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15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**  
17 **(Fresno Division)**

18 FRIENDS OF CALWA, INC. and FRESNO  
19 BUILDING HEALTHY COMMUNITIES,

20 Plaintiffs and Petitioners,

21 v.

22 CALIFORNIA DEPARTMENT OF  
TRANSPORTATION, UNITED STATES  
23 DEPARTMENT OF TRANSPORTATION,  
FEDERAL HIGHWAY ADMINISTRATION,  
24 TONY TAVARES, in his official capacity as  
Director of the California Department of  
25 Transportation; PETE BUTTIGIEG, in his  
official capacity of Secretary of  
26 Transportation, SHAILEN BHATT, in his  
official capacity as Administrator of the  
27 Federal Highway Administration; and DOES  
1-48 inclusive.

28 Defendants and Respondents

Case No. 1:23-CV-00353-JLT-EPG

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

National Environmental Policy Act, 42 U.S.C.  
§§ 4321 et seq.; Clean Air Act, 42 U.S.C.  
§§ 7401 et seq.; Administrative Procedure Act,  
5 U.S.C. §§ 701 et seq.; California  
Environmental Quality Act, Cal. Pub. Res.  
Code. §§ 21000 et seq.; Cal. Gov. Code  
§§ 11135 and 8899.50; Cal. Code Civ. Proc.  
§§ 1085 and 1094.5

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**I. INTRODUCTION**

1  
2 1. This action challenges a project by Defendants and Respondents California  
3 Department of Transportation (“Caltrans”) and Federal Highway Administration (“FHWA”)  
4 (collectively, “Defendants”) to reconstruct and expand two interchanges on North Avenue and  
5 American Avenue connecting California State Route 99 to local roadways in South Fresno. The  
6 project would increase capacity for heavy-duty truck traffic and support further industrial buildout in  
7 nearby low-income communities of color.

8 2. For over fifty years, State Route 99 has cut a line through South Fresno, dividing  
9 communities and cutting off residents from the commercial and economic resources of downtown  
10 and North Fresno neighborhoods, while carrying an expanding flow of truck traffic and attendant  
11 pollution into local neighborhoods.

12 3. Neighborhoods and communities surrounding the interchanges in South Fresno –  
13 including the historic unincorporated communities of Calwa and Malaga to the east and adjacent  
14 neighborhoods in the City of Fresno (the “City”) – are among the most polluted in the state from  
15 particulate matter and other traffic-related emissions, as well as from industrial facilities fed by the  
16 trucks that flow from State Route 99. They are also among the most socially vulnerable, bearing the  
17 marks of decades of racial segregation and discrimination in zoning and financial services.

18 4. The neighborhoods impacted by the project are also comprised of significantly higher  
19 shares of people of color and children and have significantly higher poverty rates relative to  
20 surrounding areas. Unlike more affluent and White neighborhoods in the northern parts of the City  
21 and elsewhere in Fresno County, South Fresno communities have been zoned for decades for  
22 industrial land uses and have experienced a lack of investment in and zoning for neighborhood-  
23 serving amenities and resources, like grocery stores, parks, quality housing, and multi-modal  
24 transportation options. These communities have inherited and continue to suffer from the legacy of  
25 environmental racism and neglect.

26 5. The State of California has acknowledged the disproportionate pollution burdens  
27 impacting South Fresno and has taken actions to help remedy the legacy of environmental racism in  
28 these communities. In particular, the State adopted legislation and other directives requiring state and

1 local agencies to reduce pollution exposures, reverse industrialization trends, and promote  
2 environmental justice in as well as direct resources to overburdened communities. Among such  
3 efforts, the California Air Resources Board (“CARB”) designated a large area of South Fresno as a  
4 priority community requiring air monitoring and the reduction of air pollution from traffic and  
5 industry. Likewise, the California Attorney General’s Office has warned the County of Fresno (the  
6 “County”) that its land use policies targeting South Fresno for industrial development likely violate  
7 state civil rights law and environmental justice mandates. And the State has approved  
8 implementation plans to bring damaging ozone and particulate matter pollution in the region down to  
9 federally required levels.

10 6. Defendants’ South Fresno State Route 99 Corridor Project (the “Project”) conflicts  
11 with these policies and practices to reduce air pollution and industrial burdens and correct disparities  
12 in South Fresno communities. The Project would expand the capacity of State Route 99  
13 interchanges, facilitating increased traffic flow – particularly of heavy-duty trucks – between the  
14 highway and local South Fresno roadways. The existing interchanges and adjacent local roads have  
15 deteriorated over time due to their use by heavy-duty trucks travelling to existing industrial facilities  
16 concentrated in the area. But instead of simply remedying these problems, Defendants proposed and  
17 approved a project that would facilitate increased industrial buildout and related heavy-duty truck  
18 traffic, exacerbating pollution burdens and locking in a vision of expanding industrialization in the  
19 area, which denies South Fresno residents access to the opportunities enjoyed in other areas of the  
20 City and County.

21 7. As a joint project between Caltrans and the FHWA, the Project is subject to the  
22 protections of the National Environmental Protection Act, 42 U.S.C. sections 4321 et seq. (“NEPA”),  
23 and the California Environmental Quality Act, California Public Resources Code sections 21000 et  
24 seq. (“CEQA”). These laws require Caltrans – which is charged with CEQA as well as NEPA  
25 compliance for the Project – to carefully analyze and disclose potential environmental impacts of the  
26 Project, including impacts on air quality, traffic, and environmental justice, as well as conflicts with  
27 air quality plans and land use policies. And these laws require Caltrans to consider less harmful  
28 alternatives and to adopt feasible and enforceable mitigation measures to reduce adverse impacts to

1 insignificance. As a federal transportation project, the Project is also subject to federal Clean Air Act  
2 protections, which require Defendant U.S. Department of Transportation, acting through FHWA, to  
3 ensure that the Project is consistent with federal air quality goals and will not interfere with plans to  
4 correct air quality violations in the area. *See* 42 U.S.C. § 7506(c).

5 8. Defendants’ environmental review of the Project fell significantly short. Caltrans  
6 prepared an Environmental Impact Report (“EIR”) under CEQA that, among other things, failed to  
7 acknowledge the existence of *any* impacted communities or sensitive receptors, failed to consider  
8 conflicts with air quality and land use plans and policies, failed to analyze the capacity-increasing  
9 Project’s impacts on vehicle miles traveled, and failed to consider cumulative impacts and public  
10 health impacts of the Project together with similar and coordinated Caltrans’ projects up and down  
11 the State Route 99 corridor as well as industrial development projects planned for adjacent  
12 neighborhoods. Caltrans also refused to prepare a detailed Environmental Impact Study (“EIS”) for  
13 the Project under NEPA, instead relying on the flawed EIR to find that the Project is not likely to  
14 have a significant adverse impact on the human environment despite Caltrans’ conclusion that  
15 greenhouse gas impacts would be significant and unavoidable. And Caltrans failed to make  
16 underlying studies and reports readily accessible to the public, including in Spanish, the language  
17 spoken by a majority of affected residents.

18 9. Likewise, FHWA failed to properly consult with the public on its transportation  
19 conformity determination or provide reasonable access to technical information underlying its  
20 determination for public review and comment. It failed to effect proper interagency consultation to  
21 ensure that its conformity determination would be informed by the technical expertise of the U.S.  
22 Environmental Protection Agency and other appropriate administrative agencies. And it improperly  
23 disclaimed its obligation to perform a hot-spot analysis to assess the Project’s propensity to aggravate  
24 damaging particulate matter pollution.

25 10. The numerous inadequacies in the environmental analysis mean that decisionmakers  
26 and the public have been left in the dark about the Project’s impacts, including the Project’s  
27 contribution to already disproportionate pollution burdens borne by South Fresno communities and  
28 its conflict with laws and policies designed to reverse these trends. Consequently, it has also failed to

1 adopt effective mitigation to offset foreseeable harms.

2 11. These failures have put Caltrans on a collision course with civil rights mandates  
3 designed to prevent discrimination and reverse disparities in environmental health and access to  
4 housing and opportunity. California Government Code section 11135 prohibits Caltrans from  
5 unlawfully discriminating in its programs and activities, including through actions that result in a  
6 disparate impact on the basis of race, ethnicity, age, or other protected characteristics. Government  
7 Code section 8899.50 requires Caltrans to affirmatively further fair housing (“AFFH”) by taking  
8 meaningful actions to overcome segregation patterns and foster inclusive communities free from  
9 barriers that restrict access to opportunity. The statute also prohibits Caltrans from taking any action  
10 that is materially inconsistent with its duty to AFFH. Caltrans’ approval of the Project violates these  
11 laws by facilitating increased flows of polluting heavy-duty truck traffic into South Fresno, furthering  
12 the industrialization of South Fresno communities and compounding the wide-ranging resource and  
13 public health disparities impacting these areas. Other neighborhoods in North Fresno and Fresno  
14 County do not face the same impacts from the Project which threaten South Fresno communities.

15 12. The Court should accordingly issue a declaration that Defendants’ support for and  
16 approvals of the Project violate federal and state environmental and civil rights laws, and it should set  
17 aside approvals of the Project and certification of the legally deficient environmental documents on  
18 which they rely. Because the Project in its current form cannot proceed without violating Caltrans’  
19 duties under state civil rights laws, the Court should also permanently enjoin Caltrans from re-  
20 approving the Project.

## 21 II. JURISDICTION AND VENUE

22 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1331, as  
23 Plaintiffs assert federal claims under NEPA and the Clean Air Act, and pursuant to 28 U.S.C. section  
24 1346, as Plaintiffs assert claims against the United States as a Defendant. This Court also has subject  
25 matter jurisdiction under 23 U.S.C. sections 327(c)(3)(B) and 327(d) and the May 27, 2022  
26 Memorandum of Understanding between Caltrans and the FHWA, which together provide for  
27 exclusive jurisdiction in the federal district court for the compliance, discharge, and enforcement of  
28 any responsibilities assigned by the FHWA and assumed by Caltrans, including compliance with

1 NEPA. The State of California has consented to federal jurisdiction in these matters and has waived  
2 any claim of sovereign immunity pursuant to California Streets and Highways Code section 820.1.

3 14. This Court has supplemental jurisdiction pursuant to 28 U.S.C. section 1367(a) over  
4 Plaintiffs' state law claims under CEQA and California Government Code sections 11135 and  
5 8899.50, because these state law claims are related to Plaintiffs' federal claims, arise out of the same  
6 nucleus of operative facts, and form part of the same case or controversy. Such state law claims are  
7 brought pursuant to Public Resources Code sections 21168 (or, in the alternative, pursuant to Public  
8 Resources Code section 21168.5) and 21168.9 and Government Code sections 11139 and 8899.50(b),  
9 as well as California Code of Civil Procedure sections 1094.5 and 1085.

10 15. Declaratory and injunctive relief is sought and authorized under 28 U.S.C. sections  
11 2201 and 2202.

12 16. Plaintiffs have performed any and all conditions precedent to filing this action and  
13 have exhausted all administrative remedies available to them to the extent required by law, and the  
14 violations of law claimed below are ripe for judicial review.

15 17. Plaintiffs have served the Attorney General of the State of California with a copy of  
16 the original petition and complaint and this amended petition and complaint along with notices of  
17 filing in compliance with California Public Resources Code section 21167.7 and California Code of  
18 Civil Procedure section 388. The Notice and Proof of Service for the original petition and complaint  
19 is provided as Exhibit A, and the Notice and Proof of Service for the amended petition and complaint  
20 is provided as Exhibit B.

21 18. Plaintiffs provided written notice to Caltrans of their intent to commence this action  
22 asserting claims for violations under CEQA and provided the Notice and Proof of Service with the  
23 initial pleading as required by California Public Resources Code section 21167.5. The Notice and  
24 Proof of Service are attached as Exhibit C hereto.

25 19. Plaintiffs have complied with the requirements of California Public Resources Code  
26 section 21167.6 by concurrently filing a notice of Plaintiffs' election to prepare the record of  
27 administrative proceedings relating to the CEQA claims in this action with their initial pleading.

28 20. Venue lies in this District, pursuant to 28 U.S.C. section 1391(e), because the events

1 giving rise to this lawsuit occur in this District and because Caltrans, a Respondent and Defendant in  
2 the action, resides within this District.

3 21. A substantial part of the events or omissions which give rise to the claims herein  
4 occurred in Fresno County; the Project is located in Fresno County and administered by Caltrans  
5 District Six, which includes and has offices in Fresno County; Plaintiffs' offices and staff are located  
6 in Fresno County; and many of the adverse impacts of Defendants' violations of the law occurred or  
7 will occur in Fresno County. Therefore, assignment to the Fresno Division of this Court is proper  
8 under U.S. District Court for the Eastern District of California, Civil Local Rule 120(d).

9 22. Plaintiffs do not have a plain, speedy, or adequate remedy at law and will be  
10 irreparably harmed by Defendants' actions and inactions challenged herein.

11 23. An actual justiciable controversy exists between the parties hereto.

### 12 III. PARTIES

13 24. Plaintiff and Petitioner FRIENDS OF CALWA, INC. ("Friends of Calwa") is a  
14 California non-profit organization headquartered in Fresno County in the community of Calwa. The  
15 community of Calwa was named after the California Wine Association, which produced local wines  
16 from a nearby vineyard. From the large brick winery owned by the California Wine Association,  
17 which has now crumbled, a person in Calwa can see the skyline of downtown Fresno and imagine the  
18 possibilities that have not been available in the heavily-industrialized neighborhood. In their fight to  
19 improve their community for future generations, neighbors in the community of Calwa have a strong  
20 history of organizing together. Following that tradition of neighbors helping neighbors, Friends of  
21 Calwa was formed in 2009 by a group of Calwa neighbors who came together with the vision that all  
22 people, regardless of income level, cultural background, or political persuasion are entitled to live in  
23 neighborhoods that nurture their development. Friends of Calwa brings resources and people  
24 together to foster a healthy and thriving Calwa, where all people have access to quality education,  
25 good jobs, healthy food, public transportation, housing, recreation and parks, retail, meaningful civic  
26 engagement, and the opportunity to enjoy artistic, spiritual, and cultural amenities. In service of this  
27 mission, Friends of Calwa works to promote environmental health and justice in Calwa, including by  
28 advocating before local, state, and federal agencies to protect the health and environment of the local



1 community from harmful industrial development and traffic, and from consequent toxic pollution.

2 25. Friends of Calwa, and Calwa residents on whose behalf the organization advocates,  
3 are directly adversely impacted by the Project. Friends of Calwa’s mission to ensure that residents  
4 enjoy equal access to environmental benefits and protection from health and environmental burdens  
5 regardless of race, color, national origin, or income is frustrated by Defendants’ support for and  
6 approval of the Project. Friends of Calwa has been and will be required to divert resources from  
7 other organizationally essential programs and services to challenge Defendants’ actions and the  
8 harms to environmental quality, civil rights, and to access to housing that will flow from these  
9 actions. Friends of Calwa has also been required to invest staff time and other resources to ensure  
10 that residents of Calwa and other area residents have opportunities to provide input to Caltrans  
11 regarding the Project.

12 26. Plaintiff and Petitioner FRESNO BUILDING HEALTHY COMMUNITIES (“Fresno  
13 BHC”) is a California nonprofit organization headquartered in the City of Fresno. Fresno BHC’s  
14 mission is to foster thriving communities where all children and families can live healthy, safe, and  
15 productive lives. Fresno BHC is led by and works for the rights of people of color, as well as for the  
16 benefit of all Fresno County residents and works in partnership with community residents, young  
17 people, and community and faith-based organizations to advance its mission. Many of Fresno BHC’s  
18 staff and its executive team members were born and raised in South Fresno and are directly impacted  
19 by the disparities effecting South Fresno; as a result, they care deeply about accomplishing Fresno  
20 BHC’s mission. Fresno BHC brings attention and resources to Fresno communities and  
21 neighborhoods that need it most, including Calwa, Malaga, and other South Fresno communities. In  
22 service of this mission, Fresno BHC endeavors to build community members’ leadership and further  
23 community priorities relating to six focus areas: (1) advancing health equity across Fresno; (2)  
24 ensuring access to safe, affordable housing for every community member; (3) uplifting  
25 neighborhoods through community-engaged economic development; (4) advocating for responsible  
26 land use practices which support the development of parks and sustainable business, rather than  
27 polluting facilities; (5) improving access to outdoor spaces; and (6) advocating for quality  
28 transportation options which result in safer streets, cleaner air, and better public transit. One of

1 Fresno BHC’s current projects is managing the state-funded renovation of the 70-year-old Calwa  
2 Park, which has provided generations of community members with valued recreational and outdoor  
3 experiences and is located approximately one and a half miles from the Project Site.

4 27. The Project will directly impact Fresno BHC and the communities on whose behalf  
5 Fresno BHC advocates. Fresno BHC’s mission to foster healthy and thriving communities is  
6 frustrated by Defendants’ support for and approval of the Project. In addition, Fresno BHC has been  
7 and will be required to divert staff time and other resources away from other important projects and  
8 services, such as its efforts to support local training and leadership and to build environmental and  
9 community assets in South Fresno, to oppose Defendants’ approvals of the Project and counteract the  
10 adverse environmental and health impacts that will result from the Project.

11 28. Defendant U.S. DEPARTMENT OF TRANSPORTATION (“USDOT”) is the  
12 executive department of the federal government responsible for oversight of the transportation  
13 planning process, including implementing the requirements of NEPA with respect to federal highway  
14 projects, 23 U.S.C. § 139, and ensuring the conformity of federally-developed, funded, or approved  
15 transportation projects with approved State Implementation Plans to obtain National Ambient Air  
16 Quality Standards pursuant to section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c). *See* 40  
17 C.F.R. § 93.100.

18 29. Defendant FEDERAL HIGHWAY ADMINISTRATION (“FHWA”) is a federal  
19 agency within the USDOT that supports state and local governments in the design, construction, and  
20 maintenance of the Nation’s highway system, including by providing financial and technical  
21 assistance. Pursuant to authority delegated by the USDOT, 49 C.F.R. § 1.85, FHWA has primary  
22 responsibility for ensuring that federal highway projects, including the Project, comply with relevant  
23 state and federal laws. The Project is a joint project of FHWA and Caltrans. Pursuant to 23 U.S.C.  
24 section 327(b) and the Memorandum of Understanding between FHWA and Caltrans dated May 27,  
25 2022, FHWA assigned to Caltrans the USDOT Secretary’s responsibilities for compliance with  
26 NEPA with respect to highway transportation projects in California. Although this Project is subject  
27 to this NEPA assignment, the USDOT, acting through FHWA, remains responsible for transportation  
28 conformity determinations under section 176 of the Clean Air Act, 42 U.S.C. § 7506(c). FHWA

1 issued a transportation conformity determination for the Project on October 3, 2022.

2 30. Defendant CALIFORNIA DEPARTMENT OF TRANSPORTATION (“Caltrans”) is  
3 a California public agency responsible for managing California’s highway and freeway system.  
4 Caltrans is the lead agency responsible for the Project’s environmental review under CEQA and, as  
5 assigned by the FHWA, under NEPA. Caltrans is listed as the Project Applicant on the February 6,  
6 2023 Notice of Determination. Plaintiffs are informed and believe, and on that basis allege, that  
7 Caltrans is undertaking the Project as part of its broader vision, goals, and policies to expand capacity  
8 of State Route 99 to support increased movement of goods.

9 31. Defendant PETE BUTTIGIEG is the Secretary for Transportation for USDOT and is  
10 named herein and at all times mentioned herein in his official capacity. Secretary Buttigieg is  
11 responsible for the administration, operations, and activities of USDOT, including oversight of  
12 FHWA. Defendants USDOT and Secretary Buttigieg are referred to collectively in this complaint as  
13 USDOT.

14 32. Defendant SHEILAN BHATT is the Administrator of the FHWA, an agency of the  
15 federal government, and is named herein and at all times mentioned herein in his official capacity.  
16 Defendants FHWA and Administrator Bhatt are referred to collectively in this complaint as FHWA.

17 33. Defendant TONY TAVARES is the Director of Caltrans, an agency of the State of  
18 California, and is named herein and at times mentioned herein in his official capacity. Defendants  
19 Caltrans and Tavares are referred to collectively in this complaint as Caltrans.

20 34. Plaintiffs do not know the true names and capacities, whether individual, corporate,  
21 associate, or otherwise, of Defendants and Respondents DOES 1-48 inclusive, and therefore sue said  
22 Defendants and Respondents under fictitious names. Plaintiffs will amend this Complaint to show  
23 their true names and capacities when the same have been ascertained.

#### 24 **IV. LEGAL BACKGROUND**

##### 25 **A. The National Environmental Policy Act**

26 35. Congress enacted NEPA “to promote efforts which will prevent or eliminate damage  
27 to the environment” and to “stimulate [human] health and welfare.” 42 U.S.C. § 4321. Recognizing  
28 the “profound influences” of “industrial expansion” and other intensive human activity on the natural

1 environment and human health and welfare, NEPA requires the federal government to use all  
2 practical means to improve and coordinate federal plans, functions, programs, and resources to  
3 “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing  
4 surroundings.” 42 U.S.C. § 4331.

5 36. NEPA is intended to ensure that all federal agencies consider the environmental  
6 impacts of their actions in their decision-making processes, thereby making environmental protection  
7 part of the mandate of every federal agency. 40 C.F.R. § 1500.1(a). NEPA fulfills this purpose by  
8 requiring that agencies take a “hard look” at the environmental impacts of federal action before the  
9 action occurs and by ensuring that “relevant information will be made available to the larger audience  
10 that may also play a role in both the decisionmaking process and the implementation of that  
11 decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989). NEPA’s  
12 purpose is not to generate paperwork, but to provide for informed decision-making and excellent  
13 agency action. 42 U.S.C. § 1500.1(a).

14 37. NEPA and the regulations promulgated thereunder by the Council on Environmental  
15 Quality require the preparation of a detailed statement, referred to as an Environmental Impact  
16 Statement (“EIS”), for all “major Federal actions significantly affecting the quality of the human  
17 environment.” 40 C.F.R. § 1502.3; 42 U.S.C. § 4332(c). The EIS must provide a full and fair  
18 discussion of significant environmental impacts and inform decisionmakers and the public of  
19 reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the  
20 human environment. 42 U.S.C. § 4332(c); 40 C.F.R. § 1502.1.

21 38. An agency’s NEPA review must consider the direct effects of the agency action, as  
22 well as “[i]ndirect effects, which are caused by the action and are later in time or farther removed in  
23 distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.1(g)(1)-(2). And it must consider  
24 “[c]umulative effects, which are effects on the environment that result from the incremental effects of  
25 the action when added to the effects of other past, present, and reasonably foreseeable actions,”  
26 regardless of what agency or person undertakes those actions. 40 C.F.R. § 1508.1(g)(3). Cumulative  
27 effects may “result from individually minor but collectively significant actions taking place over a  
28 period of time.” *Id.* The requirement that agencies consider the full range of cumulative effects

1 prevents agencies from “impermissibly subject[ing] the decision-making process contemplated by  
2 NEPA to the tyranny of small decisions” – that is, from “dividing a project into multiple actions, each  
3 of which individually has an insignificant environmental impact, but which collectively have a  
4 substantial impact.” *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1078 (9th Cir. 2002)  
5 (citations omitted).

6 39. In evaluating the significance of agency action, the agency must consider “both the  
7 context and the intensity of the possible effects” and base its decision on consideration of all relevant  
8 factors. *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2020). Effects that must be considered  
9 include ecological, aesthetic, historic, cultural, economic, social, and health effects, whether direct,  
10 indirect, or cumulative. 40 C.F.R. § 1508.1(g)(4).

11 40. To determine whether a proposed action significantly affects the environment such  
12 that an EIS is required, the lead agency may initially prepare an Environmental Assessment (“EA”).  
13 40 C.F.R. §§ 1501.5(a), 1501.5(c)(1). An EA must provide sufficient evidence and analysis of the  
14 proposed action’s direct, indirect, and cumulative impacts to determine whether the lead agency must  
15 prepare an EIS.

16 41. The lead agency may issue a Finding of No Significant Impact (“FONSI”) only if the  
17 EA supports the finding that the proposed action will not have a significant effect on the  
18 environment. 40 C.F.R. § 1501.6(a). If at any point the agency determines that the action is likely to  
19 have a significant impact on the environment, then the agency must prepare an EIS before proceeding  
20 with the action. 23 C.F.R. § 771.119(i); *see Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402  
21 F.3d 846, 864 (9th Cir. 2005) (EIS must be prepared where “substantial questions are raised as to  
22 whether a project may cause significant degradation of some human environmental factor”).

23 42. Courts will set aside a FONSI and require the preparation of an EIS if the FONSI is  
24 based on conclusory or perfunctory assertions that do not reflect adequate consideration of relevant  
25 factors. *Ocean Advocates*, 402 F.3d at 864, 870.

26 43. Claimed violations of NEPA are reviewed under the Administrative Procedure Act, 5  
27 U.S.C. §§ 701-706 (“APA”). The APA confers a right of judicial review on any person that is  
28 adversely affected by agency action. 5 U.S.C. § 702. Under the APA, a reviewing court must “hold

1 unlawful and set aside agency action, findings, and conclusions” found to be “arbitrary, capricious,  
2 an abuse of discretion, or otherwise not in accordance with law” or “unsupported by substantial  
3 evidence” in the record, as well as those found to be “without observance of procedure required by  
4 law.” 5 U.S.C. § 706(2).

5 **B. The Clean Air Act**

6 44. The purpose of the Clean Air Act is “to protect and enhance the quality of the  
7 Nation’s air resources so as to promote the public health and welfare and the productive capacity of  
8 its population.” 42 U.S.C. § 7401(b)(1). In adopting the Act, Congress recognized that the  
9 proliferation of “industrial development, and the increasing use of motor vehicles, has resulted in  
10 mounting dangers to the public health and welfare.” 42 U.S.C. § 7401(a)(2).

11 45. To this end, section 176(c) of the Clean Air Act imposes an affirmative duty on  
12 federal agencies to assure that any project subject to federal approvals or receiving federal assistance  
13 or support conforms with state implementation plans (“SIPs”) to attain or maintain national ambient  
14 air quality standards (“NAAQS”) in the area affected by the project. 42 U.S.C. § 7506(c); *see also* 42  
15 U.S.C. § 7410(a) (setting forth SIP requirements).

16 46. “Conformity” for purposes of section 176(c) means:

17 (A) conformity to an implementation plan’s purpose of eliminating or  
18 reducing the severity and number of violations of the national ambient  
19 air quality standards and achieving expeditious attainment of such  
standards; and

20 (B) that such activities will not – (i) cause or contribute to any new  
21 violation of any standard in any area; (ii) increase the frequency or  
22 severity of any existing violation of any standard in any area; or (iii)  
delay timely attainment of any standard or any required interim  
emission reductions or other milestones in any area.

42 U.S.C. § 7506(c)(1).

23 47. The Clean Air Act delegates to the U.S. Environmental Protection Agency (“EPA”)  
24 and the USDOT the duty to promulgate criteria and procedures to assure conformity for  
25 transportation plans, programs, and projects. 42 U.S.C. § 7506(c)(4)(B). These transportation  
26 conformity regulations, codified at 40 C.F.R. Part 93, apply in all nonattainment and maintenance  
27 areas for transportation-related criteria pollutants, including but not limited to ozone, particulate  
28 matter (PM<sub>2.5</sub> and PM<sub>10</sub>), and carbon monoxide (CO). 40 C.F.R. § 93.102(b); *see also* 40 C.F.R.

1 § 93.101.

2 48. The transportation conformity regulations impose additional requirements on the  
3 FHWA in CO, PM<sub>10</sub>, and PM<sub>2.5</sub> nonattainment and maintenance areas to ensure that the project will  
4 not contribute to new localized violations of these damaging pollutants or impede the timely  
5 attainment of the NAAQS. 40 C.F.R. § 93.116(a). To satisfy these requirements, the FHWA must  
6 generally employ a “hot-spot analysis,” meaning “an estimation of likely future localized CO, PM<sub>10</sub>,  
7 and/or PM<sub>2.5</sub> pollutant concentrations and a comparison of those concentration to the [NAAQs]. Hot-  
8 spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area,  
9 including, for example, congested roadway intersections and highways or transit terminals, and uses  
10 an air quality dispersion model to determine the effects of emissions on air quality.” 40 C.F.R.  
11 § 93.101; *see* 40 C.F.R. § 93.116(a).

12 49. Hot-spot analyses for PM<sub>10</sub> and PM<sub>2.5</sub> must be based on quantitative analysis methods  
13 for projects that present air quality concerns. 40 C.F.R. § 93.123(b). Such projects include, among  
14 others: “expanded highway projects that have a significant increase in the number of diesel vehicles”  
15 and projects that “affect[] intersections that are at Level-of-Service D, E, or F with a significant  
16 number of diesel vehicles” or that could fall to these low levels of service because of increased diesel  
17 truck traffic “related to” the project. 40 C.F.R. § 93.123(b)(1); *see* 40 C.F.R. § 93.116(a).

18 50. The transportation conformity regulations also dictate public and interagency  
19 consultation on proposed conformity determinations. *See generally* 40 C.F.R. § 93.105. Public  
20 consultation means a “proactive public involvement process which provides opportunity for public  
21 review and comment by, at a minimum, providing reasonable public access to technical and policy  
22 information considered by the agency at the beginning of the public comment period.” 40 C.F.R.  
23 § 93.105(e). Likewise, interagency consultation procedures ensure that agencies at the federal, state,  
24 regional, and local levels with responsibilities over SIPs are involved in evaluating the project’s  
25 conformity. 40 C.F.R. § 93.105(c).

26 51. Violations of the Clean Air Act’s transportation conformity requirements are  
27 reviewable under the APA, 5 U.S.C. §§ 701 et seq.

28



1 **C. California Environmental Quality Act**

2 52. CEQA is California’s comprehensive statute intended to provide for the “long-term  
3 protection of the environment, consistent with the provision of a decent home and suitable living  
4 environment for every Californian.” Cal. Pub. Res. Code § 21001(d). CEQA makes it state policy to  
5 “[d]evelop and maintain a high-quality environment now and in the future, and take all action  
6 necessary to protect, rehabilitate, and enhance the environmental quality of the state.” *Id.* § 21001(a).

7 53. CEQA mandates environmental review of all state and local agency projects in  
8 California to inform decisionmakers and the public about potential significant environmental effects  
9 and to identify ways to avoid or significantly reduce those impacts. CEQA Guidelines (14 Cal. Code  
10 Regs.) § 15002.

11 54. Under CEQA, all state lead agencies must prepare and certify the completion of an  
12 Environmental Impact Report (“EIR”) for any project they propose to carry out or approve that may  
13 have significant effects on the environment. Cal. Pub. Res. Code § 21100(a). As the “heart” of  
14 CEQA, the EIR is “an environmental ‘alarm bell’ whose purpose it is to alert the public and its  
15 responsible officials to environmental changes before they have reached ecological points of no  
16 return.” *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 392 (1988)  
17 (citation omitted).

18 55. An EIR must identify and describe the project’s potential direct and indirect  
19 significant effects on the environment, as well the project’s cumulative impacts when viewed in  
20 connection with the effects of past, present, and probable future projects. CEQA Guidelines  
21 §§ 15126.2(a), 15065(a)(3), 15130(a). In doing so, the EIR must describe and disclose the “whole of  
22 [the] action,” *id.* § 15378(a), thereby ensuring that “environmental considerations do not become  
23 submerged by chopping a large project into many little ones – each with a minimal potential impact  
24 on the environment – which cumulatively may have disastrous consequences.” *Laurel Heights  
25 Improvement Assn.*, 47 Cal.3d at 396 (citation omitted).

26 56. Environmental effects that the agency must consider include, but are not limited to,  
27 adverse impacts on aesthetics, noise, housing, land use, traffic, pedestrian and bicyclist facilities,  
28 climate change, and air quality. CEQA Guidelines, App. G. Analysis of air quality impacts must



1 consider the potential for a project to conflict with or obstruct implementation of an applicable air  
2 quality plan and to expose sensitive receptors to substantial pollution concentrations. *Id.* App. G,  
3 § III. Further, an agency must make a reasonable effort to substantively connect a project’s air  
4 quality impacts to likely health consequences. *Sierra Club v. County of Fresno*, 6 Cal.5th 502, 510  
5 (2018); *see* CEQA Guidelines § 15126.2(a).

6 57. CEQA makes a finding of significance mandatory when the project will “have  
7 environmental effects which will cause substantial adverse effects on human beings, either directly or  
8 indirectly.” CEQA Guidelines, App. G, § XXI. The EIR must also set forth project alternatives and  
9 enforceable mitigation measures to avoid or minimize environmental damage. *Id.* § 15002(a)(2)-(3).

10 58. The EIR must include an accurate description of the physical and environmental  
11 conditions in the vicinity of the project, which serves as the baseline against which the lead agency  
12 determines whether an impact is significant. *Id.* § 15125(a). This baseline must ordinarily reflect  
13 conditions “as they exist at the time the [CEQA] notice of preparation is published.” *Id.*  
14 § 15125(a)(1). Without an adequate baseline description, “analysis of impacts, mitigation measures  
15 and project alternatives becomes impossible.” *Save our Peninsula Comm. v. Monterey Cnty. Bd. of*  
16 *Supervisors*, 87 Cal.App.4th 99, 124 (2001) (citation omitted).

17 59. An accurate description of the environmental setting is also critical because the  
18 significance of an activity may vary with the setting. CEQA Guidelines § 15064(b)(1).

19 60. The lead agency must provide an adequate opportunity for public review and comment  
20 on a draft EIR and must thoroughly evaluate all comments received, offering a good faith, reasoned  
21 analysis in a written response. *Id.* §§ 15087, 15088. In particular, the lead agency’s response to  
22 comments must address in detail major environmental issues raised when the lead agency’s position  
23 differs from recommendations and objections made in public comments. *Id.* § 15088(c).

24 61. “CEQA does not authorize an agency to proceed with a project that will have  
25 significant, unmitigated effects on the environment . . . unless the measures necessary to mitigate  
26 those effects are truly infeasible” and the agency determines that the project’s specific benefits  
27 outweigh these effects. *City of San Diego v. Bd. of Trustees of Cal. State Univ.*, 61 Cal.4th 945, 967  
28 (2015) (citation omitted). When the lead agency approves a project that will result in significant and

1 unavoidable effects, the agency must provide a detailed statement of reasons, supported by  
2 substantial evidence, to support its approval. CEQA Guidelines § 15093(b).

3 **D. California’s Anti-Discrimination Law, Government Code section 11135**

4 62. California’s overarching anti-discrimination law, codified in Government Code  
5 section 11135, prohibits the State from discriminating against any person on the basis of race, color,  
6 ancestry, national origin, ethnic group identification, religion, age, sex, sexual orientation, color,  
7 genetic information or disability. Cal. Gov. Code § 11135(a). This proscription extends to any  
8 program or activity conducted, operated, or administered by the State or any local agency that  
9 receives state funding or financial assistance.

10 63. Facially neutral policies or activities may violate Government Code section 11135 if  
11 they cause a disproportionate impact on a protected class. *See Darensburg v. Metro. Transp.*  
12 *Comm’n*, 636 F.3d 511, 519 (9th Cir. 2011).

13 64. Government Code section 11139 provides a private right of action for any person to  
14 seek equitable relief for violations of Government Code section 11135. Cal. Gov. Code § 11139.

15 **E. California’s Duty to Affirmatively Further Fair Housing**

16 65. Pursuant to Government Code section 8899.50(b), the State, including every  
17 department, division, and officer, and other public agencies, is subject to a duty to affirmatively  
18 further fair housing (“AFFH”) in the administration of programs and activities relating to housing and  
19 community development. Cal. Gov. Code § 8899.50(b)(1). Agencies subject to the duty to AFFH  
20 are prohibited from taking any action that is materially inconsistent with that duty. *Id.*

21 66. “Affirmatively furthering fair housing” means taking meaningful actions, “in addition  
22 to combating discrimination, that overcome patterns of segregation and foster inclusive communities  
23 free from barriers that restrict access to opportunity based on protected characteristics.” Cal. Gov  
24 Code § 8899.50(A)(1). Meaningful actions are those that “address significant disparities in housing  
25 needs and in access to opportunity, replacing segregated living patterns with truly integrated and  
26 balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas  
27 of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” *Id.*

28 67. The California Department of Housing and Community Development’s (“HCD”)

1 guidance on agencies' AFFH duty provides that "access to opportunity," within the context of that  
2 duty, encompasses safe and decent housing, transportation, recreation, and a healthy environment,  
3 including safety from environmental hazards and healthy air and water, among other features.  
4 Actions that are materially inconsistent with the duty to AFFH may include zoning or siting toxic or  
5 polluting land uses or projects in or near a disadvantaged community and other actions which have a  
6 disparate impact on protected classes, perpetuate discrimination, segregation, and barriers to  
7 opportunity, and hinder any affirmative actions by agencies to AFFH. *See Martinez v. City of Clovis*  
8 90 Cal.App.5th 193 (2023).

9 68. The duty to AFFH is enforceable through issuance of a writ of mandate pursuant to  
10 California Code of Civil Procedure section 1085. Cal. Gov. Code § 8899.50(b)(2).

## 11 V. FACTUAL BACKGROUND

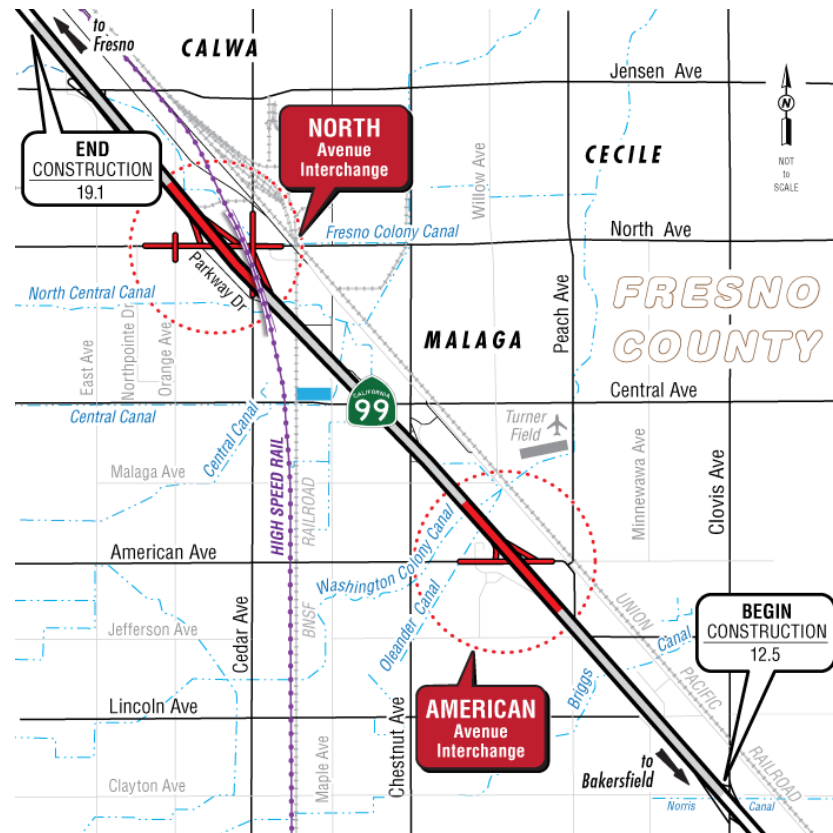
### 12 A. Community and Environmental Setting

#### 13 Communities within Vicinity of Project Site

14 69. The Project is located at the southern edge of the City in close proximity to multiple  
15 communities and neighborhoods which will be directly impacted by the Project. These residential  
16 areas, collectively referred to herein as "South Fresno," are home to thousands of residents living  
17 within a mile and a half of the Project Site to the east and west of State Route 99. South Fresno  
18 neighborhoods include low-income neighborhoods located within the City's jurisdictional limits and  
19 others in unincorporated County but within the City's planned development trajectory known as its  
20 sphere of influence.

21 70. The two historic communities of Calwa and Malaga lie within roughly a mile of the  
22 Project Site and just to the east of State Route 99, as depicted on the Project map below: Calwa just  
23 north of the Project's North Avenue interchange, and Malaga between the Project's North Avenue  
24 interchange and its southern American Avenue interchange. Calwa and Malaga are located in census  
25 tracts home to nearly 8,500 people.  
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Source: Caltrans, South Fresno State Route 99 Corridor Project Draft Environmental Impact Report, Figure 1-2.

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71. Both Calwa and Malaga are designated as “disadvantaged unincorporated communities” under California Senate Bill 244, meaning that they have “an annual median household income [] that is less than 80 percent of the statewide annual median household income.” Cal. Water Code § 79505.5(a). While Malaga is entirely unincorporated, the eastern portion of Calwa has been annexed into the City and only the western portion of the community remains unincorporated.

72. Calwa was established in 1885, the same year the City was incorporated. Today, Calwa is home to a vibrant mixed-use commercial and residential district whose community assets include Calwa Elementary School, a beauty salon, a candy store, a taqueria, a barbershop, and a bank, as well as blocks of single-family residential homes and multi-family apartments. Calwa is also home to several long-established places of worship, including the St. Anthony Mary Claret Church, the Lao Evangelical Church, and the Calwa United Methodist Church. The community park, Calwa Park, supported by the Calwa Parks Recreation and Parks District, recently received funding for a playground, picnic area, walking loop, and a renovation project for the swimming pool.

1           73.     Malaga was established in 1883. Today, the community’s amenities include Cristo  
2 Rey Catholic Church, the Malaga Community Park and Recreation Center, and Malaga Elementary  
3 School, as well as blocks of single-family homes and multi-family apartments.

4           74.     South Fresno is home to other historic low-income incorporated and unincorporated  
5 neighborhoods and communities located in Southwest, South Central, and Southeast Fresno – all  
6 areas separated from North Fresno by state highways.

7           75.     South Fresno is served by an array of additional community assets and non-residential  
8 sensitive land uses, including Gurdawara Nanaksar Sahib, a Sikh Temple (0.6 miles from the  
9 Project), Orange Elementary School (0.85 miles from the Project), and West Fresno Elementary  
10 School and West Fresno Middle School (1.4 miles from the Project). In addition, a 1,400-bed  
11 juvenile detention facility lies just 300 yards from the Project’s American Avenue interchange site.

12           76.     South Fresno communities also contribute in essential ways to the local and regional  
13 economy. South Fresno residents, for instance, are employed across a wide variety of sectors,  
14 including as farmworkers, construction workers, teachers, service workers, small business owners,  
15 and in other physically and mentally strenuous occupations.

16                           **History of Segregation and Discriminatory Land Use Practices**

17           77.     The Project’s location in South Fresno is no accident: The City and County – with  
18 which Caltrans is cooperating on the Project – have a long history of government-sponsored  
19 segregation and discriminatory land use practices that have concentrated highways and industrial  
20 development in and near South Fresno communities.

21           78.     The City and County’s history of segregation goes back to at least the 1870s. During a  
22 town meeting in 1873, the City’s White residents agreed to restrictive covenants which prohibited the  
23 sale or rental of housing to immigrants and people of color outside of certain South Fresno  
24 neighborhoods, setting in motion a history of exclusion, the effects of which persist today. Local  
25 police enforced these color lines, criminalizing residents of color who dared to transgress them.

26           79.     Over the next 25 years, the population of Fresno grew as the area attracted immigrants  
27 from China, Mexico, Japan, Armenia, and Italy whose work, experience, and culture enriched the  
28 local community, but who were forced to live in segregated parts of South Fresno. In 1918, the

1 City’s first general plan furthered residential segregation by designating the southern parts of the City  
2 both for multi-family housing targeted toward lower-income households and for polluting land uses,  
3 leading to the concentration of industrial development in the area’s poorest neighborhoods and in  
4 communities of color. Even after the Supreme Court declared racially restrictive zoning  
5 unconstitutional, the Fresno County Recorder’s Office recorded thousands of racially restrictive  
6 covenants prohibiting the sale, lease, or occupation of property in Fresno’s White neighborhoods to  
7 immigrants and people of color.

8         80. In the 1930s, “redlining maps” created by the quasi-governmental Home Owners’  
9 Loan Corporation (“HOLC”) categorized neighborhood desirability for financial lending based on  
10 “risk factors” including neighborhoods’ racial composition and polluting land uses. A 1936 HOLC  
11 map for Fresno marked areas in Southwest and Southeast Fresno as red (“Hazardous”) and yellow  
12 (“Definitely Declining”), denoting these census tracts as the riskiest for financial investment based on  
13 the racial background of their populations and zoning for “business” in the area. Residents and  
14 businesses in these neighborhoods were systematically denied mortgages or provided mortgages on  
15 unfavorable terms compared to mortgages issued in neighborhoods classified as lower-risk. Like  
16 racially restrictive covenants, the HOLC maps both recorded and furthered formal segregation  
17 practices. They also drove housing instability, poverty, and the concentration of industrial land uses  
18 in and around redlined neighborhoods – patterns which persist today.

19         81. In the 1950s, the construction of State Route 99 further cemented Fresno’s decades-  
20 long history of government-sponsored segregation, creating a physical barrier cutting off lower-  
21 income South Fresno communities of color from the public and private resources of downtown and  
22 wealthier neighborhoods comprised of a greater share of White residents. The establishment of the  
23 highway destroyed more than 20 blocks of existing housing; according to news reports, a former  
24 member of Fresno County’s Board of Supervisors would refer to the highway as “Fresno’s Berlin  
25 Wall.”

26         82. The City and County have since continued to adopt and reinforce industrial zoning and  
27 approval patterns and practices which encourage the concentration of industrial land uses in South  
28 Fresno, while shielding Whiter and more affluent neighborhoods from industrial development. As a

1 result, South Fresno is home to a disproportionate concentration of heavy industrial uses, compared  
2 to the City and County as a whole. Industrial sources in the area range from smaller operations like  
3 gasoline dispensing operations and auto body coating operations, to medium-sized operations like  
4 chrome plating facilities, to larger operations like a biomass power facility, a gasoline pipeline  
5 terminal facility, a steel product manufacturer, meat rendering plants, slaughterhouses, and multiple  
6 warehouse facilities, as well as landfills and waste transfer stations.

7 83. Truck routes that serve industrial development cut through and surround South Fresno  
8 communities, running alongside homes, places of worship, and parks. As a result, greater volumes of  
9 truck traffic flow next to or through Malaga, Calwa, and Southwest and South Central Fresno  
10 neighborhoods than in 55, 72, and 99 percent of census tracts across the United States, respectively.  
11 By comparison, certain Northwest and Northeast Fresno neighborhoods rank in the 24<sup>th</sup> and 35<sup>th</sup>  
12 percentiles nationwide for traffic volume exposures, respectively.

13 84. The County's and City's general plans both envision the continued proliferation of  
14 industrial development in and around South Fresno communities, next to homes, schools, parks,  
15 places of worship, and other community resources. In particular, the City's General Plan proposes the  
16 conversion of several historic South Fresno neighborhoods to industrial development and calls out the  
17 need for transportation capital projects to service this industrial growth.

18 85. In August 2021, the Fresno County Board of Supervisors began to lay the groundwork  
19 for further industrialization in South Fresno next to the community of Malaga. At a public meeting,  
20 the Board voted to direct County staff to study rezoning a 3,000-acre agricultural area for  
21 development of a "Fresno County Business and Industrial Campus," which would accommodate 19  
22 million square feet of building inventory. The Board also directed staff to assess utility and roadway  
23 infrastructure availability and needs to support this industrial expansion. According to a public  
24 statement by a Board member who also sits on the board of the Fresno County Transportation  
25 Authority (a Project sponsor), the Project would directly enable the development of the campus. The  
26 Supervisor acknowledged that the County is "doing the industrial park because it is potentially a fit  
27 for this area with these [Caltrans projects] and other improvements" and that "interchange upgrades  
28 [are] a help to the industrial park."



1           86.     City and County industrial land use zoning and approvals have gone hand-in-hand  
2 with the lack of investment in community-serving infrastructure, services, and land uses in South  
3 Fresno communities. South Fresno communities lack consistent access to safe and reliable drinking  
4 water and wastewater service, sidewalks, streetlights, crosswalks, stormwater drainage, and other  
5 investments to support safe and efficient transportation options. They likewise lack the level of access  
6 to quality housing, parks, grocery stores, medical facilities, and other community-serving resources  
7 available to residents of North Fresno neighborhoods and other Whiter and more affluent areas of the  
8 County. South Fresno residents and non-profits organizations have worked hard to sustain local  
9 businesses and community amenities despite this lack of government investment.

10           87.     South Fresno residents have advocated for years for the City, County, and State to act  
11 to redress these disparities and harms, including through the cessation of new industrial facility siting  
12 in their neighborhoods, re-routing of truck traffic away from homes and other sensitive land uses,  
13 improved environmental quality, and public and private investment in their communities.

14                           **Social Vulnerabilities Impacting South Fresno Communities**

15           88.     South Fresno communities continue to bear the marks of this long lineage of  
16 discriminatory land use, housing, and transportation policies and practices.

17           89.     Calwa and Malaga are disproportionately low-income communities of color relative to  
18 North Fresno neighborhoods, Fresno County, and the state as a whole, and they are comprised of a  
19 greater proportion of children and families with children compared to Fresno County and the state as a  
20 whole.

21           90.     Eighty-six percent of Calwa residents identify as Hispanic or Latino/a/e relative to 21  
22 percent of residents in Census Tract 6019004405 in Northeast Fresno near State Route 41 (hereinafter  
23 “Northeast Fresno neighborhood”), 39 percent Census Tract 6019004215 in Northwest Fresno near  
24 State Route 99 (hereinafter, “Northwest Fresno neighborhood”), and 55 percent in Fresno County.  
25 Ninety-two percent of Calwa residents identify as non-White relative to 31 percent in the Northeast  
26 Fresno neighborhood, 66 percent in the Northwest Fresno neighborhood, and 74 percent in the  
27 County.

28           91.     Seventy-eight percent of homes in Calwa house children, and 98 percent house family



1 units (households with families and unrelated members). This compares to 30, 40, and 40 percent of  
2 homes that house children and 79, 77, and 72 percent of homes that house family units in the  
3 Northeast Fresno neighborhood, the Northwest Fresno neighborhood, and the County of Fresno as a  
4 whole. Twenty percent of Calwa residents are children under the age of five, compared to just four  
5 percent and eight percent of residents in the Northwest Fresno neighborhood and Northeast Fresno  
6 neighborhood, respectively.

7           92. Thirty-seven percent of Calwa residents earn incomes that fall below the poverty line  
8 – nearly 28 times the rate in the Northeast Fresno neighborhood, four times the rate in the Northwest  
9 neighborhood, and double the rate in the County as a whole. And the median Calwa household  
10 income is just over \$50,000, whereas the median household income for the Northeast Fresno  
11 neighborhood and the Northwest Fresno neighborhood are \$135,000 and \$82,000, respectively, and  
12 for the County and state as a whole are \$63,000 and \$84,000, respectively.

13           93. In Malaga, 92 percent of residents identify as Hispanic or Latino/a/e and 95 percent as  
14 non-White. The median household income in Malaga is just under \$46,000. The percentage of people  
15 in Malaga living below twice the federal poverty level is worse than in 94 percent of census tracts in  
16 the state.

17           94. Children in Calwa and Malaga face high rates of household poverty. According to  
18 2021 data from the U.S. Department of Education, 88 percent of students at Malaga Elementary  
19 School and 96 percent of students at Calwa Elementary School qualified for free or reduced-priced  
20 lunch. In comparison, 42 percent of children who attend Fort Washington Elementary School in  
21 Northeast Fresno and 44 percent of children who attend River Bluff Elementary School in Northwest  
22 Fresno qualified for free or reduced-priced lunch in that year.

23           95. Plaintiffs are informed and believe, and on that basis allege, that other South Fresno  
24 communities are also disproportionately comprised of residents who identify as people of color and  
25 are low-income, and they are comprised of greater shares of children and/or families with children  
26 compared to the Northeast and Northwest Fresno neighborhoods and to the County as a whole. For  
27 example, in a census tract in Southwest Fresno located between State Route 99 and 41, approximately  
28 78 percent of residents identify as Latino/a/e, 17 percent as Black, and only two percent as White. In

1 the same census tract, 36 percent of residents are children.

2           96. According to a tool developed by HCD to classify neighborhoods according to their  
3 relative levels of racial integration and segregation, a Northeast Fresno neighborhood has “High White  
4 Segregation;” a Northwest Fresno neighborhood is “Racially Integrated;” and South Fresno  
5 communities, including Calwa, Malaga, and Southwest Fresno, have “High [People of Color]  
6 Segregation.” South Fresno communities also qualify as areas as of racially and ethnically  
7 concentrated poverty (“RECAPs”), according to a definition adopted by the U.S. Department of  
8 Housing and Urban Development, while a Northwest and a Northeast Fresno neighborhood do not.  
9 Sixty-one percent of families in the City’s RECAPs have children, exceeding the share of families  
10 with children throughout the County by up to nine percent.

11           97. South Fresno communities’ disproportionate lack of access to public and private  
12 resources and amenities manifests in restricted access to opportunities. The California Tax Credit  
13 Allocation Committee and HCD’s “Opportunity Area Maps,” which the agencies created as a tool to  
14 identify areas whose characteristics support positive economic, educational, and health outcomes,  
15 ranks a Northwest and a Northeast Fresno neighborhood as “Highest Resource,” Malaga as “Low  
16 Resource,” and Calwa and other South Fresno communities as “High Segregation and Poverty.”

17           **Disparate Environmental Burdens Impacting South Fresno Communities**

18           98. Concentrated development and operation of heavy industrial uses and warehouse  
19 facilities, together with heavy-duty truck traffic that serves these uses, expose South Fresno residents  
20 to a wide range of negative health, safety, and environmental impacts.

21           99. The development and operation of industrial facilities and the resulting influx of  
22 thousands of daily truck trips into South Fresno communities generate diesel emissions, dust, and  
23 other unhealthy air emissions which infiltrate residents’ homes, degrade outdoor air quality, and  
24 result in acute and long-term health impacts. Industrial facilities and trucks passing along local  
25 roadways also generate significant street noise and ground-borne vibrations, which residents can hear  
26 and feel in their homes; nighttime light pollution which disrupts sleep; safety risks to pedestrians,  
27 cyclists, and public transit users; and odors, among other impacts. Children growing up in and  
28 attending school in South Fresno communities are especially vulnerable to these impacts, which

1 effect their short and long-term health, wellbeing, safety, and quality of life.

2 100. These impacts occur against a backdrop of already severe air pollution burdens from  
3 transportation emissions. The EPA has designated the San Joaquin Valley, where the Project is  
4 located, in “serious” nonattainment for PM<sub>2.5</sub> pollution and “extreme” nonattainment for 8-hour  
5 ozone. The San Joaquin Valley is also under a maintenance plan to prevent backsliding on PM<sub>10</sub>  
6 pollution.

7 101. Data from mapping tools developed by California’s Office of Environmental Health  
8 Hazard Assessment (“CalEnviroScreen”) and by EPA (“EJScreen”) demonstrate the excess pollution  
9 burden borne by South Fresno residents. Both mapping tools assess communities at the census tract  
10 level to identify relative burdens by particular kinds of pollution from multiple sources and those  
11 most vulnerable to the effects of that pollution based on socioeconomic factors and underlying health  
12 status. In addition, CalEnviroScreen assigns cumulative impact scores of one through 100 for each  
13 census tract based on aggregate pollution burdens and population vulnerabilities of residents.

14 102. The mapping tools illustrate the environmental footprint of decades of concentrated  
15 development in and around these communities. For example, within Calwa, CalEnviroScreen  
16 identifies 12 cleanup sites (places that are contaminated with hazardous chemicals and require  
17 cleanup by the property owner or government), a concentration higher than in 99 percent of census  
18 tracts in California. Across Calwa and Malaga, EJScreen and CalEnviroScreen identify more than 50  
19 facilities regulated under the Resource Recovery and Conservation Act (a federal law governing  
20 management of hazardous and solid waste), 16 facilities regulated under the Toxic Substances  
21 Control Act, numerous solid waste sites, and one Superfund Site.

22 103. South Fresno also bears the hallmarks of severe pollution impacts from the  
23 concentration of pollution sources in close proximity to communities, including vehicular and heavy-  
24 duty truck traffic. Calwa is more severely impacted by cumulative pollution burdens than 99 percent  
25 of census tracts in the state, and Malaga ranks among the most impacted of all census tracts in the  
26 state, falling in the 100<sup>th</sup> percentile for cumulative pollution burden. Similarly, the communities are  
27 more burdened by diesel particulate matter (“DPM”) – a carcinogenic air toxin emitted by trucks and  
28 industrial operations – than 68 percent and 65 percent of California census tracts, respectively. On

1 the other hand, the Northwest and Northeast Fresno neighborhoods are each more impacted by these  
2 pollutants than 19 percent of census tracts in the state. The severe pollution burden scores assigned  
3 to Calwa, Malaga, and other South Fresno communities led CalEPA to designate the communities as  
4 Disadvantaged Communities under California Senate Bill 535.

5 104. Health outcomes for populations in these communities are worse than in most of the  
6 country. The census tracts containing Calwa and Malaga have populations with life expectancies  
7 lower than 80 percent or more census tracts in the United States, according to EJScreen. Calwa and  
8 Malaga residents experience more emergency room visits for asthma than 94 and 93 percent of all  
9 census tracts in the state, respectively. South Central and Southwest Fresno experience more  
10 emergency room visits than 98 percent of the state. Calwa and Malaga respectively rank in the 74<sup>th</sup>  
11 and 71<sup>st</sup> percentiles of census tracts in the state for rates of cardiovascular disease, while South  
12 Central and Southwest Fresno rank in the 92<sup>nd</sup> percentile. By contrast, the Northwest Fresno and  
13 Northeast Fresno neighborhoods rank in the 66<sup>th</sup> and 25<sup>th</sup> percentiles, respectively. And Calwa and  
14 Malaga residents experience greater lifetime cancer risks from the inhalation of air toxins than  
15 residents in 98 and 93 percent of census tracts in the country, compared with residents of the  
16 Northwest Fresno and Northeast Fresno neighborhoods, who experience risks greater than 54 and 26  
17 percent of census tracts.

18 **State Efforts to Redress Harms to South Fresno**

19 105. The State Legislature and State agencies, including Caltrans, have recognized the need  
20 for concerted action to reverse the environmental disparities, disinvestment, and segregation which  
21 impact low-income communities of color across the state, and South Fresno in particular.

22 106. In 2020, for instance, Caltrans adopted an Equity Statement acknowledging that  
23 communities of color and under-served communities have experienced fewer benefits and a greater  
24 share of negative impacts associated with the State’s transportation system, and that its own highway  
25 projects “quite literally put up barriers, divided communities, and amplified racial inequities,  
26 particularly in [] Black and Brown neighborhoods.” To address this legacy, the Equity Statement  
27 committed Caltrans to “meaningfully engage communities most impacted by structural racism in  
28 creating and implementing programs and projects that affect their daily lives” and “reform [its]

1 programs, policies, and procedures to avoid harm to frontline and vulnerable communities.” Caltrans  
2 has failed to act consistently with or implement these commitments.

3 107. State legislation, policies, and programs aimed at overcoming this legacy of  
4 disinvestment and segregation and improving environmental quality in impacted communities like  
5 South Fresno include the following:

6 *“South Central Fresno” AB 617 Designation and Community Emissions Reduction Program*

7 108. California Assembly Bill (“AB”) 617 (Garcia, Stats. of 2017, ch. 136) initiated a  
8 statewide effort to reduce air pollution exposure and improve public health in communities most  
9 impacted by air pollution, including by implementing community-specific air quality monitoring  
10 networks and Community Emission Reduction Programs (“CERPs”) in selected communities.

11 109. In 2018, CARB selected an area which includes Calwa, Malaga, and portions of  
12 Southwest, South Central, Southeast, and Downtown Fresno as a priority community for the first year  
13 of AB 617 implementation due to the heavy burden of air pollution and other health and  
14 environmental challenges in these communities and neighborhoods. CARB designated these  
15 neighborhoods collectively as “South Central Fresno” for purposes of AB 617 implementation  
16 (referred to herein as “AB 617 South Central Fresno Community”). CARB and other agencies have  
17 since expended \$1.2 billion in efforts to reduce excess pollution burdens in this and other AB 617  
18 communities.

19 110. Residents of Calwa, Malaga, and other nearby communities, as well as Plaintiffs and  
20 other community-based organizations, have been heavily involved in AB 617 implementation  
21 through membership and participation in the South Central Fresno Community Steering Committee  
22 facilitated by the San Joaquin Valley Air Pollution Control District (“District”). In July 2019, the  
23 District published a Community Air Monitoring Plan for South Central Fresno, developed in  
24 partnership with the Steering Committee, which identifies heavy-duty trucks and industrial processes  
25 in the area as among the “top sources of concern” and provides for air monitoring to inform and  
26 monitor the success of emission reduction strategies.

27 111. In September 2019, the District approved a CERP for South Central Fresno. The  
28 CERP, also developed in partnership with the Steering Committee and with input from other

1 community partners and residents, sets forth a holistic set of emission reduction strategies – including  
2 community-centered investments, enhanced enforcement, increased outreach and training, cross-  
3 agency collaboration, and regulatory strategies – to reduce cumulative air pollution burdens  
4 impacting the community. The CERP highlights heavy-duty trucks and passenger vehicles traversing  
5 major freeways, interchanges, and main roads that run through the community as major sources of  
6 pollution, as well as industrial sources located near sensitive receptors.

7 112. CERP strategies target heavy-duty vehicles, passenger cars, and new industrial  
8 developments to reduce air pollution burdens. The CERP also puts in place policies to reduce  
9 community exposure to fine particulate matter, Toxic Air Contaminants, and nitrous oxides (NO<sub>x</sub>).

10 113. In addition, the City is currently undertaking a truck re-route study to implement a  
11 policy contained in the CERP. The study aims to identify and evaluate strategies to abate truck  
12 traffic impacts and reroute trucks away from sensitive land uses within the AB 617 South Central  
13 Fresno Community.

14 *Senate Bill 1000*

15 114. Senate Bill (“SB”) 1000, Cal. Gov. Code § 65302(h), mandates that local agencies  
16 identify and describe disadvantaged communities and include environmental justice policies in their  
17 general plans to “reduce the unique or compounded health risks” for those communities. Among  
18 other requirements, SB 1000 mandates policies to improve air quality, reduce pollution exposures,  
19 and promote safe and sanitary homes for disadvantaged communities. SB 1000 also requires  
20 environmental justice policies that “promote public engagement in the public decisionmaking  
21 process.”

22 115. California law defines environmental justice to include “deterrence, reduction, and  
23 elimination of pollution burdens for populations and communities experiencing the adverse effects of  
24 that pollution, so that the effects of the pollution are not disproportionately borne by those  
25 populations and communities.” Cal. Gov. Code § 65040.12(e)(2). It requires, “at a minimum, the  
26 meaningful consideration of recommendations from communities most impacted by pollution into  
27 environmental and land use decisions.” *Id.*

28 116. The County is in the process of updating its general plan to include an environmental

1 justice element and policies, as required by SB 1000. In July 2021, the County released a draft  
2 General Plan update.

3 117. In March 2022, California Attorney General Rob Bonta issued a letter to the County  
4 highlighting multiple deficiencies in the draft General Plan update’s implementation of SB 1000.  
5 The letter explained that the proposal failed to address the breadth of environmental issues faced by  
6 Calwa and Malaga, failed to reduce pollution exposure for disadvantaged communities or buffer  
7 existing or new sensitive land uses from many other sources of pollution, and failed to include  
8 policies to address housing needs in these communities. The letter further pointed out that the draft  
9 General Plan update failed to prioritize improvements and programs that address the needs of  
10 disadvantaged communities such as Calwa and Malaga.

11 118. The Attorney General’s letter took particular issue with proposed Policy No. ED-A.7,  
12 titled “Locating New Industrial Sites,” which would “encourage the location of new and expanding  
13 industry within Fresno County” and provided that the “[i]nitial focus of potential new or redeveloped  
14 industrial areas shall include Malaga [and] Calwa....” According to the Attorney General, “[t]he  
15 County’s ‘clear commitment’ and ‘unequivocal directive’ to prioritize Malaga and Calwa for new or  
16 redeveloped industrial sites in light of the known pollution burdens, health risks and population  
17 demographics raises civil rights and environmental justice concerns.” These include likely violations  
18 of the California Fair Employment and Housing Act, the duty to Affirmatively Further Fair Housing  
19 under Government Code section 8899.50, and inconsistency with the South Central Fresno CERP.

20 **B. The South Fresno State Route 99 Corridor Project and its Adverse Impacts on**  
21 **South Fresno**

22 119. Caltrans has recognized that heavy-duty truck traffic flowing from State Route 99 onto  
23 local roadways in South Fresno is already resulting in cracked and deteriorating pavement, potholes,  
24 and hazardous conditions for local residents.

25 120. Instead of simply addressing the existing issues, Caltrans proposed to initiate a Project  
26 that would increase heavy-duty truck capacity from State Route 99 into and around South Fresno  
27 communities and allow for further industrial expansion in the area, including next to homes, schools,  
28 and other land uses with vulnerable populations.



1 121. Currently, vehicles traveling along State Route 99 access local roadways around  
2 Calwa and Malaga by way of “half interchanges” at North, Cedar, and American Avenues; these half  
3 interchanges separate on- and off-ramps, limiting traffic flow between the highway and local roads.

4 122. The Project would replace the existing half interchanges with two new and expanded  
5 “full” highway interchanges. Construction of these interchanges will involve development of new  
6 ramps and grade separations at the junction of State Route 99 and North Avenue and American  
7 Avenue for the purpose of increasing traffic capacity at the crossings and allowing for bidirectional  
8 traffic flow at the interchanges. The Project will also involve construction of a new four-lane bridge  
9 structure crossing over State Route 99. Caltrans’ Environmental Impact Report/Environmental  
10 Assessment (“EIR/EA”) for the Project states that the interchange expansion is needed to increase  
11 capacity for heavy-duty truck traffic and other vehicles entering and exiting State Route 99 from local  
12 roadways.

13 123. According to the Project EIR/EA, Caltrans is pursuing the Project in coordination with  
14 the Project sponsors, the Fresno County Transportation Authority (“FCTA”) and the Fresno Council  
15 of Governments, as well as “in cooperation” with the City and County. FCTA’s governing board  
16 includes elected officials representing the City, County, and other local governments.

17 124. Caltrans entered into Cooperative Agreements with FCTA in which FCTA assumed  
18 responsibility for establishing the Project’s scope and securing funding, and Caltrans assumed  
19 responsibilities for the development of Project plans, serving as the lead agency under CEQA,  
20 obtaining permits, awarding construction contracts, and acquiring and developing rights-of-way  
21 required for the Project.

22 125. The Project will channel an estimated \$119-146 million of state, local, and regional  
23 funds to build out the new interchanges to further industrialization in South Fresno, rather than  
24 support efforts that could repair local roadways and improve bicycle and pedestrian infrastructure.

25 126. Caltrans considered just two build alternatives for each interchange, which differed  
26 only in their configuration (for instance, a “spread diamond” versus “partial cloverleaf”  
27 configuration). Caltrans did not consider alternatives for the Project that would remediate the current  
28 infrastructure without increasing traffic capacity.



1           127. According to Caltrans, the Project is part of an “ultimate route concept” for State  
2 Route 99 that would expand the highway from six to eight lanes – a 33 percent increase of road  
3 capacity.

4           128. According to the Project EIR/EA, the new interchanges are intended to “serve as main  
5 points of access for the existing and developing industrial and commercial businesses” in the South  
6 Fresno area. This Project is one of dozens of Caltrans projects planned and ongoing in Caltrans  
7 District Six to expand traffic flow along State Route 99. As stated in Caltrans’ State Route 99  
8 Business Plan, the purpose of these interchange projects is to accommodate expanding industrial  
9 development and goods movement along State Route 99.

10           129. The EIR/EA identifies that the Project would increase annual average daily traffic  
11 volumes at the American Avenue interchange by thousands of vehicles by 2046.

12           130. The EIR/EA’s air quality report identifies that each Project alternative would increase  
13 vehicle miles traveled “because the additional capacity of the interchanges increases the efficiency of  
14 the interchanges and allows more direct access to local areas along [State Route] 99.”

15           131. As a result of these changes, the Project would adversely affect air quality in the  
16 region and South Fresno in particular by increasing particulate matter pollution. In particular, the  
17 Project would increase the total emissions of PM<sub>10</sub> at the American Avenue Interchange by 65  
18 percent in 2026 and by nearly 842 percent by 2046 (from 0.024 pounds/day at baseline to 0.23  
19 pounds per day in 2046). The EIR/EA also identifies a 50 percent increase in PM<sub>2.5</sub> pollution at  
20 American Avenue by 2026.

21           132. PM<sub>2.5</sub> particles pose a significant health risk to humans because of their ability to  
22 penetrate the lungs and enter the bloodstream. Short and long-term exposure to both PM<sub>10</sub> and PM<sub>2.5</sub>,  
23 especially at high concentrations, can trigger illness, hospitalization, and premature death from  
24 respiratory, cardiovascular and other causes.

25           133. DPM is a type of PM<sub>2.5</sub> comprised of the solid material emitted in diesel exhaust  
26 derived from combustion engines in trucks, industrial operations, construction equipment and other  
27 sources. CARB has identified DPM as a toxic air contaminant due to its carcinogenic properties.  
28 DPM also contributes to other health effects associated with PM<sub>2.5</sub>.

1 134. NO<sub>x</sub> is another form of air pollution emitted from combustion engines and industrial  
2 operations. Exposure to NO<sub>x</sub> may increase the risk of premature death, cardiopulmonary effects,  
3 intensified allergic responses, emergency room visits for asthma, and decreased lung function and  
4 growth in children.

5 135. Children, infants, the elderly, and people suffering from heart or lung disease, asthma,  
6 or chronic illness are particularly sensitive to the effects of exposure to air pollution. Increased rates  
7 of infant mortality, reduced lung function and development, and increased severity of asthma attacks  
8 and hospitalization for asthma are among the heightened risks experienced by children and infants  
9 compared to adults as a result of air pollution exposure. People of color and people with lower  
10 socioeconomic status may also face higher health risks from exposure to particulate matter pollution.

11 136. In addition to operational impacts, the EIR/EA acknowledges that Project construction  
12 would cause degradation of air quality while construction activities are ongoing due to release of  
13 particulate emissions, including CO, NO<sub>x</sub>, volatile organic compounds, PM<sub>2.5</sub>, PM<sub>10</sub>, and Toxic Air  
14 Contaminants like DPM. Based on Caltrans' proposed construction schedule, Project construction is  
15 expected to last for almost four years, from January 2025 through December 2028 (18 or more  
16 months at each of the two interchange locations).

17 137. The EIR/EA further identifies a significant increase in emissions of carbon dioxide, a  
18 greenhouse gas, due to population growth and commercial and industrial development attributable to  
19 the Project. By 2046, carbon dioxide emissions would increase by 3,414 tons per year at the  
20 American Avenue interchange and by 4,281 tons per year at the North Avenue interchange.

21 138. Plaintiffs are informed and believe, and on that basis allege, that increased traffic  
22 capacity, induced truck and car traffic, increased vehicle miles traveled, induced industrial  
23 development, related light, glare, aesthetic, air quality, traffic safety, and public health impacts from  
24 the Project would be significantly greater than identified in the EIR/EA. Plaintiffs are informed and  
25 believe, and on that basis allege, that these impacts would disproportionately, and in some cases  
26 exclusively, impact South Fresno communities and South Fresno roadways utilized by traffic on the  
27 American Avenue and/or North Avenue interchanges.

28 139. Plaintiffs are informed and believe, and on that basis allege, that increased traffic

1 capacity and induced truck and car traffic associated with the Project would result in significant noise  
2 and ground-borne vibrational impacts, which would negatively affect nearby residential  
3 neighborhoods and communities, worsen already significant noise pollution from industrial  
4 development, warehouse facilities, highways, and other sources, and contribute to negative public  
5 health impacts associated with the Project. Plaintiffs are informed and believe, and on that basis  
6 allege, that these impacts would disproportionately, and in some cases exclusively, impact South  
7 Fresno communities and South Fresno roadways utilized by traffic that travels on the American  
8 Avenue and/or North Avenue interchanges.

9 140. Plaintiffs are informed and believe, and on that basis allege, that the Project will allow  
10 for, incentivize, contribute to, and/or expedite increased industrial buildout in and around South  
11 Fresno communities, exacerbating existing traffic, noise, odor, air quality, aesthetic, and other  
12 environmental, public health, and housing burdens and reducing the land available to meet residents'  
13 needs for access to educational opportunities, medical centers, affordable housing, groceries and fresh  
14 food, green space, recreational centers, retail and other opportunities. Plaintiffs are informed and  
15 believe, and on that basis allege, that these impacts would disproportionately, and in some cases  
16 exclusively, impact South Fresno communities located close to the Project Site and South Fresno  
17 roadways utilized by traffic that travels on the American Avenue and/or North Avenue interchanges.

18 141. Plaintiffs are informed and believe, and on that basis allege, that construction and  
19 operation of the Project would exacerbate South Fresno communities' disconnection from other more  
20 affluent neighborhoods with greater access to resources and amenities. Plaintiffs are informed and  
21 believe, and on that basis allege, that as a result, the Project will disproportionately negatively impact  
22 South Fresno communities compared to Northwest Fresno and Northeast Fresno neighborhoods and  
23 the County as a whole by compounding barriers for residents of South Fresno communities to access  
24 such resources and amenities.

25 142. As a result of the foregoing, the Project conflicts with State policies and efforts  
26 intended to promote and prioritize environmental justice, such as SB 1000, as well as ongoing efforts  
27 by the Attorney General and South Fresno residents to ensure that the County's General Plan update  
28 aligns with these state requirements and civil rights laws. The Project also conflicts with the AB 617

1 South Central Fresno CERP’s goal of reducing South Fresno residents’ exposure to unhealthy air  
2 emissions from industrial facilities and mobile sources. And by cementing the North Avenue and  
3 American interchanges as interchanges designed to facilitate high-volume truck traffic, Petitioners  
4 are informed and believe that the Project would undermine implementation of the CERP’s truck re-  
5 route study by predetermining its outcome.

6 **C. Environmental Review Process, Public Input, and Project Approval**

7 **Draft Environmental Impact Report/Environmental Assessment**

8 143. Caltrans is the public agency with principal responsibility for reviewing the Project  
9 under CEQA as well as NEPA, pursuant to assignment by the FHWA.

10 144. On March 8, 2019, Caltrans issued a Notice of Preparation that it would prepare a  
11 Draft EIR for the Project under CEQA.

12 145. Caltrans issued and circulated the Draft EIR to the public for review and comment  
13 under CEQA between October 14, 2021 and December 3, 2021. The Draft EIR specified that the  
14 document would also serve as an Environmental Assessment (“EA”) for purposes of NEPA.

15 146. Caltrans did not include technical studies relied on and underlying the Draft EIR/EA  
16 in the environmental document or make them publicly available on the Project website. The missing  
17 studies include but are not limited to: the Noise Impact Study (2020), the Paleontological Evaluation  
18 Report (Feb 2020), the Draft Relocation Impact Study (2020), the Initial Site Assessment (2020), the  
19 Historic Resource Evaluation Report (April 2020), the Historic Property Survey Report (May 2020),  
20 the Traffic Study (2020), the Location Hydraulics Study and Floodplain Evaluation Report (2018),  
21 Community Studies (2018-2022), and a Community Impact Memorandum (2020).

22 147. On November 29, 2021, counsel for Plaintiffs requested that an electronic copy of a  
23 Spanish translation of the Draft EIR/EA be made available to the public, and that the comment period  
24 be extended to run from the date that the Spanish translation was released.

25 148. Caltrans circulated a Spanish-language version of the Draft EIR/EA for public review  
26 and comment from December 15, 2021 to January 28, 2022.

27 149. Despite the numerous barriers to public participation, a number of organizations  
28 submitted comments expressing concern with the Project. These included written comments by the

1 District and by a coalition of local community-based organizations and residents, including Plaintiff  
2 and Petitioner Fresno BHC. Friends of Calwa hosted meetings with Caltrans on April 22 and August  
3 31, 2022, at which residents and staff expressed concerns with the likelihood that the Project would  
4 spur more industrial development and generate more truck traffic in the area, worsening air quality  
5 and habitability of these communities.

6 150. Comments expressed numerous concerns with the Draft EIR/EA and with Defendants'  
7 support for the Project, including but not limited to the following:

8 *Failure to Consider Environmental Justice Impacts*

9 151. The Draft EIR/EA did not acknowledge the presence of Calwa, Malaga, or any other  
10 communities within the Project vicinity, nor did it acknowledge the poor quality of existing  
11 environmental conditions in these communities or the particular vulnerability of their residents to  
12 added pollution burdens. Rather, the Draft EIR/EA stated that there are “no neighborhoods in or  
13 close to the project area,” that “no minority or low-income populations were identified in the project  
14 area,” that “no sensitive receptors have been identified for this project,” and that “the closest  
15 residential neighborhoods [are] over two miles away” despite multiple communities being located  
16 within a 1.5 mile radius of the Project.

17 152. The Draft EIR/EA did not acknowledge the presence of schools, places of worship,  
18 and other sensitive land uses, in addition to residential neighborhoods, along North Avenue,  
19 American Avenue, and other local roads onto which traffic using the Project interchanges flows.

20 153. As a consequence, the Draft EIR/EA failed to record an accurate environmental  
21 baseline for the Project or to appropriately consider impacts on sensitive receptors and environmental  
22 justice.

23 *Failure to Analyze Vehicle Miles Traveled*

24 154. CEQA establishes vehicle miles traveled (“VMT”) as the “most appropriate measure  
25 of transportation impacts.” CEQA Guidelines § 15064.3(a); see Cal. Pub. Res. Code § 21099(b).

26 155. The California Governor’s Office of Planning and Research requires that, “[f]or any  
27 project that increases vehicle travel, explicit assessment and quantitative reporting of the amount of  
28 additional vehicle travel should not be omitted from the [CEQA] document.”



1 Regional Transportation Plan.

2 163. The Draft EIR/EA did not consider in its cumulative impacts analysis similar State  
3 Route 99 projects, including the 19 capacity-increasing project candidates (two in Fresno County), 45  
4 operational improvement project candidates (10 in Fresno County), and three new interchange  
5 candidate projects listed in the 2020 Route 99 Business Plan for Caltrans Districts Six and Ten. Nor  
6 did Caltrans consider the cumulative impacts of its 2005 Route 99 Corridor Enhancement Master  
7 Plan intended to guide public and private sections decisions with the goal of “reliev[ing] congestion  
8 and improv[ing] the movement of goods” along State Route 99. It also did not adequately consider  
9 cumulative impacts of the Project together with existing and planned industrial projects, such as the  
10 planned Fresno County Business and Industrial Campus.

11 *Failure to Adequately Analyze Air Quality Impacts or Conflicts with Air Quality Plans*

12 164. The Draft EIR/EA failed to acknowledge or consider inconsistencies with applicable  
13 air quality plans, including the South Central Fresno CERP and other measures to reduce air quality  
14 burdens under AB 617. This was so even though the CERP recognized that the majority of air  
15 pollution emissions in South Central Fresno come from mobile and industrial sources and identified  
16 DPM from mobile sources as “the main contributor to community air toxics health risk” in the area.

17 165. The Draft EIR/EA did not consider the Project’s conflict with CERP Policy HD.11,  
18 Heavy Duty Truck Routing, which calls for the District to work with the City and County and with  
19 Caltrans to support a Heavy Duty Truck Routing Study to evaluate alternative truck routes. Nor did  
20 it consider the possibility of conflicts with the Heavy Duty Truck Routing Study currently in  
21 development under the CERP.

22 166. The Draft EIR/EA failed to conduct a reasonably thorough analysis of the Project’s  
23 potential, during both construction and operation, to degrade air quality and adversely impact  
24 sensitive receptors in the Project vicinity by compounding already severe particulate matter, ozone,  
25 and other air pollution. The Draft EIR/EA’s air quality analysis also notably omitted consideration of  
26 certain emission categories highlighted in the CERP for reduction, including NO<sub>x</sub>.

27 167. In comments to Caltrans, Plaintiff Fresno BHC and others raised concerns with the  
28 Draft EIR/EA’s failure to analyze DPM associated with truck and car traffic and industrial



1 development that would occur as a result of the Project or the potential public health impacts of this  
2 pollution on sensitive receptors near the Project Site. They also pointed out that the Draft EIR/EA  
3 did not consider dust impacts on sensitive receptors from Project construction and operation or  
4 emissions resulting from tire wear.

5 168. Because the Draft EIR/EA did not conduct a quantitative VMT analysis, it did not  
6 fully consider air quality impacts resulting from increases in VMT caused by the Project.

7 169. The EIR also did not consider indirect air quality impacts associated with industrial  
8 buildout in South Fresno communities, which the Project is intended to support.

9 *Failure to Include a Health Risk Assessment and Comply with Indirect Source Rule*

10 170. In its comment on the Draft EIR/EA, the San Joaquin Valley Air Pollution Control  
11 District requested that a Health Risk Assessment be performed to evaluate Project-related impacts,  
12 including by quantifying potential air pollution emissions from Project operation.

13 171. The District specifically asked that the Health Risk Assessment identify operational  
14 emissions of Toxic Air Contaminant pollutants, which pose hazards to human health and which were  
15 not assessed by Caltrans in the EIR/EA. Adverse health impacts of Toxic Air Contaminants include  
16 damaged organs, birth defects, cancer, immune system damage, neurological damage, and  
17 reproductive damage. The District noted the existence of numerous sensitive receptors in the Project  
18 area, including residences, a juvenile facility, healthcare facilities, and day-care facilities, all of which  
19 could be impacted by such emissions. The District emphasized its strong recommendation that  
20 projects resulting in a significant health risk not be approved by the lead agency.

21 172. The District also notified Caltrans in its comment that Caltrans was required to ensure  
22 compliance with District Rule 9510 (Indirect Source Rule) in its approval of the Project. The purpose  
23 of District Rule 9510 is to reduce NO<sub>x</sub> and PM<sub>10</sub> emissions associated with construction and  
24 operation of development and transportation projects. Because the Project's construction exhaust  
25 emissions exceed two tons of NO<sub>x</sub> or PM<sub>10</sub>, the Project is subject to the rule. Caltrans was therefore  
26 required to submit an application to the District *prior to* Project approval with documentation  
27 supporting an Air Impact Assessment to quantify NO<sub>x</sub> and PM<sub>10</sub> emissions and ensure appropriate  
28 mitigations.



*Failures to Comply with State Civil Rights Laws*

1  
2 173. Comments submitted by Plaintiffs' counsel on December 3, 2021 also warned  
3 Caltrans that its approval of the Project as proposed and without correcting the Draft EIR/EA's  
4 deficiencies conflicts with Caltrans' duties to avoid discrimination in its programs and activities and  
5 to affirmatively further fair housing under state civil rights laws. The letter explained that the Project  
6 and Caltrans' failure to thoroughly analyze and effectively mitigate environmental impacts would  
7 disproportionately adversely impact South Fresno communities of color.

8 174. Plaintiffs, along with other community-based organizations, issued another letter to  
9 Caltrans on October 12, 2022 in which they requested that the agency not proceed with the Project.  
10 The letter stated that the Project would exacerbate environmental health inequities impacting South  
11 Fresno, undercut efforts by CARB and the Attorney General's Office to address these inequities, and  
12 conflict with Caltrans' commitments expressed in its 2020 Equity Statement and its duties under civil  
13 rights laws. In response, Caltrans issued a letter identifying steps Caltrans had taken to accept public  
14 input on the Project and stating that the Project's Final EIR/EA "will address the comments that were  
15 submitted during the public review period" of the Draft EIR/EA, which had closed in December  
16 2021.

17 **Transportation Conformity Determination**

18 175. In the Draft EIR/EA, Caltrans acknowledged that as a regionally significant project  
19 located in an area subject to approved SIPs for PM<sub>2.5</sub> and ozone and a Maintenance Plan for PM<sub>10</sub>, the  
20 Project is subject to Clean Air Act transportation conformity requirements. This includes a project-  
21 level hot-spot analysis to assess the Project's potential to result in localized particulate matter  
22 pollution.

23 176. In July 2020, Caltrans circulated a memorandum to interagency consultation partners  
24 requesting concurrence that the Project is not a Project of Air Quality Concern and that no hot-spot  
25 analysis would be necessary to determine transportation conformity for the Project.

26 177. The interagency consultation memorandum failed to notify consultation partners of  
27 Caltrans' determination that the Project would worsen PM<sub>2.5</sub> and PM<sub>10</sub> pollution at the American  
28 Avenue Interchange. The memorandum failed to notify consultation partners of Caltrans'

1 determination that the Project would affect multiple intersections at an existing level-of-service of D  
2 or F and others that that would change to a level-of-service of D or E due to the Project. The  
3 memorandum stated that the Project would serve only “already established commercial and retail  
4 industry,” thereby failing to notify consultation partners that the Project would foreseeably result in  
5 increased diesel truck traffic and other sources of particulate matter pollution by inducing new  
6 industrial development. The memorandum also informed consultation partners that significant  
7 projected increases in average annual daily truck traffic would be due to “normal anticipated  
8 population increases” despite record evidence that these increases were specifically attributable to the  
9 Project.

10 178. Plaintiffs are informed and believed, and on that basis allege, that Defendants did not  
11 make the July 2020 interagency consultation memorandum or supporting technical documentation  
12 readily available to the public.

13 179. In August 2020, the FHWA and EPA concurred on the basis of the July 2020  
14 interagency consultation memorandum that the Project was not a Project of Air Quality Concern.

15 180. On or about September 2, 2022, Caltrans submitted to the FHWA a request for a  
16 project-level conformity determination for the Project. As supporting documentation, Caltrans  
17 submitted an Air Quality Conformity Analysis dated August 2022. This analysis acknowledged that  
18 diesel truck traffic would increase if the Project were built relative to if it were not built, but again  
19 attributed these increases solely to “expected future population growth.” The analysis also  
20 acknowledged that the Project would impact intersections with a level-of-service of D, E, or F and  
21 acknowledged that it would lower level-of-service for at least one interchange. The analysis did not  
22 address the potential for the Project to induce new industrial development and attendant truck traffic  
23 or affect nearby sources of pollution, including industrial and goods movement facilities. The  
24 analysis nevertheless concluded that the Project meets transportation conformity requirements  
25 without a hot-spot analysis.

26 181. Plaintiffs are informed and believe, and on that basis allege, that Defendants did not  
27 perform a hot-spot analysis for the Project to assess its potential to contribute to localized violations  
28 of PM<sub>2.5</sub> or PM<sub>10</sub> pollution.

1 182. Plaintiffs are informed and believe, and on that basis allege, that Defendants did not  
2 provide the August 2022 Air Quality Conformity Analysis to interagency consultation partners or  
3 reopen interagency consultation.

4 183. Plaintiffs are informed and believe, and on that basis allege, that Defendants did not  
5 notify the public of the August 2022 Air Quality Conformity Analysis and its supporting technical  
6 documentation or provide an opportunity for public review and comment on the Analysis.

7 184. Plaintiffs are informed and believe, on that basis alleged, that Defendants did not  
8 provide the public with notice through the Federal Register of the opportunity for public review and  
9 comment on the transportation conformity determination for the Project.

10 185. By letter dated October 3, 2022, FHWA determined that the Project conforms with  
11 applicable State Implementation Plans. FHWA's conformity determination recognized that the  
12 Project is in an area designated nonattainment for ozone and PM<sub>2.5</sub> pollution but did not acknowledge  
13 the Project's potential to conflict with the Maintenance Plan for PM<sub>10</sub> pollution.

14 **Final EIR/EA and Project Approval**

15 186. On February 6, 2023, Caltrans filed a Notice of Determination of its approval of the  
16 Project, triggering the 30-day statutory deadline under CEQA to challenge the certification of the  
17 Final EIR. CEQA Guidelines § 15112(c)(1).

18 187. The Notice of Determination stated that Caltrans approved the Project on January 30,  
19 2023. It also linked to a Caltrans website containing the Final EIR/EA, dated "January 2023."

20 188. The Final EIR/EA set forth a new alternative not included or considered in the Draft  
21 EIR/EA – a hybrid of Alternatives 1 and 2 for the American Avenue Interchange – which Caltrans  
22 identified as the Preferred Alternative along with Alternative 2 for North Avenue. The final EIR/EA  
23 failed to analyze multiple categories of environmental impacts for the Hybrid Alternative, including  
24 but not limited to a traffic and VMT analysis and air quality analysis.

25 189. In response to comments, the Final EIR/EA defended its decision not to consider  
26 impacts on Calwa, Malaga, and other adjacent communities and sensitive land uses like the nearby  
27 juvenile detention facility, instead deeming them "outside the project area." And it declined to  
28 update the substantive analyses in the EIR/EA to consider impacts on these and other adjacent

1 communities. In support of this finding, the Final EIR/EA reduced the Project area for the  
2 environmental justice and community cohesion analysis from two miles in the Draft EIR/EA to 0.5  
3 miles, asserting that the Project area in the Draft EIR/EA was “incorrectly labeled.”

4 190. The Final EIR/EA defended Caltrans’ decision not to conduct a VMT analysis by  
5 stating that Project sponsors determined, based on “the project timeline, which is tied to critical  
6 funding, and the absence of an established process to complete [VMT] analysis” “to proceed with the  
7 recommendation not to implement [VMT] analysis on this project.” The Final EIR/EA did not  
8 explain why the Project was subject to a case-by-case determination for VMT analysis.

9 191. The Caltrans Policy Memo sets forth factors that ordinarily require a VMT analysis for  
10 projects subject to a case-by-case determination, including “[a] high level of public and stakeholder  
11 interest in the project.” The Final EIR/EA did not explain whether this or any other factors that  
12 would trigger a VMT analysis apply to the Project, despite concerns with the Project raised to  
13 Caltrans by the District, Plaintiffs, other community-based organizations, and residents.

14 192. The Final EIR/EA brushed aside Plaintiffs’ request that Caltrans delay approval of the  
15 Project pending completion of the Heavy-Duty Truck Routing Study, asserting in response to  
16 comments that the study “is being conducted by the City of Fresno, independent of” the Project.

17 193. The Final EIR/EA dismissed Plaintiffs’ concerns relating to the Project’s potential air  
18 quality impacts and their associated public health impacts on the basis of FHWA’s determination and  
19 the EPA’s concurrence that the Project would not result in new violations of the Clean Air Act and on  
20 the basis that the Project would “benefit traffic circulation.”

21 194. The Final EIR/EA acknowledged that the Project is subject to Rule 9510 but defended  
22 its failure to submit an Air Impact Assessment application prior to Project approval, asserting that an  
23 application need only be submitted prior to construction. Caltrans ignored the District’s  
24 recommendation to condition approval of the Project on demonstration of compliance with District  
25 Rule 9510, instead stating that “Caltrans and the construction contractor will work with the [District]  
26 to obtain approval of the Air Impact Assessment” but without specifying any timeline for  
27 compliance. The Final EIR/EA also set forth a new mitigation measure, HW-7, that purported to  
28 make the future Project construction contractor responsible for the Air Impact Assessment.

1 195. The Final EIR/EA set forth new mitigation for significant GHG increases attributable  
2 to the Project, including the installation of a vegetative barrier and sidewalk on Cherry Avenue by  
3 Orange Center Elementary School, in addition to the installation of one electric charging station  
4 proposed in the Draft EIR/EA. The Final EIR/EA describes the vegetative barrier as a “recognized  
5 metho[d] of mitigation greenhouse gas emissions” but provides no details about the barrier, such as  
6 type of vegetation, size, or time to maturity. And the Final EIR/EA makes no attempt to quantify or  
7 otherwise evaluate the extent of GHG reductions likely to result from this or other mitigation.

8 196. Caltrans adopted the new Hybrid Alternative for the American Avenue interchange  
9 and Alternative 2 for North Avenue as the Project and certified the Final EIR/EA. Caltrans also  
10 adopted a statement of overriding considerations to support its approval of the Project despite  
11 “significant and unavoidable” impacts on GHG emissions but failed to explain why these impacts  
12 could not be reduced to insignificance through feasible mitigation measures.

13 197. Together with issuance of the Final EIR/EA, Caltrans issued a FONSI for the Project  
14 under NEPA, dated January 24, 2023. The FONSI stated that the Hybrid Alternative at American  
15 Avenue and Alternative 2 at North Avenue “will have no significant impact on the human  
16 environment,” without further analysis or explanation.

17 198. Caltrans did not provide a public comment period on the FONSI, despite requests by  
18 Plaintiffs’ counsel.

19 199. After filing of the Notice of Determination, counsel for Plaintiffs contacted Caltrans  
20 via email on January 27, 2023, requesting underlying technical studies relied on by the EIR/EA.  
21 Caltrans responded on February 13, 2023 with a subset of the documents relied on by the EIR/EA.  
22 Upon subsequent request, Caltrans disclosed a further set of studies between February 22 and  
23 February 24, 2023.

24 **VI. CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**

26 **VIOLATIONS OF THE CLEAN AIR ACT**

27 **(Against Defendants FHWA and USDOT)**

28 200. Plaintiffs incorporate herein by reference the allegations contained in the foregoing

1 paragraphs.

2 201. The Project is subject to transportation conformity requirements and rules imposed by  
3 section 176(c) of the Clean Air Act, 42 U.S.C. § 7506, and its implementing regulations, 40 C.F.R.  
4 Part 93.

5 202. Defendants FHWA and USDOT violated section 176(c) of the Clean Air Act and its  
6 implementing regulations by failing to provide for legally adequate public and interagency  
7 consultation on transportation conformity and by failing to assess PM<sub>2.5</sub> and PM<sub>10</sub> conformity using a  
8 quantitative hot-spot analysis. These violations are subject to judicial review under the APA, 5  
9 U.S.C. sections 701-706.

10 203. As a result of these violations, Defendants' determination of transportation conformity  
11 is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, in violation  
12 of the Clean Air Act and its implementing regulations and the APA, 5 U.S.C. § 706(2)(A). Likewise,  
13 Defendants acted arbitrary, capriciously, and otherwise not in accordance with the law in violation of  
14 the Clean Air Act and its implementing regulations and the APA, 5 U.S.C. § 706(2)(A), by  
15 supporting, approving, and providing financial assistance for the Project without making a legally  
16 adequate determination that the Project conforms to the approved ozone and PM<sub>2.5</sub> SIPs and PM<sub>10</sub>  
17 Maintenance Plan.

18 **Inadequate Public Consultation**

19 204. Defendants failed to provide a proactive public involvement process on its  
20 transportation conformity determination as required by the transportation conformity regulations, 40  
21 C.F.R. section 93.105(e).

22 205. Defendants failed to provide legally adequate public notice or an adequate opportunity  
23 for public review and comment on transportation conformity and the reasoning, data, and analysis  
24 underlying its determination. In particular, Defendants failed to publish notice in the Federal  
25 Register of the opportunity to review and comment on the conformity determination for the Project.  
26 Defendants failed to notify the public of the rationale for declining to perform a hot-spot analysis.  
27 And Defendants failed to notify the public of the August 2022 Air Quality Conformity Analysis on  
28 which the transportation conformity determination relied or to provide for public review and

1 comment on this document.

2 206. Defendants failed to provide reasonable public access to technical and policy  
3 documents on which its conformity determination was based, including by failing to notify the public  
4 of the existence of or make readily available to the public the July 2020 interagency consultation  
5 memorandum, the August 2022 Air Quality Conformity Analysis, or technical and policy documents  
6 on which the memorandum and analysis relied. Defendants also failed to provide meaningful  
7 opportunity for Spanish-speaking residents to consult on the air quality conformity determination as  
8 they did not make these documents available in Spanish.

9 **Inadequate Interagency Consultation**

10 207. Defendants failed to provide a “reasonable opportunity for consultation” on project-  
11 level transportation conformity with the U.S. Environmental Protection Agency and other  
12 consultation partners. 40 C.F.R. § 93.105(a)(2).

13 208. In particular, Defendants failed to notify consultation partners of evidence indicating  
14 that the Project qualified as a type of project requiring a quantitative hot-spot analysis under 40  
15 C.F.R. section 93.123(b), including because it is projected to: worsen particulate matter pollution at  
16 the American Avenue Interchange; result in a significant increase in the number of diesel vehicles;  
17 affect multiple intersections at a level-of-service of D, E, or F or that would change to such level-of-  
18 service because of increased diesel traffic resulting from the Project; and foreseeably result in  
19 increased diesel truck traffic and other sources of particulate matter pollution by inducing new  
20 industrial development or affecting nearby existing and planned sources of pollution, including the  
21 Fresno County Business and Industrial Campus planned for Malaga and other industrial and goods  
22 movement facilities.

23 209. Defendants failed to provide the August 2022 Air Quality Conformity Analysis to  
24 interagency consultation partners or to reopen consultation on the basis of new information and  
25 reasoning set forth in this analysis.

26 210. Defendants failed to consult with interagency consultation partners on important  
27 considerations affecting assessment of localized PM<sub>2.5</sub> and PM<sub>10</sub> violations, including the geographic  
28 area and emissions sources to be covered by the analysis, nearby sources affected by the Project, and



1 background particulate matter pollution concentrations, as required by the EPA's October's 2021 PM  
2 Hot-spot Guidance.

3 **Failure to Conduct a Hot-Spot Analysis**

4 211. Defendants' decision not to perform a particulate matter hot-spot analysis for the  
5 Project was arbitrary, capricious, and not in accordance with the law.

6 212. Defendants' conclusion that the Project was not a Project of Air Quality Concern  
7 conflicted with evidence showing that the Project qualified as the type of project for which a hot-spot  
8 analysis is required pursuant to 40 C.F.R. section 93.123(b)(1). This included evidence that the  
9 Project: (1) would expand the State Route 99 highway by increasing the number of highway lanes  
10 and increasing interchange capacity and also have a significant increase in the number of diesel  
11 vehicles, and (2) affect intersections that are at Level-of-Service D, E, or F with a significant number  
12 of diesel vehicles or that will change to Level-of-Service D, E, or F because of increase traffic  
13 volumes from a significant number of diesel vehicles related to the Project. 40 C.F.R.

14 § 93.123(b)(1)(i)-(ii).

15 213. Defendants acted arbitrarily, capriciously, and in violation of the law by failing to  
16 consider whether the Project would result in increased PM<sub>2.5</sub> and PM<sub>10</sub> emissions by affecting  
17 existing and planned nearby sources of particulate matter pollution, including industrial and goods  
18 movement facilities.

19 214. Defendants acted arbitrarily, capriciously, and in violation of the law by failing to  
20 consider whether the Project would result in a significant increase in diesel truck traffic by inducing  
21 industrial development.

22 215. Defendants violated the law by failing to consider the Project's potential to conflict  
23 with the Maintenance Plan for PM<sub>10</sub> pollution.

24 216. As a result of these violations, Defendants failed to make a legally adequate  
25 determination that the Project would not cause or contribute to any new localized particulate matter  
26 pollution violations, increase the frequency or severity of such violations, or delay timely attainment  
27 of the particulate matter NAAQS. 40 C.F.R. § 93.116(a). Defendants' determination of  
28 transportation conformity for the Project was thus arbitrary, capricious, an abuse of discretion, and

1 otherwise not in accordance with law in violation of the Clean Air Act and its implementing  
2 regulations and the APA, 5 U.S.C. § 706(2)(A).

3 **SECOND CAUSE OF ACTION**

4 **VIOLATIONS OF NATIONAL ENVIRONMENTAL POLICY ACT**

5 **(Against Defendant Caltrans)**

6 217. Plaintiffs incorporate herein by reference the allegations contained in the foregoing  
7 paragraphs.

8 218. Caltrans has failed to prepare adequate environment review documents, to satisfy its  
9 duty to provide full and good faith public disclosure of the Project's impacts, and to provide for  
10 public comment and participation in the public review process, in violation of NEPA and its  
11 implementing regulations. 42 U.S.C. § 4331 et seq.; 40 C.F.R. § 1500.1 et seq.

12 219. As a result of these violations, Caltrans' NEPA documentation, FONSI, and approval  
13 of the Project are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with  
14 law, in violation of NEPA and its implementing regulations and are subject to judicial review under  
15 the APA, 5 U.S.C. sections 701-706.

16 220. These deficiencies include, without limitation, the following:

17 **Failure to Prepare an EIS**

18 221. Caltrans unlawfully failed to prepare an EIS even though substantial evidence in the  
19 record showed that the Project is likely to cause significant impacts on the environment. 23 C.F.R.  
20 § 771.123(a).

21 222. Caltrans failed to prepare an EIS even though substantial questions were raised about  
22 significance of multiple factors, such as adverse effects on air quality, public health, and safety, and  
23 possible violation of federal and state laws and local planning processes meant to protect the  
24 environment. 40 C.F.R. § 1501.3(b); *Ocean Advocates*, 402 F.3d at 864 (requiring that an "[i]mpact  
25 statement must be prepared if substantial questions are raised as to whether a project may cause  
26 significant degradation of some human environmental factor").

27 223. Caltrans erred in issuing a FONSI despite evidence in the record showing the  
28 existence of significant adverse environmental effects, including but not limited to Caltrans' findings

1 that the Project would have significant and unavoidable impacts on GHG emissions.

2 224. Caltrans erred in its determination of environmental significance by failing to consider  
3 appropriately the relevant context and intensity of possible environmental effects, including direct,  
4 indirect, and cumulative effects. *See Bark v. U.S. Forest Serv.*, 958 F.3d 865, 869 (9th Cir. 2020).

5 225. Caltrans' FONSI was conclusory and did not reflect adequate consideration of relevant  
6 factors necessary for understanding the environmental effects of the Project. *Ocean Advocates*, 402  
7 F.3d at 864.

### 8 **Inadequacy of Environmental Assessment**

9 226. Caltrans failed to consider the full extent of direct, indirect, and cumulative effects of  
10 the Project by limiting consideration of impacts to only those within the "Project area," which the  
11 EIR/EA narrowly defined as "all properties that would be potentially purchased and converted to  
12 transportation use" within a half mile from the center of the new interchanges. This narrow definition  
13 fails to acknowledge, despite substantial evidence in the record, that impacts of the Project extend  
14 beyond its immediate physical footprint. As a result, the EIR/EA improperly omits from its  
15 description of environmental setting any acknowledgment of the thousands of residents in Calwa,  
16 Malaga, and other impacted communities, and it fails to consider impacts on these residents and other  
17 sensitive receptors and land uses within 1.5 miles of the Project, including schools, places of worship,  
18 and businesses. Further, the EIR/EA failed to consider the unique risks of the Project to impacted  
19 disadvantaged communities whose members are particularly vulnerable to environmental effects.

20 227. The EIR/EA failed to consider the effects of the Project when combined with other  
21 similar past, present, and reasonably foreseeable future projects – including the numerous related  
22 Caltrans District Six highway expansion projects planned or undertaken along the State Route 99  
23 Corridor under Caltrans' State Route 99 Corridor Enhancement Master Plan and State Route 99  
24 Business Plan, as well as industrial buildout in South Fresno such as the planned Fresno County  
25 Business and Industrial Campus.

26 228. The EIR/EA failed to adequately analyze the Project's impacts on important sources  
27 of air pollution emissions impacting nearby communities, including NO<sub>x</sub>, dust, and emissions  
28 associated with tire wear, as well as pollution resulting from further industrial buildout facilitated by

1 the Project.

2 229. The EIR/EA's findings regarding the Project's impacts on air quality, health, dust  
3 exposure, scenic vistas and public views, light and glare, noise, vibration, environmental justice, and  
4 other resources are unsupported by substantial evidence in the record, in violation of the APA, 5  
5 U.S.C. § 706(2)(E), and Caltrans has failed to articulate a satisfactory explanation establishing a  
6 rational connection between the facts found and the conclusions made.

7 230. The EIR/EA's conclusory finding that the Project was not a Project of Air Quality  
8 Concern and did not warrant a Hot-Spot Analysis is not supported by substantial evidence in the  
9 record.

10 231. The EIR/EA failed to consider a reasonable range of alternatives, as required by  
11 NEPA and its implementing regulations, including alternatives that would address existing traffic  
12 safety impacts on local communities and deterioration of local roadways without expanding traffic  
13 flow and capacity, causing air pollution and other adverse impacts, or inducing additional industrial  
14 buildout in South Fresno. Likewise, the EIR/EA violated NEPA by defining the Project's objectives  
15 so narrowly as to exclude a meaningful analysis of reasonable, less impactful, alternatives.

16 **Failure to Provide for Public Participation**

17 232. Caltrans failed to ensure that all relevant information about the Project and its  
18 environmental effects was made available to the public by failing to acknowledge the existence of  
19 impacted vulnerable communities and by failing to include adequate discussion of environmental  
20 justice, air quality, and other impacts in the EIR/EA. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R.  
21 § 1500.1(a).

22 233. Caltrans failed to make technical information, studies, and reports relied on and  
23 incorporated into the EIR/EA and data underlying the EIR/EA's findings and conclusions readily  
24 available to the public.

25 234. Caltrans failed to provide meaningful opportunity for Spanish-speaking residents to  
26 participate in the NEPA process. In particular, Caltrans only released a Spanish translation of the  
27 EIR/EA following requests, despite the majority of residents in nearby communities speaking  
28 Spanish at home. Caltrans also failed to make readily available Spanish-language versions of studies

1 and reports relied on by and incorporated into the Final EIR/EA.

2 235. Caltrans failed to adequately respond to public comments on the EIR/EA.

3 236. Caltrans failed to allow for public review of the FONSI even though the Project is  
4 closely similar to one that ordinarily requires an EIS. 40 C.F.R. § 1501.6(a)(2)(i).

5 **THIRD CAUSE OF ACTION**

6 **VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

7 **(Against Defendant Caltrans)**

8 237. Plaintiffs incorporate herein by reference the allegations contained in the foregoing  
9 paragraphs.

10 238. Caltrans' failure to satisfy its environmental review and disclosure obligations under  
11 CEQA constitutes a prejudicial abuse of discretion and is actionable under California Public  
12 Resources Code sections 21168 and 21168.5 as well as California Code of Civil Procedure sections  
13 1094.5 and 1085.

14 239. Plaintiffs have a clear, present, and beneficial right to the proper performance by  
15 Caltrans of its duties alleged herein, and Plaintiffs will suffer irreparable harm for which there is no  
16 plain, speedy, or adequate remedy unless the Court grants the requested writ of mandate.

17 240. Caltrans violated CEQA by certifying a legally deficient EIR and by approving the  
18 Project without adequate environmental review, including but not limited to the following defects:

19 **Inadequacy of Environmental Impact Report**

20 241. Caltrans unlawfully piecemealed environmental review of the Project in its entirety by  
21 failing to consider environmental impacts of related approvals under Caltrans' State Route 99  
22 Business Plan and State Route 99 Corridor Enhancement Master Plan.

23 242. The EIR/EA failed to consider a reasonable range of alternatives, as required by  
24 CEQA, including alternatives that would address existing traffic safety impacts on local communities  
25 and deterioration of local roadways without expanding traffic flow and capacity, causing air pollution  
26 and other adverse impacts, or inducing additional industrial buildout in South Central Fresno.

27 Likewise, the EIR/EA violated CEQA by defining the Project's objectives so narrowly as to exclude  
28 a meaningful analysis of reasonable, less impactful, alternatives.

1           243. Caltrans failed to “include a description of the physical environmental conditions in  
2 the vicinity of the project” that reflects conditions “as they exist at the time the notice of preparation  
3 is published.” CEQA Guidelines § 15125(a), (a)(1). Among other things, the EIR/EA unlawfully  
4 failed to acknowledge the presence of numerous proximate communities, residences, schools, places  
5 of worship, and thousands of sensitive receptors that could be impacted by the Project, or to disclose  
6 the unique vulnerabilities of adjacent disadvantaged communities. The incomplete and inaccurate  
7 baseline description infects and invalidates the entirety of the EIR/EA’s environmental analysis.

8           244. Caltrans failed to adequately consider the full scope of the Project’s direct and indirect  
9 effects on the environment. CEQA Guidelines § 15126.2(a).

10           245. Caltrans failed to adequately identify and analyze cumulative effects of the Project by  
11 ignoring its incremental effects “in connection with the effects of past projects, the effects of other  
12 current projects, and the effects of probable future projects.” CEQA Guidelines §§ 15065(a)(3),  
13 15130(a). The EIR/EA’s cumulative impacts analysis considered only around seven projects and  
14 plans, one of which dates back to 1870 and another to 1927. It wholly ignored numerous closely  
15 related past, present, and probable future projects, including related Caltrans District Six highway  
16 expansion activities (over a dozen of which are in Fresno County alone), the Fresno County Business  
17 and Industrial Campus, and all but two industrial development projects in the Project area. As to the  
18 related projects it did consider, the cumulative impacts analysis was conclusory and lacked reasoning,  
19 analysis, or supporting documentation.

20           246. Caltrans failed to present quantitative VMT information in its transportation analysis  
21 as required by Public Resources Code section 21099(b) and CEQA Guidelines sections 15064.3(a)  
22 and 15007(d). Indeed, Caltrans failed to perform any VMT analysis at all even though the EIR’s air  
23 quality analysis pointed out that “the VMT estimated for each of the build alternatives would be  
24 slightly higher than for the No Build Alternative because the additional capacity of the interchanges  
25 increases efficiency of the interchanges and [allows] more direct access to local areas along [State  
26 Route] 99.”

27           247. Caltrans failed to comply with the requirements for conducting a VMT analysis under  
28 Caltrans’ September 10, 2020 Memorandum regarding Caltrans Policy on Transportation Impact

1 Analysis and CEQA Significance Determinations for Project on the State Highway System.

2 248. Caltrans failed to adequately analyze the Project's impacts on important sources of air  
3 pollution emissions impacting nearby communities, including NO<sub>x</sub>, dust, and emissions associated  
4 with tire wear, as well as pollution resulting from further industrial buildout facilitated by the Project.

5 249. The EIR/EA's discussion of construction and operational impacts of the Project on air  
6 quality, dust, aesthetic impacts, light and glare, noise, and vibration, among other impacts, is  
7 inadequate, conclusory, and lacking substantial evidentiary support.

8 250. Caltrans failed to adequately analyze the Project's air quality impacts from NO<sub>x</sub> and  
9 PM<sub>10</sub> by refusing to submit documentation for and undertake the Air Quality Assessment required by  
10 District Rule 9510 prior to Project approval.

11 251. Caltrans failed to adequately discuss the inconsistencies between the Project and State  
12 laws and local air quality implementation plans. CEQA Guidelines § 15125(d). For example, the  
13 EIR/EA fails to evaluate the Project's consistency with the CERP. Likewise, Caltrans failed to  
14 discuss the conflict between the Project and other land use plans and policies under development,  
15 including but not limited to the pending updates to the County of Fresno General Plan (including  
16 environmental justice policies to reduce industrialization and polluting land uses in South Fresno).

17 252. The EIR/EA impermissibly defers developing the details of mitigation measures to  
18 reduce GHG impacts, including details regarding installation of a vegetative barrier. CEQA  
19 Guidelines § 15126.4(a)(1)(B). By failing to set forth details regarding when and by whom the  
20 vegetation barrier will be installed, the EIR/EA also impermissibly fails to ensure that mitigation will  
21 be implemented before adverse impacts occur.

22 253. Mitigation measure HW-7 in the Final EIR/EA impermissibly defers developing  
23 details of mitigation for adverse air quality impacts from NO<sub>x</sub> and PM<sub>10</sub> and fails to ensure that  
24 mitigation will be timely implemented before construction-related air quality impacts occur. *Id.*

25 254. Caltrans failed to make adopted mitigation measures, including mitigation for GHG  
26 impacts, NO<sub>x</sub>, and PM<sub>10</sub>, "fully enforceable through permit conditions, agreements, or other legally-  
27 binding instruments." *Id.* § 15126.4(a)(2). Among these shortcomings, Caltrans impermissibly  
28 outsourced Rule 9510 compliance to a third-party contractor, and it failed to condition Project



1 approval on or otherwise adopt legally-binding instruments to ensure Rule 9510 compliance and  
2 development of a vegetative barrier and other mitigation to offset Project-related GHG emissions.

3 **Inadequacy of Statement of Overriding Considerations**

4 255. Caltrans unlawfully approved the Project despite substantial and unmitigated GHG  
5 impacts without evaluating whether feasible mitigation could be developed and implemented to  
6 reduce GHG impacts to insignificance.

7 256. Caltrans failed to support the adopted Statement of Overriding Considerations with  
8 substantial evidence in the record. The findings do not provide the reasoning or analytic route from  
9 facts to conclusions, as required by law. CEQA Guidelines § 15093(b).

10 **Failure to Provide for Meaningful Public Participation**

11 257. Caltrans failed to adequately evaluate and respond to comments received on the Draft  
12 EIR/EA and failed to offer a good faith, adequately reasoned analysis in its responses. Cal. Pub. Res.  
13 Code § 21091(d); CEQA Guidelines § 15088(a), (c).

14 258. Caltrans failed to adequately respond to major environmental issues raised in  
15 comments, including issues related to air quality and health concerns raised by the San Joaquin Air  
16 Pollution Control District. CEQA Guidelines § 15088(c). In particular, Caltrans failed to provide  
17 reasoning and data to support its conclusion that a Health Risk Assessment was not needed for the  
18 Project.

19 259. Caltrans failed to make technical studies relied on and incorporated into the EIR/EA  
20 and data underlying the findings and conclusions in the EIR/EA readily available to the public.

21 260. Caltrans failed to provide meaningful opportunity for Spanish-speaking residents to  
22 participate in the CEQA process. In particular, Caltrans only released a Spanish translation of the  
23 EIR/EA following requests, despite the majority of residents in nearby communities speaking  
24 Spanish at home. Caltrans also failed to make technical studies and reports relied on and  
25 incorporated into the EIR/EA available in Spanish.

26 261. By certifying the final EIR and by approving the Project, Caltrans committed a  
27 prejudicial abuse of discretion, failed to proceed in the manner required by law, and acted without  
28 substantial evidentiary support.

**FOURTH CAUSE OF ACTION**

**DISCRIMINATION IN A GOVERNMENT PROGRAM**

**Cal. Gov. Code § 11135**

**(Against Defendant Caltrans)**

1  
2  
3  
4  
5 262. Plaintiffs incorporate herein by reference the allegations contained in the foregoing  
6 paragraphs.

7 263. Defendant Caltrans is a Department of the State of California, and the activities of the  
8 Defendants described in this Complaint are administered with the use of state funds. As such,  
9 Caltrans is subject to section 11135's prohibition against discrimination based on race, ethnicity and  
10 age.

11 264. Plaintiffs are informed and believe, and on that basis allege, that Calwa, Malaga, and  
12 other South Fresno communities which Plaintiffs serve are located in close proximity to the Project  
13 Site. These communities would be directly and adversely impacted by the Project. Residents of  
14 Calwa, Malaga, and other South Fresno communities are disproportionately Latino/a/e, Black, and  
15 members of certain other racial and ethnic groups, and disproportionately comprised of children  
16 under the age of 18 as compared to Fresno County's population as a whole and residents living near  
17 interchanges in a Northeast and a Northwest Fresno neighborhood.

18 265. The Project will frustrate Plaintiffs' mission to increase access to healthy housing and  
19 other amenities and resources in South Fresno, because increased industrialization, pollution and  
20 traffic resulting from the Project will adversely impact the housing conditions of people living near  
21 the Project and the conditions of other amenities and resources. Plaintiffs will face greater  
22 difficulties in their efforts to improve and maintain access to healthy housing and other amenities and  
23 resources in South Fresno if traffic, noise, dust, and pollution are increased by the Project.

24 266. Plaintiffs' mission includes advocacy to ensure safe travel to and from school for  
25 community members and to increase the educational outcomes for students. The Project frustrates  
26 this mission because increased truck traffic, noise, and pollution degrades school conditions and  
27 conditions for children travelling to and from schools, including walkability to schools. Plaintiffs'  
28 will face more and almost insurmountable obstacles to the advancement of their mission in regards to

1 education.

2 267. The Project will degrade environmental quality, worsen public health outcomes,  
3 reduce opportunities for the development of public and private amenities and housing, and negatively  
4 impact the quality of housing and residents' use and enjoyment of housing, and will perpetuate,  
5 contribute to, and/or exacerbate racial segregation in Calwa, Malaga and other South Fresno  
6 communities surrounding the Project Site by allowing, facilitating, and/or inducing increased  
7 industrial development and truck and car traffic on roadways in and near these communities and  
8 neighborhoods.

9 268. These harms will disproportionately adversely impact Latino/a/e and Black residents,  
10 members of other racial and ethnic groups, members of certain national origins, children, and other  
11 protected classes compared to residents of Fresno County and the State of California as a whole, and  
12 other communities in Northeast and Northwest Fresno near interchanges in violation of Government  
13 Code 11135.

14 269. Caltrans has not engaged in an analysis of the Project's impacts on Latino/a/e or Black  
15 residents, children, or members of other protected classes. Rather, Caltrans refused to complete such  
16 an analysis because it determined that there "are no populations within the project area," despite  
17 CARB's recognition that the area surrounding the Project Site includes communities which are  
18 among the most impacted by air pollution statewide and its designation of the area for special  
19 protections from air pollution exposures.

20 270. Caltrans' actions and omissions, as alleged, will have a predictably discriminatory  
21 effect and discriminate based on race, ethnicity, and age in that they perpetuate, contribute to,  
22 exacerbate, and/or result in the degradation of the environment in communities disproportionately  
23 comprised of these protected classes.

24 271. This degradation of the environment results in poor public health outcomes,  
25 inadequate access to public and private amenities, and patterns of segregation based on race,  
26 ethnicity, and/or age for the communities Plaintiffs serve.

27 272. This degradation of the environment impacts housing terms as it adversely affects the  
28 ability of families to use and enjoy their homes. The exacerbation of adverse environmental

1 conditions in South Fresno caused by Caltrans' action and inactions will also negatively impact the  
2 potential for development of housing and other resources necessary to a healthy and safe environment  
3 and a thriving South Fresno. The Project as designed will worsen and perpetuate the environmental  
4 burdens and housing and other resource disparities experienced by current and future residents in the  
5 Project area.

6 273. Plaintiffs have had to and will have to continue to use their resources, including staff  
7 time, to inform and protect South Fresno community members about the adverse impacts from the  
8 Project and to advocate to avoid and/or reduce those impacts instead of using their resources to  
9 improve public safety and health outcomes and access to other amenities and services in South  
10 Fresno.

11 274. Plaintiffs will suffer irreparable injury via the frustration of their missions and the  
12 diversion of their resources as a result of Defendants' unlawful acts and omissions unless enjoined.  
13 The injuries suffered are not easily quantified or compensable. No monetary damages or other legal  
14 remedy could adequately compensate Plaintiffs for the irreparable harm that would result from  
15 Caltrans' construction and operation of the Project.

16 275. An actual controversy exists between Plaintiffs and Defendant Caltrans as to whether  
17 Defendant Caltrans has violated and/or is imminently threatening to violate the law.

18 276. Unless enjoined, Caltrans will violate, or continue to violate, Government Code  
19 section 11135, adversely impacting Plaintiffs, residents of Calwa, Malaga and other South Fresno  
20 communities surrounding the Project Site, and other members of the public and protected classes  
21 under Government Code section 11135.

22 277. Plaintiffs are directly and beneficially interested in Defendants' compliance with all  
23 applicable provisions of law and with all legal duties set forth herein.

24 278. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.  
25  
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**FIFTH CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA’S DUTY TO AFFIRMATIVELY FURTHER FAIR  
HOUSING**

**Cal. Govt. Code § 8899.50; Cal. Code Civ. Proc. § 1085**

**(Against Defendant Caltrans)**

279. Plaintiffs incorporate herein by reference the allegations contained in the foregoing paragraphs.

280. California Government Code section 8899.50(b) requires public agencies in California, including State agencies, to administer their programs and activities relating to community development in a manner that affirmatively furthers fair housing, including by addressing significant barriers to opportunities and replacing segregated living patterns with balanced and integrated living patterns.

281. Caltrans is subject to clear, mandatory duties and prohibitions imposed by section 8899.50.

282. The Project will degrade environmental quality, worsen public health outcomes, reduce opportunities for the development of public and private amenities and housing, and negatively impact the quality of housing and residents’ use and enjoyment of housing and other amenities and resources, and it will perpetuate, contribute to, and/or exacerbate racial segregation in Calwa, Malaga and other South Fresno communities surrounding the Project Site by allowing, facilitating, and/or inducing increased industrial development and truck and car traffic on roadways in and near these communities and neighborhoods in contradiction to the requirement to take actions to overcome patterns of segregation and address disparities in access to opportunities in all activities related to community development. These harms will disproportionately adversely impact Latino/a/e and Black residents, children, and other protected classes compared to residents of Fresno County and the communities in Northeast and Northwest Fresno near interchanges.

283. Caltrans has not engaged in an analysis of the Project’s impact on Latino/a/e or Black residents or children or based on residents’ membership in other protected classes. Rather, Caltrans refused to complete such an analysis because it determined that there “are no populations within the

1 project area,” despite CARB’s recognition of the area surrounding the Project Site as including  
2 communities which are among the most impacted by air pollution statewide and designation of the  
3 area for special protections from air pollution exposures. These actions and omissions are  
4 inconsistent with Caltrans’ duty to affirmatively further fair housing and violates the law’s mandate  
5 that the agency “take no action that is materially inconsistent with its obligations to affirmatively  
6 further fair housing.” Cal. Govt. Code § 8899.50(b)(1).

7 284. Caltrans’ actions and omissions, as alleged, have a discriminatory effect and  
8 discriminate based on race, ethnicity, and age in that they perpetuate, contribute to, exacerbate, and/or  
9 result in the degradation of the environment and worsen public health outcomes for people living  
10 proximate to the Project.

11 285. This degradation of the environment impacts housing terms as it adversely affects the  
12 ability of families to use and enjoy their homes. The exacerbation of adverse environmental  
13 conditions in South Fresno caused by Caltrans’ actions and omissions will also negatively impact the  
14 potential for development of housing and other resources necessary to a healthy and safe environment  
15 and a thriving South Fresno. As a result, Caltrans’ actions and omissions, as alleged herein,  
16 perpetuate, reinforce, and exacerbate patterns of segregation and disparities in access to opportunity  
17 based on race, ethnicity, and age.

18 286. Plaintiffs are informed and believe, and on that basis allege, that Caltrans has failed to  
19 take actions to affirmatively further fair housing in South Fresno communities by failing to  
20 implement commitments contained in its Racial Equity Action Plan, including policies to adopt a  
21 District Six Equity Strategic Action Plan by Fall 2021 and to convene a District Six Equity Advisory  
22 Committee by Spring 2022.

23 287. Plaintiffs are informed and believe, and on that basis allege, that Defendant Caltrans  
24 violated its duty to affirmatively further fair housing by failing to take meaningful actions to remove  
25 barriers to fair housing and access to opportunity and to undo patterns of segregation, including  
26 engaging in activities such as: supporting the improvement of transportation alternatives that enhance  
27 mobility within South Fresno and between South Fresno and other areas, such as by improving  
28 walking, bicycling, and public transportation options in South Fresno; and seeking and responding to

1 input from South Fresno residents and other state agencies to redress environmental harms,  
2 disinvestment, and segregation impacting those communities and neighborhoods.

3 288. Plaintiffs bring this request for a writ of mandate in the public's interest and have a  
4 direct and beneficial interest in Caltrans' compliance with its duties, as set forth herein.

5 289. Unless compelled by this Court to comply with its legal duties, Caltrans will continue  
6 to refuse to carry out and act consistently with its duties pursuant to Government Code section  
7 8899.50 and will continue to violate the law.

8 290. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law.  
9

## 10 **VII. REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiffs request that the Court grant the following relief:

- 12 1) A peremptory writ of mandate commanding Defendant Caltrans to:
- 13 a. Vacate and set aside the certification of the EIR/EA, the Finding of No Significant  
14 Impact, approvals of the Project, and any and all approvals rendered pursuant to and/or  
15 in furtherance of all or any part of the Project and remand to the agency;
- 16 b. Act consistently with its duty to affirmatively further fair housing in its community  
17 development activities pursuant to California Government Code section 8899.50  
18 including taking affirmative steps to remove patterns of segregation and discontinuing  
19 the Project.
- 20 2) For declaratory judgment that Defendant Caltrans' policies, practices, and conduct  
21 regarding this Project:
- 22 a. Violate the APA, NEPA, and NEPA's implementing regulations;
- 23 b. Violate CEQA;
- 24 c. Violate Plaintiffs' rights under section 11135 of the California Government Code.
- 25 3) For declaratory judgment that Defendants FHWA and USDOT have violated the Clean  
26 Air Act and the APA, and that the transportation conformity determination for the Project  
27 was *void ab initio* and provided no lawful basis for granting any approval or authorization  
28 of federal funds in reliance thereon.



- 1 4) Vacate Defendants FHWA's and USDOT's approvals and authorization of funding for the
- 2 Project.
- 3 5) Issue a preliminary and permanent injunction ordering Defendant Caltrans to cease
- 4 actions which discriminate against people based on their race, ethnicity, and/or age by
- 5 approving and funding this Project.
- 6 6) Issue a preliminary and permanent injunction ordering Defendants to cease constructing
- 7 and operating the Project, and from taking any action to implement, fund, or initiate any
- 8 portion or aspect of the Project, unless and until they comply with NEPA, CEQA, the
- 9 Clean Air Act, California Government Code section 11135, and Government Code
- 10 section 8899.50.
- 11 7) Award Plaintiffs their reasonable attorneys' fees, costs, expenses, and disbursements
- 12 associated with this action.
- 13 8) Grant Plaintiffs such additional relief as the Court may deem just and proper.

14 Respectfully submitted,

15  
16 DATED: June 22, 2023

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

17  
18  
19 By: /s/ Stephanie L. Safdi  
Stephanie L. Safdi  
Rica V. Gacia

20  
21 DATED: June 22, 2023

LEADERSHIP COUNSEL FOR JUSTICE AND  
ACCOUNTABILITY

22  
23  
24 By: /s/ Ashley E. Werner  
Ashley E. Werner, Directing Attorney

25  
26 Attorneys for Plaintiffs and Petitioners  
FRIENDS OF CALWA, INC. and FRESNO  
27 BUILDING HEALTHY COMMUNITIES  
28

**VERIFICATION**

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I, Sandra Celedon-Castro, am the President and Chief Executive Officer (CEO) of Fresno Building Healthy Communities, which is a non-profit organization and a party to this action. I am authorized to make this verification for and on behalf of Plaintiffs and Petitioners, and I make this verification for that reason. I hereby certify that I have read the foregoing First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and the contents thereof are true and accurate to the best of my knowledge and belief.

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

Executed on June 22, 2023, at Fresno, California.

  
\_\_\_\_\_  
Sandra Celedon-Castro  
FRESNO BUILDING HEALTHY COMMUNITIES

# **EXHIBIT A**

March 8, 2023

Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Tel 650 725-8571  
Fax 650 723-4426  
www.law.stanford.edu

**Via U.S. Mail**

Attorney General Rob Bonta  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

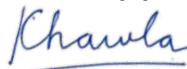
**Re: Friends of Calwa, Inc. and Fresno Building Healthy Communities v.  
California Department of Transportation and Federal Highway  
Administration**

Dear Attorney General Rob Bonta,

Enclosed please find a copy of the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") in the above-captioned action. Petitioners and Plaintiffs Friends of Calwa, Inc. and Fresno Building Healthy Communities filed suit against the California Department of Transportation ("Caltrans") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in Caltrans' decision to approve the South Fresno State Route 99 Corridor Project on January 30, 2023 and certify the Environmental Impact Report for this Project, as noticed in Caltrans' Notice of Determination dated February 6, 2023. The Petition also states claims against Caltrans and the Federal Highway Administration for violations of the National Environmental Policy Act, 42 U.S.C. section 4321 et seq., arising out of these approvals and the issuance of a Finding of No Significant Impact for the Project.

A copy of the Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388.

Sincerely yours,



Kiran Chawla, Certified Law Student  
Jacqueline M. Maldonado, Certified Law Student  
Stephanie L. Safdi, Supervising Attorney

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age **and not a party to this action**. I am employed in the County of Santa Clara, State of California. My business address is 559 Nathan Abbot Way, Stanford CA 94305

On March 8, 2023, I served true copies of the following document(s) described as:

**NOTICE OF FILING CEQA LITIGATION**

on the parties in this action as follows:

Attorney General Rob Bonta  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the person at the address listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the Stanford Environmental Law Clinic's practice for collecting and processing correspondence for mailing. On the same day that the 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.

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

Executed on March 8, 2023 at Stanford, California.



---

Ana Villanueva

# **EXHIBIT B**

June 22, 2023

Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Tel 650 725-8571  
Fax 650 723-4426  
www.law.stanford.edu

**Via U.S. Mail**

Attorney General Rob Bonta  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

**Re: Friends of Calwa, Inc. and Fresno Building Healthy Communities v. California Department of Transportation and Federal Highway Administration, et al., Case No. 1:23-cv-00353-JLT-EPG**

Dear Attorney General Rob Bonta,

Enclosed please find a copy of the First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Amended Petition") in the above-captioned action. Petitioners and Plaintiffs Friends of Calwa, Inc. and Fresno Building Healthy Communities filed suit against the California Department of Transportation ("Caltrans") for failure to observe the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in Caltrans' decision to approve the South Fresno State Route 99 Corridor Project on January 30, 2023 and certify the Environmental Impact Report for this Project, as noticed in Caltrans' Notice of Determination dated February 6, 2023.

The Amended Petition also states claims against Caltrans for violations of the National Environmental Policy Act, 42 U.S.C. section 4321 et seq., and against the U.S. Department of Transportation and the Federal Highway Administration under the Clean Air Act, 42 U.S.C. section 7506(c), arising out of these approvals, the issuance of a Finding of No Significant Impact for the Project, and determination of transportation conformity for the Project. Additional civil rights claims are made against Caltrans under California Government Code sections 11135 and 8899.50.

A copy of the Amended Petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388.

Sincerely yours,



Jacqueline M. Maldonado, Certified Law Student  
Stephanie L. Safdi, Supervising Attorney



Rica V. Garcia, Supervising Attorney

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age **and not a party to this action**. I am employed in the County of Santa Clara, State of California. My business address is 559 Nathan Abbot Way, Stanford CA 94305

On June 22, 2023, I served true copies of the following document(s) described as:

**NOTICE OF FILING AMENDED CEQA PETITION**

on the parties in this action as follows:

Attorney General Rob Bonta  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the person at the address listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the Stanford Environmental Law Clinic's practice for collecting and processing correspondence for mailing. On the same day that the 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.

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

Executed on June 22, 2023 at Stanford, California.



---

Ana Villanueva

# **EXHIBIT C**

March 7, 2023

Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Tel 650 725-8571  
Fax 650 723-4426  
www.law.stanford.edu

***Via Electronic Mail and U.S. Mail***

Tony Tavares  
Director  
California Department of Transportation  
1120 North Street  
Sacramento, CA 95814

John Thomas  
Senior Environmental Planner  
California Department of Transportation, District 6  
2015 E. Shields Avenue, Suite 100  
Fresno, CA 93726  
John.q.thomas@dot.ca.gov

**Re: South Fresno State Route 99 Corridor Project (SCH# 2019039121)**

Dear Director Tavares and Mr. Thomas,

This letter is to notify you that Fresno Building Healthy Communities and Friends of Calwa, Inc. will file suit against the California Department of Transportation (“Caltrans”) for failure to observe the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in Caltrans’ decision to approve the South Fresno State Route 99 Corridor Project on January 30, 2023 and certify the Environmental Impact Report for this Project, as noticed in Caltrans’ Notice of Determination dated February 6, 2023. This notice is given pursuant to Public Resources Code section 21167.5.

Sincerely yours,



Kiran Chawla, Certified Law Student  
Jacqueline M. Maldonado, Certified Law Student  
Stephanie L. Safdi, Supervising Attorney

ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Santa Clara, State of California. My business address is 559 Nathan Abbott Way, Stanford CA 94305.

On March 7, 2023, I served true copies of the following document(s) described as:

**NOTICE OF INTENT TO SUE LETTER**

on the parties in this action as follows:


**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the Stanford Environmental Law Clinic's practice for collecting and processing correspondence for mailing. On the same day that the 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 E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address anamv@stanford.edu to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on March 7, 2023 at Stanford, California.

  
\_\_\_\_\_  
Ana Villanueva

**SERVICE LIST**

Tony Tavares  
Director  
California Department of Transportation  
1120 North Street  
Sacramento, CA 95814  
Tony.Tavares@dot.ca.gov

John Thomas  
Senior Environmental Planner  
California Department of Transportation, District  
6 2015 E. Shields Avenue, Suite 100  
Fresno, CA 93726  
John.q.thomas@dot.ca.gov

Diana Gomez  
Central Region Director  
California Department of Transportation, District  
6 1352 W. Olive Avenue  
P.O. Box 12616  
Fresno, CA 93728  
Diana.gomez@dot.ca.gov

Office Chief – Project Management, Office B  
California Department of Transportation, District 6  
2015 E. Shields Avenue, Suite 100  
Fresno, CA 93726  
Chris.gardner@dot.ca.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22 day of June, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Sally Ann Salisbury  
California Department of Transportation  
1120 N Street  
Legal Division, Ms 57  
Sacramento, CA 95814  
949-777-6843  
Email: ann.salisbury@dot.ca.gov

I also certify the document and a copy of the Notice of Electronic Filing was served via U.S.

Certified Mail on the following non-CM/ECF participants:

U.S. Department of Transportation  
c/o Chief Counsel (HCC-1), Rm. E82-328(HCC)  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590-9898

Federal Highway Administration  
U.S. Department of Transportation  
c/o Chief Counsel (HCC-1), Rm. E82-328(HCC)  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590-9898

Tony Tavares, Director  
California Department of Transportation  
1120 N Street  
Sacramento, CA 95814

Pete Buttigieg, Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590-9898

Shailen Bhatt, Administrator  
Federal Highway Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590-9898

U.S. Department of Justice  
Environment & Natural Resources Division  
c/o Samuel R. Vice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001.

United States Attorneys' Office  
Civil Process Clerk  
501 I Street, Suite 10-100  
Sacramento, CA 95814

/s/ Ana Villanueva

Ana Villanueva