for impact analysis was" appropriate. (AR 12726.) Under the SB 743 regulations, the agency has the "discretion to determine the appropriate measure of transportation impact consistent with CEQA." (Guidelines §15064.3, subd (b)(2).) The agency also has discretion "to choose the most appropriate methodology to evaluate a project's" VMT. (Guidelines §15064.3, subd (b)(4).) On methodology, the regulation further states:

> A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the Project. The standard of adequacy in Section 15151 shall apply to the analysis described in the section.

CALTRANS decided on TDM methodology early on, as noted by the spreadsheets created in 2021. (AR 30531-30532.) The column stating "Benefit Adequacy Addressing TAC/TAF" referred to whether the TDM or the NCST would satisfy the TAC/TAF requirements for calculating the induced VMT (i.e., the transportation impacts), not the methodology for other environmental impacts. The answer "low benefit/accuracy" referred to the TDM providing low benefit and accuracy for calculating the Project's induced VMT.

As was its discretionary right, CALTRANS chose to use a modified and calibrated version of the SACOG TDM as its methodology to analyze the Project's effects on GHG emissions, air pollutant emissions, and energy. (AR **12438-12442, 12512**, 1215-1226.) A lead "agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521.) The TDM used met legal requirements under either standard of review.

3. The One Data Point in CALTRANS' Validation of the TDM Does Not Negate Its Use.

To determine whether SACSIM's TDM matched the observational data collected, CALTRANS used a two-part process: (1) static validation and (2) dynamic validation. (AR 34154.) In its Opening Brief, PETITIONERS has not argued the dynamic validation testing (AR 34159-34169) was deficient. Instead, they quibble with the static validation testing.

To conduct static validation, CTC's guidelines[27] recommend using three targets: (1) "the correlation coefficient between the actual counts and the model volumes," which should be greater than 0.88"; (2) the "percent root mean squared error (%RMSE)" which should not exceed 40%; and (3) "the roadway links for which counts are available should within the maximum desirable deviation" of at least 75%. (AR 34153-34154.) Two tests met the acceptance criteria When CALTRANS and its consultant performed the static validation testing. (AR 34155-34156.) Since the static validation passed two tests, the TDM was accepted, but refinements were made for more sensitivity. (AR 34156-34168.) Further, after the validation testing, the model behaved adequately, and no anomalies were noted to question the lack of perfection on all three static validation tests. Modeling results are rarely perfect because the models attempt to simulate the real world but cannot do so perfectly. George Box, one of the greatest 20th-century statisticians, aptly stated: "All models are wrong, but some are useful." SACSIM was useful and was required under TAF and TAC.

IV. THE RECORD SHOWS ADDITIONAL VMT MITIGATION WAS NOT FEASIBLE

1. CALTRANS Obtained All Feasible VMT Mitigation.

PETITIONERS do not, nor can they cite any additional VMT mitigation measures that were feasible for CALTRANS to employ, nor have they questioned the mitigation projects rejected. The evidence shows CALTRANS obtained all the feasible VMT mitigation possible. (AR 22365-22374.) Currrently there are no VMT mitigation banks were set up. Hence, VMT mitigation requires specific projects to fund that reduce VMT. (AR 47415.) In September 2022, CALTRANS reached out to SACOG, YCTD, the City of Sacramento, the City of West Sacramento, Sacramento County, Yolo County, Sacramento Regional Transit, and Capitol Corridor to obtain a list of projects they prioritized for CALTRANS to fund and obtain VMT mitigation credit. (AR 7208-7214.) Initially, the list included 55 VMT reduction projects. (AR 42007-42014.) However, most of the projects on the list were unfeasible and hence excluded.

---

[27] Both CARB and CALTRANS provide input to CTC for its travel demand model guidelines "used in the development of regional transportation plans by federally designated metropolitan planning organizations." (Gov. Code, § 14522.1.) The CTC guidelines apply to MPOs. SACOG's TDM met the requirements of CTC guidelines which are mandatory under federal and state law. (AR 31949- 31951.) CALTRANS had discretion as to how to validate SACSIM for the Project, and what value each validation testing was given. For CALTRANS, the CTC guidelines are permissive or optional.

2. Credit For VMT Mitigation Is Limited.

The California Air Pollution Control Officers Association (CAPCOA) handbook has 28 VMT strategies that could qualify for VMT mitigation. (AR **12255**, 44143.) VMT mitigation projects must meet these requirements[28]: (1) they must be unfunded; (2) they must have adverse effects on VMT; (3) they must be likely to come to fruition; and (4) they must pass the additionality test (i.e., the mitigation measure would not have occurred but for CALTRANS involvement. (AR 41528, 44144.) Many VMT mitigation projects CALTRANS looked at did not meet these conditions.

3. CALTRANS Determination of the Amount of Funding Going Towards the Project's VMT Mitigation Was Reasonable

PETITIONERS argue that more money was available from state or federal grants for mitigation. The EIR and the AR belie this claim. Projects are not built without funding. CALTRANS determined that the appropriate VMT mitigation costs must be reasonable based on its experience and professional judgment to qualify and receive federal and state funding. Here, the 15% marker was calculated based on actual Project construction costs and then what was reasonably and feasibly left over in the budget for actual obtainable grant funds.

Federal transportation funding is competitive. An INFRA Grant must show that "the project will be cost-effective." (23 U.S.C. § 117, subd. (g)(2).) Additionally, the amount awarded is subject to Congressional scrutiny and disapproval. (23 U.S.C. § 117, subd. (n).) Using its expertise, CALTRANS believed 15% going towards VMT mitigation was reasonable. YCTD and CALTRANS had to submit four INFRA Grant requests until they finally received federal funds. Given that the past administration awarded less than 70% of what was requested, it seems highly improbable the Project would receive future federal funding for more VMT mitigation. CALTRANS cannot apply for additional federal funding until the INFRA funds are fully spent.

[28] Other reasons VMT mitigation credits are excluded included: (1) if the VMT has less than significant impact (AR 43183); (2) working with a private developer (AR 43134); (3) enhancing an existing bicycle and pedestrian connection; (AR 47413); (4) the California Constitution precludes state transportation funds being used for housing mitigation (AR 37380); and (5) if the project is exempt from a VMT analysis (AR 43183); and (6) if there are no specific projects to construct. (AR 47415.)

State funding is also challenging to obtain. It also took YCTD, CALTRANS, and SACOG several attempts to obtain partial state funding from CTC finally. The applicant must prepare a benefit-cost ratio. To fully mitigate the VMT, the Project would not qualify for state funding as the benefit-cost ratio could not be met. To minimize the VMT even by 64%, it would cost $1,688,000,000. (AR 9173.) Thus, the argument that CALTRANS just needed to ask for more money to reduce the VMT is not credible.

The evidence shows that CALTRANS and its partners repeatedly sought all possible funding and ultimately could only secure financing for Segment 1. CALTRANS has decades of experience with funding and knows the appropriate sweet spot for determining project funding, construction costs, mitigation costs, and the range in which it is possible to request and receive agency funding. Armchair quarterbacking on this issue cannot negate the substantial evidence that CALTRANS took all feasible measures to obtain Project funding and mitigate the induced VMT.

"VMT reduction numbers are more complicated than a straight-line calculation." (AR 8097.) The costs to entirely reduce the annual 106 million induced VMT from the Project are exponential.

V. THE EIR'S DESCRIPTION OF THE BIOLOGICAL IMPACTS FULFILLS CEQA'S PURPOSE OF INFORMED DECISION MAKING AND PUBLIC PARTICIPATION

PETITIONERS have not clearly stated the review standard regarding their arguments on biological resources. The de novo review determines whether the EIR omitted the requisite discussion, evaluation, and determination of the environmental impacts on biological resources. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519-520.) It is readily apparent there were no omissions, and the EIR met these requirements. (**AR 12152-12153, 12519-12635, 12646-12654.**) PETITIONERS argues that "the EIR failed to adequately describe the lighting impacts of the Project, particularly on wildlife and migratory birds." (OB 30:3-4.) This argument challenges the EIR's sufficiency determination; hence, the standard of review is substantial evidence. (See pp. 12-13, *supra*, describing the underlying work supporting the EIR's analysis of the Project's impacts on the Biological Resources.)

1. The EIR Adequately Addresses the Lighting Impact to Bats Under the Causeway.

A lead agency has discretion in determining the threshold of significance a particular environmental effect may have. (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 192; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 884 [lead agency has substantial discretion in choosing the methodology for evaluation of the significance of an impact.]) PETITIONERS' argument is purposefully vague and has not clarified: (1) which "wildlife"[29] and "migratory birds" it refers to; (2) the location of the lighting impacts deemed deficient; (3) nor whether the ostensible inadequate lighting impacts from the Project comes from construction or operation. CALTRANS is left to speculate that the PETITIONERS are referring to construction impacts on the bats beneath the Yolo Causeway.

PETITIONERS' argument narrowly focuses on a relevant yet micro issue described and analyzed in the EIR. First, the EIR identifies the lighting impact on the bats, stating that during construction, there will be "temporary impacts on bats" from the "lights during night work." (**AR 12574.**) It also notes that operationally, once the Project is built, it would have "two more travel lanes than existing conditions," and the impacts to the wildlife would not increase from existing conditions." (**AR 12575.**) Second, CEQA has no lighting analysis requirement. Instead, agencies must comprehensively consider, analyze, and disclose impacts on biological resources based on project specificity. PETITIONERS narrow argument challenges CALTRANS' compliance with CEQA Appendix G, IV. Biological Resources, (a), which requires the EIR to address this question:

> a) Have a substantial adverse effect, directly or through habitat modifications, on any species identified as a candidate, sensitive, or unique status species in local or regional plans, policies, or regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Based on all the fieldwork, consultations, and studies, the EIR responded that the effects on the biological resources (including the lighting impacts) were "[l]ess-than-significant impact with mitigation" (**AR 12152**) and provided the supporting analysis. (**AR 12646-12650.**) For impacts

[29] Petitioners' definition of "wildlife" is general and undefined. CALTRANS' obligations to wildlife within a Project area is limited to special-status species. USFWS and CDFW define special status as follows: "Special-status" species are selected for protection because they are rare and/or subject to population and habitat declines. Special-status is a general term for species that are provided varying levels of regulatory protection. (EIR, p. 2-313.)

deemed *less than* significant, the EIR is required only to briefly indicate the reasons for determining the effect is not significant, and the discussion need not be overly detailed or include descriptions of the nature and the magnitude of impacts. (*Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 429.) The EIR met this requirement.

2. The EIR Adequately Addresses Biological Impacts to Wildlife in General.

The EIR lays out a comprehensive account of the entire biological environment from the voluminous information obtained from experts and studies. (**AR 12519-12635.**) More specifically and relevant to the lawsuit, the EIR noted during site visits that 46 bird species were observed in the BSA (**AR 12565-12570**), and nine other special-status bird species were not observed but "identified as having a potential to occur within or adjacent to the BSA." (**AR 12570-12573.**) The EIR individually listed each special-status and nesting migratory raptors and birds, where they were found, their habitat, nesting season, and what mitigation measures would be undertaken to avoid the Project's impacts.

The Draft and Final EIR described and analyzed all potential habitats and wildlife within the BSA, including the special-status species, nesting migratory raptors and birds, and bat species under the Yolo Causeway. (**AR 12565-12635.**) The Project's environmental consequences from construction and operation were also addressed. (**AR 12573-12576.**) CALTRANS sufficiency determination was based on substantial evidence from the EIR and the AR, overwhelmingly showing compliance with the Project's effects on wildlife and wildlife habitat.

VI. CALTRANS ADOPTED ALL FEASIBLE MITIGATION FOR THE PROJECT'S LIGHTING IMPACTS ON WILDLIFE

PETITIONERS argue that CALTRANS failed to commit to CDFW's lighting mitigation recommended in its comment letter to the Draft EIR (**AR 12785**; OB p. 31.) The EIR adequately addressed CDFW's comment with sufficient detail in Response to Comment 9. (**AR 12797.**) This agency letter provided "comments and recommendations" (**AR 12777**) requiring consideration and a good faith response, not adoption.

There is no CEQA requirement singling out lighting for mitigation. This decision is left to the expertise of biologists and environmental experts. The EIR's function is to provide decision-makers with information that "enables them to make a decision which intelligently takes account of environmental consequences." When reviewing the sufficiency of an EIR, a court does not determine "the correctness of the EIR's environmental conclusions, but only … its sufficiency as an informative document." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392; Cal. Code Regs., tit. 14, § 15151.) The EIR's response to Comment 9 informed CDFW and the public, *inter alia*, that the lighting on the Project "would minimize the amount of new lighting being installed when not in conflict with Caltrans design guidelines or public safety standards for roadways" and that "when practicable" would use "LED's or bulbs" reducing the lighting impact. (**AR 12797.**)

Sufficiency of an EIR "is to be reviewed in light of what is reasonably feasible and … perfection is not required," and what is feasible is that which is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (*Citizens To Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 429; Cal. Code Regs., tit. 14, § 15364; Pub. Resources Code § 21061.1.) It was not feasible at the time to make this commitment. However, after the contract was awarded in the fall of 2024 and during the design phase, most, if not all, of CDFW's recommendations on lighting avoidance/mitigation measures will be incorporated into the Project. Regardless, CALTRANS' obligations under CEQA are to provide good-faith analysis and to effectively communicate significant impacts and feasible mitigation to the public through public disclosure through the EIR, was accomplished.

PETITIONERS also argue the EIR did not include all feasible mitigation measures. This assertion is inaccurate. Based on consultations, input from state and federal agencies, field assessment, and studies, thirty-one Mitigation Measures (MMs) and Avoidance, Minimization, and/or Mitigation Measures (AMMs) were adopted.[30] (**AR 11831-11836.**) Additionally, four MMs,

[30] For general reference, Chapter 2 of the EIR contains the Biological Environment section, and generally covers discussion of potential environmental impacts, AMMs, and MMs. The AMMs and MMs are also summarized in

referenced as Standard Measure BIOs, were adopted and can be found in Appendix E of the EIR. (**AR 11850-11851.**) In Chapter 2 of the EIR, the AMMs adopted were discussed (**AR 12554, 12576-12578, 12596-12599.**)

///

VII. CALTRANS PROVIDED A SUFFICIENT RESPONSE TO CDFW COMMENTS

Lastly, PETITIONERS argue that CALTRANS did not abide by "strict procedural guidelines" ostensibly created by the California Supreme Court to respond to mitigation measures recommended by another agency. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940.) This is a misreading of the case. The case did not set forth new "strict procedural guidelines." Instead, it addressed CEQA violations involving property near the coast and an EIR that failed to "identify areas that might qualify as environmentally sensitive habitat areas (ESHA) under the California Coastal Act." (*Id.* at 924.) It was noted that a "lead agency may disagree with the opinions of other agencies" and that "comments may not simply be ignored" (*Id.* at 940; Guidelines, § 15088; *People v. County of Kern* (1974) 39 Cal.App.3d 830, 842 [a lead agency must, in good faith, provide a "reasoned analysis in response" to a sister agency's comment.]

CALTRANS' EIR provided a good faith reasoned analysis of CDFW's written comment. It did not ignore them. It did not disagree per se with the recommendations that lighting could affect wildlife. Instead, the response was reasonable in its professional judgment at the time, and as the state transportation agency, that must consider operational concerns (e.g., public health, safety, and welfare). (**AR 12797**). The EIR provided sufficient responses to comment on this issue.

CONCLUSION

"CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive." (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) CALTRANS' EIR met this requirement. The Project is imperfect: only 50% of the increased VMT from the Project will be reduced despite all feasible mitigation measures.

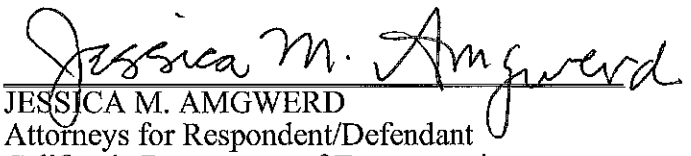
Appendix C. A list of references is available in Appendix D, a list of Standard Measures is included in Appendix E, and the list of technical studies prepared for this project is available in Appendix H.

The transportation sector is integral to the people and economy of California. The Corridor in issue is severely limited in the movement of goods and people. The EIR and the SOC have met all the legal requirements for the Project to move forward. The EIR and AR establish that CALTRANS did an outstanding job meeting its CEQA requirements. Its method was collaborative, careful, and deliberate in assessing, avoiding, and mitigating all impacts while meeting the Project's purpose and need and obtaining funding. PETITIONER's arguments against the Project are based on ideological beliefs and are not legal requirements under CEQA. They place a higher value on narrowing driving options than reducing congestion travel time and expanding multimodal transportation options that reduce GHG emissions. As set forth above, the EIR and AR are replete with evidence that substantially supports all of CALTRANS findings and conclusions in the EIR and the SOC. Accordingly, the Petition should be dismissed with prejudice as PETITIONERS have not met their burden.

DATED: March 28, 2025

Respectfully submitted,

ERIN E. HOLBROOK, Chief Counsel
ALAN M. STEINBERG, Deputy Chief Counsel
PAUL BROWN, Assistant Chief Counsel
JESSICA M. AMGWERD, Attorney
ERIN QUINDO, Attorney

By 
JESSICA M. AMGWERD
Attorneys for Respondent/Defendant
California Department of Transportation

PROOF OF SERVICE

I, the undersigned, declare that I am over 18 years of age and not a party to this action. I am employed in the county of Sacramento, California, and my business address is 1120 N Street, Sacramento, California. My electronic service address is Tamara.Yeh@dot.ca.gov. Our office ***SERVICE*** address is CaltransHQservice@dot.ca.gov.On the date of signature below, I served the following documents:

RESPONDENT CALIFORNIA DEPARTMENT OF TRANSPORTATION'S OPPOSITION BRIEF

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

SEE ATTACHED SERVICE LIST

☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and eight in the evening.

☐ **By United States mail:** I enclosed the documents in a sealed envelope or package addresses to the persons at the addresses listed and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the California Department of Transportation Legal Division's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **By overnight delivery:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **By electronic service:** Pursuant to Code of Civil Procedure section 1010.6, I caused the said documents to be sent to the persons at the electronic service address(es) listed directly below their names.

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

Executed at Sacramento, California, on March 28, 2025.

Tamara Yeh
TAMARA J. YEH, Declarant

SERVICE LIST

John P. Rose, CSBN 285819 Aruna Prabhala, CSBN 278865 CENTER FOR BIOLOGICAL DIVERSITY 1212 Broadway, Suite 800 Oakland, CA 94612 Tel: (510) 844-7100; Fax: (510) 844-7150 jrose@biologicaldiversity.org aprabhala@biologicaldiversity.org	*Attorneys for* Petitioner/Plaintiff Center for Biological Diversity
Alexander Hall, CSBN 354050 Michael E. Wall, CSBN 170238 NATURAL RESOURCES DEFENSE COUNCIL 111 Sutter St, Fl 21 San Francisco, CA 94104-4540 Tel: (415) 875 8262; Fax: (415) 795 4799 ahall@nrdc.org mwall@nrdc.org	*Attorneys for* Petitioners/Plaintiffs Natural Resources Defense Council, Inc., and Planning and Conservation League
LAW OFFICES OF DONALD B. MOONEY DONALD B. MOONEY (CA Bar# 153721) 417 Mace Boulevard, Suite J-334 Davis, California 95618 Telephone: (530) 758-2377 Facsimile: (530) 212-7120 dbmooney@dcn.org	*Attorneys for* Petitioner/Plaintiff Sierra Club and Environmental Council of Sacramento
Courtesy copy to: Robert Vaghini Robert.Vaghini@dot.ca.gov	